

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF OAK BLUFFS

and

OAK BLUFFS PROFESSIONAL
FIREFIGHTERS AND PARAMEDICS,
I.A.F.F.

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Case No. MUP-17-6101

Date Issued:
May 24, 2018

AMENDED COMPLAINT OF PROHIBITED PRACTICE
Background

On July 24, 2017, the Oak Bluffs Professional Firefighters and Paramedics, I.A.F.F. (Union) filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR) alleging that the Town of Oak Bluffs (Town) had engaged in prohibited practices within the meaning of Section 10(a)(3) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). On August 7, 2017, the Union filed an Amended Charge, alleging additional violations of Section 10(a)(3) and, derivatively, 10(a)(1) of the Law. On August 22, 2017, the Union filed a Second Amended Charge, alleging violations of Section 10(a)(5), and additional violations of Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. On September 15, 2015, the Union filed a Third Amended Charge, alleging additional violations of Section 10(a)(5), 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. On October 3, 2017,

the Union filed a Fourth Amended Charge, alleging additional violations of Section 10(a)(5), 10(a)(3) and Section 10(a)(1)¹ of the Law.²

Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.05 of the DLR's Rules, I conducted an in-person investigation into these allegations on October 5 and 27, 2017.³ Based on the evidence presented during this investigation, I found probable cause to believe that violations had occurred and dismissed the remaining allegations.

On December 11, 2017, the Union filed a Request for Review (Request) of the Partial Dismissal with the Commonwealth Employment Relations Board (CERB), pursuant to DLR Rule 456 CMR 15.05(9) (Rule 15.05(9)). The Town did not file an response to the Request. Pursuant to Section 11 of the Law and Rule 15.05 (9), the CERB issued its Ruling on May 24, 2018, affirming certain aspects of the Partial Dismissal, but remanding other aspects of the dismissed allegations to me to amend the

¹ At the investigation on October 5, 2017, the Union orally amended its charge to allege an independent violation of Section 10(a)(1) of the Law.

² On October 30, 2017, the Union filed a Fifth Amended Charge, alleging two additional violations of Section 10(a)(5) of the Law. On November 1, 2017, I ruled on that Charge, allowing it, in part, and denying it, in part. Specifically, I allowed the Fifth Amended Charge as it pertained to the installation of security cameras because both parties had presented evidence on that issue at the investigation. I also allowed it because the issue related directly to the Charging Party's allegation in its Second, Third and Fourth Amended Charges that the Respondent had refused to bargain over "its intention to install video cameras in employee work areas." However, I denied the Fifth Amended Charge as it pertained to the allegation that the Town's Board of Selectmen had voted on October 24, 2017 to remove firefighters' duties from the bargaining unit because that was a new issue that the Charging Party needed to raise at a new proceeding. Pursuant to my ruling, the Union filed a new charge on November 7, 2017, and the DLR docketed that charge as MUP-17-6323.

³ At the investigation on October 27, 2017, the Union orally amended its charge to allege a violation of Section 10(a)(5) of the Law after the Town conceded during its presentation that it had installed new security cameras on or about October 19, 2017.

Complaint in a manner consistent with its Ruling. Therefore, this Amended Complaint of Prohibited Practice shall issue and the parties will be given an opportunity to be heard for the purpose of determining the following allegations:

AMENDED COMPLAINT

Count I

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.
3. The Union is the exclusive bargaining representative for all full-time and regular part-time firefighters under the rank of Chief who are employed by the Town in the Fire Department (Department), excluding all managerial, confidential, casual and other employees.
4. At all relevant times, John Rose (Rose) was Chief of the Department.
5. At all relevant times, Kevin Kilduff (Kilduff) was Union Secretary, a firefighter and a member of the bargaining unit referenced in paragraph three, above.
6. At all relevant times, Thomas Lambert (Lambert) was Union President, a firefighter and a member of the bargaining unit referenced in paragraph three, above.
7. At all relevant times, Michael Desrosiers (Desrosiers) was Union Treasurer, a lieutenant firefighter, and a member of the bargaining unit referenced in paragraph three, above.
8. At all relevant times, Chris Flanders (Flanders) was a firefighter and a member of the bargaining unit referenced in paragraph three, above.
9. On or about July 2, 2017, Chief Rose and Kilduff entered into a Last Chance Agreement, which required Kilduff to complete an Employee Assistance Program (EAP).
10. At some point prior to June 27, 2017, Kilduff, Desrosiers, Flanders and Lambert participated in a successful union-organizing campaign at the Department.

11. On June 27, 2017, Lambert filed a petition for certification by written majority authorization (WMAM) with the DLR, seeking to represent the employees referenced in paragraph three, above.
12. At some point prior to July 26, 2017, Kilduff, Desrosiers, Flanders and Lambert spoke to The Martha's Vineyard Times about their union organizing campaign.
13. On July 26, 2017, The Martha's Vineyard Times published an article that quoted Kilduff, Desrosiers, Flanders and Lambert, and referenced an earlier vote taken by them and six other firefighter/paramedics to join the Union.
14. On August 9, 2017, the DLR certified the Union as the exclusive bargaining representative for the employees referenced in paragraph three, above.
15. At some point on or about August 9, 2017, Kilduff became Union Secretary.
16. At some point prior to August 18, 2017, Kilduff completed his EAP, with the Town-appointed psychiatrist recommending that he return to work with a less stressful job assignment (i.e., light duty).
17. On August 18, 2017, Chief Rose notified Kilduff that there were no "light duty" positions available, and that he was placing Kilduff on administrative leave until he complied with the modified EAP recommendations of the Town-appointed psychiatrist.
18. The activity described in paragraphs 10, 11 and 12 constitute concerted, protected activity within the meaning of Section 2 of the Law.
19. The Town knew of the concerted, protected activity described in paragraphs 10, 11 and 12.
20. The Town took the action referred to in paragraph 17 in retaliation for the concerted, protected activity described in paragraphs 10, 11 and 12.
21. By the conduct described in paragraphs 17 and 20, the Town has retaliated against Kilduff for engaging in concerted, protected activity in violation of Section 10(a)(3) of the Law.
22. By the conduct described in paragraphs 17 and 20, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count II

23. The allegations in paragraphs 1-5, 9 and 16-17 are re-alleged.
24. By e-mail on or about August 18, 2017, the Union contacted the Town, requesting information about the Town's decision to extend Kilduff's administrative leave.
25. The Town has failed to respond to the Union's request for information referenced in paragraph 24, above.
26. The information referred to in paragraph 24, is relevant and reasonably necessary for the Union to perform its duties as exclusive collective bargaining representative for the bargaining unit referred to paragraph three.
27. By the conduct described in paragraph 25, the Town has failed to bargain in good faith with the Union by failing to provide information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative, in violation of Section 10(a)(5) of the Law.
28. By the conduct described in paragraph 25, the Town has derivatively interfered with, restrained and coerced its employees in the exercise of their rights under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count III

29. The allegations in paragraphs 1-4 and 11 are re-alleged.
30. Prior to July of 2017, the Town paid employees to the hour.
31. In July of 2017, Chief Rose announced a new payment structure where the Town began paying employees "to the half an hour." Based on this change, the Town deducted employees' pay if they failed to work until the top or bottom of the hour.
32. By the conduct described in paragraph 31, the Town has independently interfered with, restrained, and coerced the bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count IV

33. The allegations in paragraphs 1-4 and 11 are re-alleged.

34. Prior to July 7, 2017, Chief Rose allowed employees to leave the Department station for more than 30 minutes if they first notified the shift commander or lieutenant, kept a radio on their person, and stayed within Town limits.
35. By notice on July 7, 2017, Chief Rose prohibited employees from leaving the Department station for more than 30 minutes without prior authorization and a "good" reason.
36. The Chief's July 7, 2017 notice referenced in paragraph 35, above, also stated that he would hold lieutenants "accountable" if they gave unit members permission to leave.
37. By the conduct described in paragraphs 35 and 36, the Town has independently interfered with, restrained, and coerced the bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count V

38. The allegations in paragraphs 1-4, 7 and 10-14 are re-alleged.
39. Prior to August 1, 2017, Chief Rose permitted on-duty employees to leave the station and transport other unit members coming from or returning to a ferry.
40. By memorandum dated July 5, 2017, the Chief stated that "as of August 1, 2017, all employees should report on time for their assigned shifts and remain on duty for the entire shift." Per that memorandum, the Chief stated further that "[o]n-duty personnel would not be allowed to leave the station to provide transportation for co-workers coming from or returning to a ferry or other form of transportation."
41. On August 1, 2017, the Chief announced that effective at 8:00 a.m. on that day, "it will be the responsibility of all employees to get themselves to and from work" because "the department will no longer be providing transportation."
42. The activity described in paragraphs 10-12 constitutes concerted, protected activity within the meaning of Section 2 of the Law.
43. The Town knew of the concerted, protected activity described in paragraphs 10-12.
44. The Town took the action referred to in paragraphs 40 and 41 in retaliation for the concerted, protected activity described in paragraphs 10-12.

45. By the conduct described in paragraphs 40, 41 and 44, the Town has retaliated against its employees for engaging in concerted, protected activity in violation of Section 10(a)(3) of the Law.
46. By the conduct described in paragraphs 40, 41 and 44, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count VI

47. The allegations in paragraphs 1-4 and 11 are re-alleged.
48. At some point on or prior to August 7, 2017, Chief Rose stated to employees at a staff meeting that the Union would "never step foot in the Department."
49. At that same meeting referenced in paragraph 48, Chief Rose stated that some members of the Board of Selectmen were exploring how to get rid of the Union and the bargaining unit.
50. By the conduct described in paragraphs 48 and 49, the Town has independently interfered with, restrained, and coerced the bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count VII

51. The allegations in paragraphs 1-3 are re-alleged.
52. By e-mail on or about August 31, 2017, the Union contacted the Town, requesting certain information about the Town's decision to install security cameras inside of the Department station.
53. The Town has failed to respond to the Union's request for information referenced in paragraph 52, above.
54. The information referred to in paragraph 52, is relevant and reasonably necessary for the Union to perform its duties as exclusive collective bargaining representative for the bargaining unit referred to paragraph 3.
55. By the conduct described in paragraph 53, the Town has failed to bargain in good faith with the Union by failing to provide information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative, in violation of Section 10(a)(5) of the Law.
56. By the conduct described in paragraph 53, the Town has derivatively interfered with, restrained and coerced its employees in the exercise of

their rights under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count VIII

57. The allegations in paragraphs 1-4 and 11 are re-alleged.
58. Prior to September 5, 2017, the Town did not enforce the statutory residency requirement that all employees of the Department reside within 15 miles of the Town.
59. By memorandum issued on September 5, 2017, Chief Rose announced that he would take "prompt action" to ensure that unit members complied with the residency requirement referenced in paragraph 58, above.
60. By the conduct described in paragraph 59, the Town has independently interfered with, restrained, and coerced the bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count IX

61. The allegations in paragraphs 1-4 and 7 are re-alleged.
62. Prior to September 28, 2017, the Town provided all unit members with lockers located inside separate female and male locker rooms.
63. By e-mail on September 28, 2017, the Chief assigned some unit members to specific lockers located in the basement.
64. On or around September 28, 2017, the Chief did not give Desrosiers an assigned locker.
65. Access to fire station lockers and locker rooms are mandatory subjects of bargaining.
66. The Town took the action described in paragraphs 63 and 64 without first giving the Union prior notice and an opportunity to bargain to resolution or impasse over the changed locker assignments and locations, and its impacts on employees' terms and conditions of employment.
67. By the conduct described in paragraphs 63, 64 and 66, the Town has failed to bargain in good faith with the Union over its decisions to not assign a locker to Desrosiers, and to assign unit members to basement lockers outside of the male locker room and the impacts of those decisions without giving the Union prior notice and opportunity to bargain to resolution or impasse in violation of Section 10(a)(5) of the Law.

68. By the conduct described in paragraphs 63, 64 and 66, the Town has derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count X

69. The allegations in paragraphs 1-3 are re-alleged.
70. Prior to October 19, 2017, there were no security cameras inside of the Department station.
71. On or about October 19, 2017, the Town installed security cameras inside of the Department station that monitored employees.
72. Video surveillance of employees is a mandatory subject of bargaining.
73. The Town took the action described in paragraph 71 without first giving the Union prior notice and an opportunity to bargain to resolution or impasse over the decision to install security cameras and its impacts on employees' terms and conditions of employment.
74. By the conduct described in paragraphs 71 and 73, the Town has failed to bargain in good faith with the Union over its decision to install security cameras inside of the Department station at employee work areas and the impacts of that decision without giving the Union notice and opportunity to bargain to resolution or impasse in violation of Section 10(a)(5) of the Law.
75. By the conduct described in paragraphs 71 and 73, the Town has derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XI

76. The allegations in paragraphs 1-4 and 8 are re-alleged.
77. On or about August 15, 2017, Chief Rose met with Flanders to conduct an investigatory interview that Flanders reasonably believed could lead to discipline.
78. Flanders requested that his Union representative be present at the August 15, 2017 meeting, referenced in paragraph 77.
79. Chief Rose denied Flanders' request, referenced in paragraph 78.
80. By the conduct described in paragraph 79, the Town denied Flanders his right to Union representation at an investigation that Flanders reasonably

believed would lead to discipline, thereby interfering with, restraining and coercing Flanders in the exercise of his rights under Section 10(a)(1) of the Law.

Count XII

- 81. The allegations in paragraphs 1-14, and 61-62 are re-alleged.
- 82. On September 28, 2017, Union President Lambert sent an e-mail to Chief Rose, stating:

Chief Rose, we are requesting that you please have the woman's locker room sign be replaced. Thank you, Thomas Lambert, President Local IAFF 5137.

- 83. By reply e-mail on September 28, 2017, Chief Rose stated to Lambert:

Thomas,

By the way after our conversation today and the unions [sic] level of concern! [sic] I have decided to assign locker [sic] in the men's and woman's [sic] locker room. This order reflects years on the department. . . Any employees that are not on this list are free to use the lockers in the basement because as you are well aware of [sic] we only have six lockers in the men's locker room. . .

- 84. By the conduct described in paragraph 83, the Town has independently interfered with, restrained, and coerced the bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XIII

- 85. The allegations in paragraphs 1-14 are re-alleged.
- 86. In the July 26, 2017 Martha's Vineyard Times article referenced in paragraph 13, Chief Rose and Lieutenant Mike Bradley disclosed personnel file information about Kilduff and Flanders, including their current and prior disciplinary history.
- 87. The activity described in paragraphs 10, 11, and 12 constitute concerted, protected activity within the meaning of Section 2 of the Law.
- 88. The Town knew of the concerted, protected activity described in paragraphs 10, 11, and 12.

89. The Town took the action referred to in paragraph 86 in retaliation for the concerted, protected activity described in paragraphs 10, 11, and 12.
90. By the conduct described in paragraphs 86 and 89, the Town has retaliated against Kilduff and Flanders for engaging in concerted, protected activity in violation of Section 10(a)(3) of the Law.
91. By the conduct described in paragraphs 86 and 89, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XIV

92. The allegations in paragraphs 1-14 are re-alleged.
93. At all relevant times, Robert Whritenour (Whritenour) was the Town Administrator.
94. At all relevant times, Mike Santoro (Santoro) was one of the Town's selectmen.
95. The July 26, 2017 article referenced in paragraph 13 quoted Whritenour as stating that Kilduff and Flanders "are perhaps the worst paramedics I've ever seen."
96. The July 26, 2017 article referenced in paragraph 13 quoted Santoro as stating at a recent selectmen's meeting that the firefighters/paramedics who spoke to The Martha's Vineyard Times were "'cowards who hid behind the press,' who could have gone to the personnel board or Mr. Whritenour with their complaints. . ."
97. By the statements described in paragraphs 95 and 96, the Town has independently interfered with, restrained, and coerced bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XV

98. The allegations in paragraphs 1-14 are re-alleged.
99. At some point between 2013 and 2015, the Town combined the duties of firefighters and Emergency Medical Services (EMS) personnel.
100. On September 5, 2017, after the DLR certified the Union, Chief Rose issued a memorandum in which he stated his intent to "start the process to reclassify the combined firefighter/EMS positions back to two separate ones."

101. By the conduct described in paragraph 100, the Town has independently interfered with, restrained, and coerced bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XVI

102. The allegations in paragraphs 1-14 are re-alleged.
103. At all relevant times, Captain John Gonsalves (Gonsalves) was a firefighter and a member of the petitioned-for bargaining unit in DLR Case No. WMAM-17-6059.
104. Before the Union filed the petition in Case No. WMAM-17-6059, Chief Rose permitted Gonsalves to attend work-related call firefighter meetings.
105. On August 17, 2017, after the Union filed its petition in Case No. WMAM-17-6059, the Town excluded Gonsalves from call firefighter meetings.
106. By the conduct described in paragraph 105, the Town independently interfered with, restrained, and coerced bargaining unit employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XVII

107. The allegations in paragraphs 1-17 are re-alleged.
108. On August 23, 2017, Chief Rose sent Kilduff an e-mail discussing Kilduff's compliance with the terms of his EAP referenced in paragraphs 9 and 16. Among other things, Chief Rose indicated in that e-mail "that he was open any ideas" that Kilduff might have regarding his compliance with aspects of the modified EAP plan. In the same email, Chief Rose also offered to discuss other aspects of the conditions under which Kilduff could return to work, or not.
109. The criteria for fitness for return to duty are mandatory subjects of bargaining.
110. By the conduct described in paragraph 108, the Town has failed to bargain in good faith by bypassing the Union and dealing directly with a bargaining unit member regarding a mandatory subject of bargaining in violation of Section 10(a)(5) of the Law.
111. By the conduct described in paragraphs 108, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XVIII

112. The allegations in paragraphs 1-14 are re-alleged.
113. On September 13, 2017, the Town announced new procedures that "Union members" must follow if they wanted to take time off from their assigned shift to attend Town meetings or negotiations.
114. Time off for union-related business is a mandatory subject of bargaining.
115. The Town took the action described in paragraph 113 without first giving the Union prior notice and an opportunity to bargain to resolution or impasse over the decision to implement new procedures for union-leave time, and the impacts of that decision.
116. By the conduct described in paragraphs 113 and 115 the Town has failed to bargain in good faith over the decision and the impacts of the decision to impose new procedures for time off for union-related business without giving the Union prior notice and an opportunity to bargain to resolution or impasse in violation of Section 10(a)(5) of the Law.
117. By the conduct described in paragraphs 113 and 115, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


KENDRAH DAVIS, ESQ., INVESTIGATOR