

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

TOWN OF ASHBY

and

INTERNATIONAL BROTHERHOOD OF  
POLICE OFFICERS, LOCAL 385

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Case No.: MUP-13-3021

Date Issued: February 19, 2015

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Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Michael P. Clancy, Esq. - Representing International Brotherhood  
of Police Officers, Local 385

Sharon P. Siegel, Esq. - Representing Town of Ashby

**HEARING OFFICER'S DECISION**

**SUMMARY**

1           The issue is whether the Town of Ashby (Town or Employer) failed to bargain in  
2 good faith with the International Brotherhood of Police Officers, Local 385 (Union or  
3 Local 385) by transferring bargaining unit work to non-unit personnel without first giving  
4 the Union prior notice and an opportunity to bargain to resolution or impasse over the  
5 decision and its impacts in violation of Section 10(a)(5) and, derivatively, Section  
6 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). Based on the  
7 record, and for the reasons explained below, I find that the Town did not violate the  
8 Law.

STATEMENT OF THE CASE

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On July 30, 2013, the Union filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR) alleging that the Town had engaged in prohibited practices within the meaning of the Law when it offered lieutenants the opportunity to perform overtime and outside detail work, beginning in May of 2013. On December 3, 2013, a DLR Investigator issued a Complaint of Prohibited Practice (Complaint), alleging that the Town had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain in good faith with the Union when it transferred bargaining unit overtime and detail work to lieutenants without first giving the Union prior notice and an opportunity to bargain to resolution or impasse over the decision and its impacts. On December 12, 2013, the Town filed its Answer to the Complaint. On December 13, 2013, the Town also filed a Motion to Reconsider Issuance of the Complaint, which the DLR denied on that same day.

I conducted a hearing on July 16, 2014, at which both parties had the opportunity to be heard, to examine and cross-examine witnesses and introduce evidence. On August 27, 2014, the parties filed their post-hearing briefs. On the entire record, I make the following findings and render the following decision.

STIPULATIONS OF FACT

1. The Town 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 that serves as the exclusive bargaining representative for a bargaining unit of all full-time and regular part-time patrol officers and sergeants employed by the Town [in the Police Department (Department)], excluding the lieutenant, chief of police, all managerial, confidential and casual employees and all other employees of the Town.
3. The police lieutenant and police chief are not part of the bargaining unit.

1  
2 4. Sergeant Fred Alden [(Alden)] was promoted and appointed to the rank of  
3 lieutenant on or about May 8, 2013, effective May 12, 2013.  
4

5 FINDINGS OF FACT

6 **The Lieutenant Position**

7 **1. Steven McLatchy**

8 Beginning in or about 2000, the Department promoted Steven McLatchy  
9 (McLatchy) from the position of patrol officer to the position of acting-lieutenant. In or  
10 about 2001, the Department promoted McLatchy to the lieutenant position. McLatchy  
11 served as a lieutenant until October of 2003, when the Department promoted him again  
12 to the position of Acting Chief.<sup>1</sup> At some point after McLatchy's promotion to Acting  
13 Chief in 2003, the Department stopped funding the lieutenant position and eliminated it  
14 by converting it into a patrol officer's position.

15 During his tenure as a lieutenant, the Union included McLatchy on a detail  
16 rotation list that it maintains for detail assignments, and he accepted and/or performed  
17 detail assignments on several occasions between 2001 and 2003. However, the  
18 Department never included McLatchy on any of the overtime lists that the Town  
19 maintains and McLatchy never performed any overtime assignments from those lists  
20 while he was employed as a lieutenant.<sup>2</sup> After his promotion from lieutenant to Acting

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<sup>1</sup> The Town later promoted McLatchy to the position of Chief, in which he served until his resignation from the Department in 2006.

<sup>2</sup> As a lieutenant, the Department scheduled McLatchy to work 40 hours a week on a salaried basis. If McLatchy worked more than 48 hours in a week, the Department compensated him in the form of paid-leave. There is no evidence in the record, showing that the Department had ever paid McLatchy compensatory leave for any scheduled overtime work.

1 Chief, McLatchy requested that the Union and the Department remove his name from  
2 the overtime and detail lists.

### 3 **2. Fred Alden**

4 Beginning in or about 1998, the Department hired Alden as a patrol officer and  
5 later promoted him to the position of sergeant. After eliminating the lieutenant position  
6 at some point after October of 2003, the Town decided to reinstate the position and  
7 promoted Alden to lieutenant on May 12, 2013. On or after Alden's promotion, Police  
8 Chief Edward Drew (Drew) included Alden on the overtime rotation list and instructed  
9 the Union to include him on the detail rotation list. Between May 12 and December 18,  
10 2013, Alden never performed any detail or overtime work even though he was included  
11 on both rotation lists for those assignments. On December 18, 2013, the Department  
12 promoted Alden to Acting Chief and removed him from the overtime rotation list.  
13 Around the same time, the Union also removed Alden from its detail rotation list. Since  
14 December 18, 2013, the Department has kept the lieutenant position vacant.

### 15 **Distribution of Detail and Overtime Work Assignments**

#### 16 **1. Detail Work**

17 At all relevant times, the Union has been responsible for maintaining the  
18 voluntary and involuntary detail lists. Prior to 2003, the Union distributed detail work  
19 opportunities to employees on a "first-come, first-served" basis, where the list  
20 administrator would send a simultaneous page to all full-time and part-time employees  
21 (including lieutenants) via pagers, and the first person who responded to the page  
22 would receive the detail assignment. At some point after 2003, the Union began  
23 distributing detail work opportunities to officers via a "fair and equitable" system based

1 on the lowest number of detail hours worked. Specifically, the list administrator would  
2 first offer the available detail assignment to the full time employee with the least number  
3 of detail hours to his or her credit. If that employee declined the offer, the administrator  
4 would then offer the assignment to the full-time employee with the next lowest number  
5 of detail hours. If all full-time employees declined the offer, the administrator would offer  
6 the detail assignment to part-time employees based on the same lowest-hours system.

7 If the administrator exhausted both full-time and part-time lists without filling the  
8 detail assignment, he or she would then resort to forcing (or "ordering-in") a particular  
9 employee to work the assignment by using a "reverse order" seniority system. Under  
10 that method, the administrator would order-in a part-time employee with the least  
11 amount of seniority before forcing a full-time employee to perform the work.

## 12 **2. Overtime Work**

13 At all relevant times, the Department has maintained two overtime lists: one for  
14 scheduled, voluntary work and another for unscheduled, involuntary assignments—  
15 usually resulting from shift vacancies due to illness, vacation, etc. When an overtime  
16 opportunity becomes available, the Department will first offer the assignment to the full-  
17 time officer with the least number of overtime hours to his or her credit. If that officer  
18 declines the offer, then a full-time officer with the next lowest number of hours can either  
19 accept or reject the assignment. Once the full-time officer list is exhausted, the  
20 Department will offer the overtime assignment to the next part-time officer with the least  
21 amount of overtime hours to his or her credit; and, if that offer is unsuccessful, the offer  
22 goes to the next part-time officer with the second lowest number of hours, and so on.

1 If the Department exhausts both full-time and part-time lists without filling the  
2 overtime assignment voluntarily, it will force an officer to work that assignment via the  
3 "order-in" rotation list, which is based on reverse-order seniority (i.e., where the  
4 Department orders-in part-time employees before ordering-in full-time employees).

#### 5 **The Collective Bargaining Agreements**

6 Beginning in 2003, the Union and the Town entered into its first collective  
7 bargaining agreement, effective from July 1, 2003 to June 30, 2006 (2003-2006  
8 Agreement). Article 1 of that Agreement was titled "Recognition" and stated, in  
9 pertinent part:

10 For the purpose of collective bargaining with respect to wages, hours and  
11 other terms and conditions of employment, the Town hereby  
12 acknowledges the Union as the exclusive bargaining representative of the  
13 following: All full-time and regular part-time Patrol Officers and Sergeants  
14 employed by the Town...*excluding the Lieutenant*, the Chief of Police, all  
15 managerial, confidential and casual employees and all other employees of  
16 the Town of Ashby. [Emphasis added.] These officers shall be referred to  
17 as "employees" in this Agreement and shall constitute the bargaining unit.

18  
19 Article 12 of that Agreement covered "Hours of Work and Overtime" and stated,  
20 in pertinent part:

21 Section 4. Scheduling Overtime. In emergencies, or as the needs of the  
22 Department require as determined by the Police Chief in his or her  
23 discretion, employees may be required by the Chief of Police to perform  
24 unscheduled overtime services or be held on duty. Scheduled overtime  
25 opportunities shall be distributed as fairly and equitably as possible among  
26 *qualified employees* according to seniority on a rotating basis in  
27 accordance with a lowest hours system. [Emphasis added.] There shall  
28 be a rotating list of full-time employees according to seniority and a  
29 separate rotating list of part-time employees according to seniority.

30  
31 Article 26 of the 2003-2006 Agreement concerned "Details" and stated, in  
32 pertinent part:

1 Section 1. Details shall be filled from a detail list maintained on the basis  
2 of the fewest number of actual detail hours worked, in ascending order. In  
3 the event of equal number of detail hours worked, the officer with seniority  
4 shall be considered to have the fewest number of hours and, therefore,  
5 higher on the detail list. Full-time officers shall have the right of first  
6 refusal, including the *Police Lieutenant*. [Emphasis added.]  
7

8 The parties entered into a successor agreement that was effective from July 1,  
9 2007 to June 30, 2010 (2007-2010 Agreement). The 2007-2010 Agreement did not  
10 change the language of Article 1 or Article 12 from the previous agreement; however,  
11 the parties did agree to change the language of Article 26, Section 1, which removed  
12 the term "Police Lieutenant" and stated, in pertinent part:

13 Detail opportunities shall be distributed as fairly and equitably as possible  
14 among *qualified employees* according to seniority on a rotating basis in  
15 accordance with a lowest hourly system. [Emphasis added.] There shall  
16 be a rotating list of full-time employees according to seniority and a  
17 separate rotating list of part-time employees according to seniority.  
18

19 The parties entered into their current successor agreement, which is effective  
20 from July 1, 2012 to June 30, 2015 (2012 – 2015 Agreement).<sup>3</sup> This agreement keeps  
21 unchanged the language from Articles 1, 12 and 26 of the prior agreements.

## 22 **Bargaining History**

### 23 **1. The Bargaining Teams**

24 Beginning in 1998, the Department hired Derek Pepple (Pepple) as a full time  
25 patrol officer. In 2003, Pepple became a member of the bargaining unit<sup>4</sup> and, since that  
26 time, served as Union President until 2013. Beginning in 2000, the Department hired  
27 John Dillon (Dillon) as a patrol officer and, in or about 2003, Dillon became Union Vice

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<sup>3</sup> The parties did not present evidence of any 2010 – 2012 Agreement.

<sup>4</sup> The Town first recognized Local 385 in 2003.

1 President. Both Dillon and Pepple were on the Union's bargaining team during  
2 negotiations for the 2003-2006 Agreement and the 2007-2010 and 2012-2015  
3 successor agreements.

4 Since 2010, the Union's National Office has employed Robert Dickson (Dickson)  
5 as its Regional Supervisor, assigning him to work with Local 385. Dickson was a  
6 member of the Union's bargaining team for the 2012-2015 Agreement. Between 2003  
7 and 2013, Alden served as Union Treasurer and Secretary prior to his promotion as  
8 lieutenant. Alden was also a member of the Union's bargaining team for the 2003-  
9 2006,<sup>5</sup> 2007-2010 and 2012-2015 Agreements.

10 The Town's bargaining team sometimes included the Chief. At other times, the  
11 Town's bargaining team consisted of either the Town Administrator, the Town's attorney  
12 and/or someone from the finance committee. During the 2012-2015 negotiations, Chief  
13 Drew bargained on behalf of the Town.

## 14 **2. The Contract Negotiations**

### 15 **a. 2003-2006 Agreement**

16 During their negotiations, the parties agreed to include the lieutenant on the  
17 Union's regular rotation list for detail work assignments. Although the parties expressly  
18 intended for the "Police Lieutenant" to have the same opportunity to perform detail work  
19 along with other unit members pursuant to Article 26, Section 1, they did not use the  
20 same express language when agreeing to the overtime work clause in Article 12,

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<sup>5</sup> The record is unclear about whether McLatchy participated on either parties' bargaining team during negotiations for the 2003-2006 Agreement.

1 Section 4, which covered scheduled overtime opportunities for “qualified employees,”  
2 only.<sup>6</sup>

3 While McLatchy never performed scheduled overtime work during his tenure as a  
4 lieutenant between 2001 and 2003, he did perform detail work assignments during that  
5 period pursuant to Article 26. Neither McLatchy nor any other person hired by the  
6 Department as a lieutenant ever performed any detail or overtime work after October of  
7 2003—when the Department promoted McLatchy to Acting Chief—through May of  
8 2013.

9 **b. 2007-2010 Successor Agreement**

10 Throughout the parties' successor negotiations for the 2007-2010 Agreement,  
11 the Department did not employ anyone as a lieutenant, and the position was non-  
12 existent until the Department promoted Alden to lieutenant in May of 2013.

13 During those negotiations, the parties' agreed to change the language of Article  
14 26, Section 1, by removing the term “Police Lieutenant” and substituting it with the term  
15 “qualified employees.” The parties intended for the new language to exclude  
16 lieutenants from performing detail work assignments while including other persons such

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<sup>6</sup> There is no evidence that the parties ever intended to include lieutenants within the scope of the term “qualified employees” under Article 12 of the 2003-2006 Agreement. Similarly, nothing in the record shows that McLatchy or Alden, during their tenure as lieutenants, ever performed overtime work specifically in the capacity of “qualified employees” pursuant to Article 12, Section 4.

1 as "special officers" and individuals laid off by the Town who, during their lay-off period,  
2 maintained various qualifying certifications (e.g., CPR, first responder, etc.).<sup>7</sup>

3 During these negotiations the parties also agreed to retain the term "qualified  
4 employees" in Article 12, Section 4, leaving that provision unchanged from the 2003-  
5 2006 Agreement.

### 6 c. 2012-2015 Successor Agreement

7 Throughout negotiations for the 2012-2015 successor agreement, the lieutenant  
8 position remained non-existent at the Department. When the parties concluded their  
9 successor negotiations on or about January 30, 2013, they agreed to keep the same  
10 language from Articles 1, 12 and 26 of the previous agreement.

### 11 The Union's Grievance

12 In response to the Department's announcement that it had promoted Alden to the  
13 lieutenant position effective May 12, 2013, the Union initiated correspondence with  
14 Chief Drew, on or about May 16, 2013, inquiring about whether Alden's promotion

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<sup>7</sup> Pepple and Dillon both testified that during those successor negotiations the Town agreed to remove the term "Police Lieutenant" from Article 26, Section 1 of the 2007-2010 Agreement and replace it with the term "qualified employees" after accepting the Union's final proposal on the issue. However, on direct examination Alden testified that the Union intended the term "qualified employees" to cover all "police officers regardless of rank," including lieutenants and special officers. Alden also testified that while the Town had employed one special officer, Kevin Feely (Feely), for only a "short-period of time," the Union included Feely on the detail list in 2003. On cross-examination, Alden admitted that during the parties' successor negotiations, both the Town and the Union bargained to remove the term "Police Lieutenant" from Article 26 and agreed to keep the term removed from subsequent contracts. Because the lieutenant position did not exist in 2007 and, because the Town failed to present evidence of its specific bargaining position during those negotiations, I credit the Union's argument that the parties agreed to exclude lieutenants from all detail work assignments covered by Article 26, Section 1 of the 2007-2010 Agreement. I also find that the parties intended the term "qualified employees" to cover special officers, laid-off persons and other types of individuals, but not lieutenants.

1 prevented him from performing overtime and detail work assignments pursuant to the  
2 contract. In response, Chief Drew informed Dickson that despite Alden's promotion to  
3 lieutenant, he was still permitted to perform overtime and detail work. The parties did  
4 not engage in further discussion and never met to bargain over the terms of Alden's  
5 placement on the overtime and detail lists.

6 The Union filed a grievance on June 4, 2013, seeking to remove the lieutenant  
7 position from all of the detail and overtime lists. By letter on June 11, 2013, Chief Drew  
8 denied the grievance for timeliness, stating, in pertinent part:

9 Lieutenant Alden was appointed on May 8, 2013 effective May 12, 2013.  
10 There was a meeting held on May 14, 2013, attended by Officers Dillon  
11 and Casey, during which I explained my interpretation of the articles  
12 dealing with overtime and details. There was a brief second meeting with  
13 Officers Casey and Montesion later in the afternoon due to additional  
14 questions that the Union had, but there was still no mention of a  
15 grievance, nor was one filed during either meeting.

16  
17 In fact, I received a letter from Robert Dickson dated May 16, 2013, asking  
18 for my thoughts. I responded to his letter via voice mail and asked him to  
19 call me. I explained that I had met with the officials of Local 385 and had  
20 given them my explanation as to why I felt Lt. Alden was entitled to  
21 continue to be able to work overtime and details. I did not receive any  
22 response whatsoever from Mr. Dickson nor did any member of the  
23 bargaining unit grieve this matter until I received your "Official Grievance  
24 Form" dated (June 4, 2013) on June 11, 2013.

25  
26 This response is past the ten (10) days spelled out in the contract and is  
27 therefore untimely and denied. I remain willing to meet with you at any  
28 time to discuss your concerns.

29  
30 OPINION

31 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law  
32 when it unilaterally changes an existing condition of employment or implements a new  
33 condition of employment involving a mandatory subject of bargaining without first giving  
34 its employees' exclusive bargaining representative notice and an opportunity to bargain

1 to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations  
2 Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations  
3 Commission, 388 Mass. 557 (1983); Commonwealth of Massachusetts, 30 MLC 63,  
4 SUP-4784 (Oct. 9, 2003), aff'd Secretary of Administration and Finance v.  
5 Commonwealth Employment Relations Board, 74 Mass. App. Ct. 91 (2009). The Law  
6 requires a public employer to give the exclusive collective bargaining representative of  
7 its employees prior notice and an opportunity to bargain before transferring bargaining  
8 unit work to non-bargaining unit personnel. Commonwealth of Massachusetts v. Labor  
9 Relations Commission, 60 Mass. App. Ct. 831 (2004).

10 The Commonwealth Employment Relations Board (Board) holds that the  
11 unilateral transfer of job duties from unit employees to non-unit employees violates an  
12 employer's bargaining obligation under Section 10(a)(5) of the Law. Commonwealth of  
13 Massachusetts, 35 MLC 105, 108, SUP-04-5054 (Dec. 10, 2008) (citing City of Boston,  
14 26 MLC 144, 146, MUP-1085 (May 10, 2000), aff'd sub nom., City of Boston v. Labor  
15 Relations Commission, 58 Mass. App. Ct. 1102, further rev. den'd, 440 Mass. 1106  
16 (2003)); Board of Regents of Higher Education, 19 MLC 1485, 1487-88, SUP-3376  
17 (Oct. 23, 1992) (citing City of Quincy, 15 MLC 1239, 1240, MUP-6490 (Nov. 9, 1988)).

18 To determine whether a public employer has unlawfully transferred bargaining unit  
19 work, the Board looks for evidence that: (1) the employer transferred bargaining unit  
20 work to non-unit personnel; (2) the transfer of unit work to non-unit personnel had an  
21 adverse impact on individual employees or the unit itself; and (3) the employer failed to  
22 give the union prior notice and an opportunity to bargain over the decision to transfer  
23 the work. Commonwealth of Massachusetts, 60 Mass. App. Ct. at 833; see also Lowell

1 School Committee, 28 MLC 29, 31, MUP-2074 (June 22, 2001); Higher Education  
2 Coordinating Council, 23 MLC 90, 92, SUP-4090 (Sept. 17, 1996); City of Gardner, 10  
3 MLC 1218, 1219, MUP-4917 (Sept. 14, 1983).

#### 4 **Exclusive Unit Work**

5 To establish the first element, the Union must show that overtime and detail work  
6 assignments have been exclusively performed by bargaining unit employees. City of  
7 Boston, 29 MLC 122, 124, MUP-2419 (Jan. 15, 2003) (citing Higher Education  
8 Coordinating Council, 23 MLC at 92)); City of New Bedford, 15 MLC 1732, 1736, MUP-  
9 6488 (May 31, 1989). To determine whether the Town transferred bargaining unit work  
10 to non-unit personnel, it is necessary to define the scope of the bargaining unit work.  
11 City of Quincy, 15 MLC at 1240. In analyzing what constitutes bargaining unit work, the  
12 Board focuses on the nature of the functions performed. City of Boston, 29 MLC at 124-  
13 25 (citing Town of Norwell, 13 MLC 1200, 1207-08, MUP-5655 (Oct. 15, 1986)). When  
14 bargaining unit members and non-unit employees share work, the Board will not  
15 recognize the work as belonging exclusively to the bargaining unit. Higher Education  
16 Coordinating Council, 23 MLC at 92.

#### 17 **1. Overtime Work**

18 The Town argues that overtime assignments have always been shared between  
19 unit members and lieutenants based on McLatchy's history of performing overtime work  
20 between 2001 and October of 2003. While McLatchy was entitled to receive paid-leave  
21 compensation for any work performed in excess of a 48 work-week, there is no  
22 evidence that McLatchy, Alden or any other lieutenant ever performed scheduled  
23 overtime work or that the Department compensated them for such work. Nor is there

1 evidence that the parties ever bargained to include lieutenants on the overtime lists  
2 pursuant to Article 12 in the 2003-2006 Agreement or in the 2007-2010 or 2012-2015  
3 successor agreements. Instead the record shows that for almost ten consecutive since  
4 October of 2003, the Department only placed unit members on the overtime lists, and  
5 only unit members performed overtime work. The record also shows that after October  
6 of 2003, there were no lieutenants employed at the Department, so there were no  
7 lieutenants eligible to perform overtime work. Thus, the Town's shared work argument  
8 falls short because, first, neither McLatchy nor Alden performed any overtime work.  
9 Second, there was no unit work to share between October of 2003 and May of 2013  
10 because there were no lieutenants employed at the Department during that time, and  
11 only unit members had performed that work. Accordingly, I find that the Union is able to  
12 show that the overtime work is exclusive bargaining unit work. City of Boston, 29 MLC  
13 at 124.

## 14 **2. Detail Work**

15 The Town maintains its argument that detail work has always been shared  
16 between unit members and lieutenants based on McLatchy's history of performing detail  
17 assignments between 2001 and October of 2003. However, the Department ceased its  
18 practice of offering lieutenants the opportunity to perform detail work stopped after it  
19 promoted McLatchy to Acting-Chief in October of 2003, and then eliminated his  
20 lieutenant position at some point after his promotion. Even though the 2003-2006  
21 Agreement permitted lieutenants to share in the performance detail work, once the  
22 parties executed their successor agreements, only bargaining unit members performed  
23 the disputed work, and they did so on an exclusive and consecutive basis between

1 2007 and May of 2013.

2 Further, during successor contract negotiations for the 2007-2010 and 2012-  
3 2015 Agreements, the parties agreed to remove lieutenants from the detail lists  
4 pursuant to Article 26, Section 1. The Town contends that during those successor  
5 negotiations, the parties intended to keep lieutenants on the detail lists when they  
6 included the term "qualified employees" into that provision of the contract. However, the  
7 evidence shows that the parties did not intend for the term "qualified employees" as  
8 used in Article 26 to include lieutenants. First, when the parties commenced their  
9 successor negotiations for the 2007-2010 Agreement, the lieutenant position did not  
10 exist. Second, during those same negotiations, the parties agreed to remove the term  
11 "Police Lieutenant" from Article 26, Section 1. They later agreed to keep it removed by  
12 executing the 2012-2015 Agreement. Thus, I find that the Town's shared work  
13 argument is unpersuasive because after 2007 there were no lieutenants employed (and  
14 no lieutenant position existing) at the Department to share the detail work. I also find  
15 that while McLatchy did perform detail work on several occasions between 2001 and  
16 2003, that work became exclusive unit work after October 2003 when the Department  
17 promoted McLatchy and eliminated his lieutenant position.

18 While the Town asserts that lieutenants constitute "qualified employees" for the  
19 purpose of being eligible to perform detail work, the bargaining history shows the  
20 opposite. Since October of 2003, only unit members have performed detail work even  
21 though lieutenants were eligible to also perform that work under Article 26 of the 2003-  
22 2006 Agreement. Since 2007, only unit members performed detail work, doing so in an  
23 exclusive capacity pursuant to Article 26 of both successor agreements. The parties

1 specifically negotiated to exclude lieutenants from detail lists in 2007 when they  
2 removed all reference to that position in the 2007-2010 successor agreement, and  
3 agreed to keep it removed per the 2012-2015 successor agreement. Accordingly, I find  
4 that the detail assignment work is exclusive bargaining unit work. City of Boston, 29  
5 MLC at 124.

#### 6 **Adverse Impact**

7 Next, the Union must show that the Department's transfer of overtime and detail  
8 unit work to lieutenant Alden in May of 2013, had an adverse impact on individual  
9 employees and/or the unit itself. Higher Education Coordinating Council, 23 MLC at 92;  
10 City of Gardner, 10 MLC at 1219. Here, Chief Drew ordered that Alden be placed on  
11 both the detail and overtime lists following his promotion to the lieutenant position on or  
12 after May 12, 2013. The Union does not dispute that Alden never performed any detail  
13 or overtime work during his tenure as a lieutenant. The Union also concedes that no  
14 bargaining unit members lost the opportunity to perform overtime or detail work as a  
15 result of Alden's placement on the overtime and detail lists. Consequently, I cannot find  
16 that the Chief's action was adverse in this case. See Chief Justice for Administration  
17 and Management of the Trial Court v. Commonwealth Employment Relations Board, 79  
18 Mass. App. Ct. 374, 387 (2011) (where the employer transferred unit work to non-unit  
19 personnel but no bargaining unit members lost opportunity to perform unit work, the  
20 Court refrained from finding a violation). The Court's rationale is persuasive here  
21 because there is no evidence that Alden's inclusion on the detail and overtime lists for  
22 five months between May and December of 2013 had any impact on individual

1 employees or the bargaining unit.

2 CONCLUSION

3 For the reasons stated above, I conclude that the Town did not violate Sections  
4 10(a)(5) and, derivatively, 10(a)(1) of the Law when it when it placed lieutenant Alden  
5 on the detail and overtime lists between May and December of 2013.

6  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
KENDRAH DAVIS, ESQ. HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Division of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.