

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF PLYMOUTH

and

PLYMOUTH FIREFIGHTERS, LOCAL 1768,
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS

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Case No. MUP-12-2050

Date Issued:
July 29, 2013

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

David C. Jenkins, Esq.:

Representing the Town of Plymouth

Alfred Gordon, Esq.:

Representing Plymouth Firefighters,
Local 1768, International Association
of Firefighters

HEARING OFFICER'S DECISION

Summary

1 The issue is whether the Town of Plymouth (Town) violated Section 10(a)(5) and,
2 derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law)
3 by: 1) repudiating the parties' ground rules for successor bargaining and 2) bypassing
4 the Plymouth Firefighters, Local 1768, International Association of Firefighters (Union)
5 and dealing directly with a bargaining unit member over the terms and conditions of
6 employment. Based on the record and for the reasons explained below, I conclude that
7 the Town 1) repudiated the parties' ground rules when the Town Manager asked a unit

1 member his opinion on shift swaps and 2) dealt directly with a unit member over shift
2 swaps and 24-hour shifts in violation of Section 10(a)(5) of the Law. I further conclude
3 that the Town did not repudiate the ground rules when the Town Manager asked the
4 unit member his opinion on 24-hour shifts and dismiss this portion of the complaint.

Statement of the Case

5 On July 11, 2012, the Union filed a Charge of Prohibited Practice (Charge) with
6 the Department of Labor Relations (DLR) alleging that the Town had engaged in
7 prohibited practices within the meaning of Section 10(a)(5) of the Law. On January 11,
8 2013, a DLR investigator issued a two-count Complaint of Prohibited Practice
9 (Complaint) alleging that the City had failed to bargain in good faith by: 1) repudiating
10 the parties' ground rules for successor bargaining and; 2) bypassing the Union and
11 dealing directly with a bargaining unit member over the terms and conditions of
12 employment. The Town filed its Answer on January 15, 2013.

13 Pursuant to the Notice of Expedited Hearing, I conducted a hearing on April 23,
14 2013. The parties were afforded a full opportunity to be heard, to examine and cross-
15 examine witnesses and to introduce evidence. The Union and Town timely filed their
16 post-hearing briefs. On the entire record, including my observation of the demeanor of
17 witnesses, I make the following findings:

Stipulations of Fact

- 19 1. The Town is a public employer within the meaning of Section 1 of the Law.
- 20
- 21 2. The Union is an employee organization within the meaning of Section 1 of the
- 22 Law.

- 1 3. The Union is the exclusive bargaining representative of firefighters employed
2 in the Town of Plymouth, including Brian Cusack.¹
3
- 4 4. The parties' bargaining relationship during the period of July 1, 2009 through
5 June 30, 2012 was governed by a JLMC Interest Arbitration Award, which is
6 included in the hearing record as Joint Exhibit 2.
7
- 8 5. Melissa Arrighi is the Town Manager and an agent for the Town.
9
- 10 6. On or about March 27, 2012, the Union and Town began negotiations for a
11 successor collective bargaining agreement to be effective July 1, 2012
12 through June 30, 2015.
13
- 14 7. On July 3, 2012, Arrighi met with bargaining unit member Brian Cusack.
15
- 16 8. At a bargaining meeting on May 14, 2012, the parties executed the Ground
17 Rules for Negotiations, which includes the following ground rule:
18
19 Unless and until impasse or final agreement is reached, all matters
20 discussed during collective bargaining negotiations will be kept
21 confidential by all participants, except for status reports to their
22 respective groups.

¹ The evidence introduced at the hearing shows that the bargaining unit also includes lieutenants, captains, and battalion chiefs.

Relevant Contract Provisions

From the July 1, 2006 – June 30, 2009 Collective Bargaining Agreement²:

**ARTICLE VIII
OTHER TYPES OF LEAVE**

. . .

D. Employees covered by this Agreement shall be permitted to substitute or exchange time of duty with members within the Department only upon prior approval of the Chief of the Fire Department.

From the JLMC Interest Arbitration Award:

F. Twenty-Four (24) Hour Shift

1. Effective December 1, 2011;
2. 1/2/1/4 configuration;
3. Forty (40) consecutive hours of work maximum;
4. Sick and vacation leave may be used in ten (10) and/or fourteen (14) hour segments; and
5. The circuit breaker is based on an annual seven (7) sick leave day Firefighter average. For the purposes of calculating annual sick leave usage, serious illnesses or injuries causing an absence of thirty (30) or more consecutive days shall not be included in the average sick leave usage calculation. Sick leave usage will be measured at the end of every calendar year. []
6. Continuation of the twenty-four (24) hour work schedule in succeeding years shall be subject to the foregoing conditions. If the circuit breaker provision is activated, the Town may provide sixty (60) days notice to the Union that it intends to discontinue the twenty-four (24) hour shift. During the *sixty (60) day* notice period, the Town agrees to meet and discuss with the Union the circuit

² The JLMC Interest Arbitration Award (Award) provides that “[t]he terms of the parties’ July 1, 2006 to June 30, 2009 collective bargaining agreement shall remain in effect in the July 1, 2009 through the June 30, 2011, and the July 1, 2011 through June 30, 2012 contracts, except as awarded herein by the Arbitration Panel.” The Award did not address Article VIII(D), therefore, it was still in effect during the relevant dates.

1 breaker in connection with the twenty-four (24) hour shift, including
2 savings to the Department and reduction in absenteeism.

3 Findings of Fact

4 Background

5 *Successor Bargaining*

6 The Union and Town's negotiating committees met on March 27, 2012³ to begin
7 successor bargaining. The Union's bargaining committee consisted of five members.⁴
8 The Town Manager was the chief negotiator for the Town. Mark Stankiewicz
9 (Stankiewicz) was the Town Manager at the start of negotiations, but Melissa Arrighi
10 (Arrighi) took over as Town Manager on May 1.⁵

11 At the March 27 meeting, the parties passed around the ground rules, but did not
12 execute them.⁶ The Union knew that Stankiewicz was leaving his position, so it did not

³ All referenced dates are in 2012 unless otherwise indicated.

⁴ The Union did not identify all of the bargaining committee members, but did identify James Brown (Brown), who testified at the hearing, and Doug Hawthorne (Hawthorne). Brian Cusack (Cusack) was not on the bargaining team.

⁵ The Town did not identify other members of its bargaining committee, although Arrighi testified that she thought Roberta Kety (Kety) attended the May 14 bargaining session, but she was not sure. Brown testified that Fire Chief G. Edward Bradley (Bradley) was at the June 18 meeting.

⁶ The ground rules were based on those that were used in prior negotiations.

1 want to get too far into actual negotiations, but had some “off the cuff”⁷ discussions
2 about financials and the removal of the “circuit breaker.”⁸

3 The parties next met for bargaining on May 14, which was the first meeting with
4 Arrighi as the new Town Manager and chief negotiator. At this meeting, the parties
5 executed the ground rules, as described in stipulation 8, which were amended from the
6 unsigned ground rules that the parties circulated at the March 27 meeting.⁹ The parties
7 discussed the ground rule regarding confidentiality, and confirmed that neither side
8 should speak to anyone other than their respective members about the discussions at
9 the bargaining table.¹⁰

⁷ Brown testified that the Town’s attorney, David Jenkins (Jenkins), who also represented the Town at the hearing, stated that the conversations would be off the record. However, at the hearing, the Town made a proffer that Kety would testify that she was at the March 27 meeting and Jenkins was not there. The Union responded that it would not challenge this proffer. Accordingly, I find that Jenkins was not at the March 27 meeting and, thus, there is no evidence to support Brown’s testimony that these conversations were off the record. Brown testified that “off the cuff” meant it was just a “loose” conversation.

⁸ The “circuit breaker” is defined in Article F, “Twenty-Four (24) Hour Shifts,” specifically F(5) and (6), as set forth above. In essence, if the unit members’ annual average number of sick days exceeds seven, the Town may invoke the circuit breaker to discontinue 24-hour shifts, subject to the requirements of Article F(6). Twenty-four hour shifts were a change from the day-day, night-night schedule (i.e., two 10-hour day shifts, followed by two 14-hour night shifts) that members worked prior to December 2011.

⁹ The parties only introduced the amended ground rules into evidence.

¹⁰ Brown testified that Arrighi insisted on the confidentiality provision. Arrighi did not recall this. Because this issue is not relevant to my decision, I need not consider it.

1 The Union also provided the Town with its first written proposals on May 14. The
2 Union's proposals included as 4(B), "[r]emove the circuit breaker." The parties did not
3 have an in depth discussion on the Union's proposals, rather, the Town indicated that it
4 would look them over and provide a counter-proposal at the next meeting.

5 The next bargaining session was on June 18. The Town provided the Union with
6 its proposals, which included, "[t]he Town proposes that Article VII¹¹ be amended as
7 follows: "...[e]liminate Section D - swaps."¹² The parties reviewed the proposals, but
8 did not discuss them in depth. Rather, they agreed to look over the proposals and
9 discuss them in depth at the next meeting.

10 *Cusack's Meeting*

11 A day or two prior to July 3, a deputy chief informed Cusack that Cusack would
12 be meeting with Arrighi on July 3 to discuss his promotion from provisional lieutenant to
13 permanent lieutenant.¹³ On the morning of July 3, Cusack went to the Town Hall and
14 met with Arrighi. Town Selectperson Belinda Brewster (Brewster) also attended the

¹¹ The undisputed evidence shows that this reference to Article VII, instead of Article VIII, was a typographical error.

¹² In practice, Article VIII(D), which the Town proposed to eliminate, allows unit members to swap shifts, i.e., one unit member will work another member's shift, and then vice-versa.

¹³ Cusack had been a fire fighter with the Department when he passed a civil service promotional exam for the lieutenant position. He was first appointed to the lieutenant position provisionally until he could be permanently promoted through civil service. The last step of that process was to have a "meet and greet" with Arrighi and sign the official civil service list. After the meeting with Arrighi, he was permanently promoted to lieutenant.

1 meeting.¹⁴ Arrighi began the meeting by making introductions and explaining that, as
2 the appointing authority, she likes to talk with people face to face when they are
3 promoted. She then asked Cusack to tell her about himself. Cusack described how he
4 joined the army to obtain veteran status to help him become a firefighter. She asked
5 him what his future plans were, and he responded that he would like to become Fire
6 Chief one day.

7 Arrighi then asked Cusack his opinion on 24 hour shifts.¹⁵ He responded that he
8 liked them because he was able to spend more time with his family. Next, Arrighi asked
9 Cusack what he thought of “coverages.”¹⁶ He responded that he liked them because a
10 firefighter can get time off, and the Town will save money by not paying a night
11 differential.¹⁷ Arrighi responded by stating, “if you’re scheduled to work on December 1,

¹⁴ Brewster was not scheduled to be at the meeting, but she happened to be at Town Hall that morning, and Arrighi asked her if she would like to sit in on the meeting.

¹⁵ Cusack testified that, as a lieutenant, he would have no role in formulating policy with regard to 24 hour shifts. I credit this testimony.

¹⁶ Cusack testified that “coverages” is another term for “shift swaps.” There was no evidence to refute this; therefore, I credit his testimony. I use the two terms interchangeably in this decision.

¹⁷ When asked if he would have any role in formulating policy with regard to shift swaps, Cusack testified that when his “guys” do a swap, he would have to approve it. I credit this testimony.

1 and you're not there, why should I have to pay you?" or words to that effect.¹⁸ She also
2 told him that she wanted to "get rid of them."¹⁹ Arrighi also asked Cusack what he was
3 doing for July 4th,²⁰ and he responded that he had it off. She told him that the police
4 cannot take the holiday off, and she was surprised that the fire department could.

5 Immediately following the meeting with Arrighi, Cusack told Steve Murphy
6 (Murphy), a union official, about their conversation. Murphy suggested that Cusack
7 contact the Union President, Sean Harmon (Harmon). Harmon advised Cusack to write

¹⁸ Brewster testified that she did not recall any discussion of coverages, and that Arrighi did not say anything about paying a firefighter for a shift he did not work. Arrighi testified that she did not recall discussing shift swaps, and if the term "coverage" came up, it could have only been in connection with Cusack having the July 4 holiday off, as further discussed below. She also testified that she absolutely did not recall making the statement about paying a firefighter for a shift he did not work. However, I credit Cusack's testimony as it is supported by a written statement he prepared following the meeting, as detailed below, after he advised the Union President of the conversation. Further, the record reveals no motivation for Cusack to be dishonest in his testimony or written statement, and Arrighi's testimony that she did not recall the discussion is not definitive.

¹⁹ Although Cusack testified that he assumed that Arrighi was also referring to 24-hour shifts, in addition to shift swaps, because she said she wanted to get rid of "them," I decline to credit this assumption, as there is no evidence to support it. Moreover, Cusack's written statement states that after he responded to Arrighi's question about 24-hour shifts, she "immediately began talking about coverage's [sic] and what my opinion was on them. She said 'because I am thinking about getting rid of them.'" This further supports the conclusion that Arrighi was only referring to coverages when she made this statement, as there is nothing to indicate that she was also referring to 24-hour shifts. Further, because the term "coverages" is plural, it is reasonable that Arrighi would say she wanted to get rid of "them" rather than "it."

²⁰ It is unclear from the testimony whether Arrighi and Cusack were discussing July 3rd and/or 4th, as the Town holds holiday events on July 3rd. This point is not relevant to my decision.

1 down everything that took place. Accordingly, a few hours after his meeting with Arrighi,

2 Cusack prepared the following statement, in relevant part:

3 ...[Arrighi] then proceeded to ask about 24-hour shifts compared to the old
4 way and how I felt about them. I told her that I liked them because I get to
5 spend more time with my family. She immediately began discussing
6 coverage[]s and what my opinion was on them. She said "because I am
7 thinking of getting rid of them." My answer to that was "they work out fine,
8 as a matter of fact, the town saves money because then they do not have
9 to pay night differential." [Arrighi] stated that she doesn't understand
10 coverage[]s. Her example: If I was scheduled to work on December 1st
11 and I wasn't there and someone else worked the shift, why should she
12 have to pay me (throwing her hands up in the air.) The whole meeting felt
13 like an interrogation, especially with the Selectman present...I immediately
14 notified the union leadership of the interview because it was an
15 uncomfortable atmosphere. A lot of points that were discussed have been
16 being [sic] brought up at the negotiation table in bargaining and I am not
17 on any of those committees.

18
19 As of July 3, the date of Cusack's meeting with Arrighi, the Union had advised
20 him that 24-hour shifts²¹ and shift swaps were on the table at successor bargaining, but
21 he did not know details of the proposals.

22 Opinion

23 Ground Rules

24 Section 6 of the Law requires a public employer to meet with the exclusive
25 representative and negotiate in good faith with respect to wages, hours and other terms
26 and conditions of employment. Where an employer violates the parties' agreed-upon
27 ground rules for contract negotiations, the Commonwealth Employment Relations Board

²¹ The evidence establishes that circuit breakers were on the table as of July 3, not 24-hour shifts in general.

1 (Board) holds that such conduct constitutes a refusal to bargain in good faith in violation
2 of Section 10(a)(5) of the Law. Bristol County Sheriff's Department, 31 MLC 6, 21
3 (2004); Boston School Committee, 15 MLC 1541, 1546-1547 (1989).

4 *Shift Swaps*

5 The parties agreed in their ground rules that "[u]nless and until impasse or final
6 agreement is reached, all matters discussed during collective bargaining negotiations
7 will be kept confidential by all participants, except for status reports to their respective
8 groups." The Town argues that there were no substantive or in-depth discussions at
9 any of the bargaining sessions prior to July 3. While this may be true, the parties did
10 review the proposals at their meetings, and the Town's June 18 proposal included
11 eliminating shift swaps. The ground rules do not prohibit the disclosure of only in-depth
12 discussions, but rather "all matters discussed." Thus, the depth or substance of the
13 discussions is not relevant.

14 The Town also argues that Arrighi did not mention or discuss any topic at the
15 July 3 meeting that had been specifically discussed during the collective bargaining
16 negotiations. However, Arrighi asked Cusack how he felt about coverages because she
17 wanted to "get rid of them."²² Thus, by asking Cusack his opinion, and stating hers,
18 which was in accordance with the Town's proposal, Arrighi violated the confidentiality

²² As I described above, I find that "coverage" is another term to describe shift swaps; therefore, Arrighi's statement was directed toward shift swaps.

1 provision of the ground rules. It is not relevant that she did not specifically tell Cusack
2 that eliminating shift swaps was a bargaining proposal.

3 The Town further contends that, even assuming that Arrighi did discuss the
4 Town's position on shift swaps during the July 3 meeting with Cusack, the confidentiality
5 provision of the ground rules was only intended to prohibit disclosure of information to
6 outside third parties, not members of the bargaining unit.²³ It highlights the fact that
7 Brown testified that the confidentiality provision was included so there would be no
8 discussion with "unpermitted" parties. This argument is unpersuasive. First, there is no
9 mention of third parties in the ground rule. Second, the ground rule states that matters
10 discussed by all participants will be kept confidential, except for status reports "*to their*
11 *respective groups.*" This clear and unambiguous language means that only the Union
12 may disclose matters discussed at bargaining to unit members, while the Town is
13 clearly prohibited from doing so, regardless of whether the unit member is already
14 aware of the status of negotiations or has access to the information. Similarly, the Town
15 may only disclose bargaining discussions to Town representatives. Therefore, Arrighi's
16 discussion of coverages at the July 3 meeting violated the confidentiality ground rule.

17 For the reasons set forth above, I find that the Arrighi's actions constituted a
18 deliberate refusal to abide by the confidentiality ground rule when Arrighi initiated a

²³ The Town cites Town of Maynard, 2 MLC 1281 (1976) as support for its proposition. However, the case is not on point as the issue there was whether a public statement violated the ground rules, which stated that no press releases would be issued without approval by both sides.

1 discussion about coverages with Cusack at the July 3 meeting in violation of Section
2 10(a)(5) of the Law.

3 *24-Hour Shifts*

4 Conversely, Arrighi did not violate the ground rules when she asked Cusack his
5 opinion on 24-hour shifts. The Union argues that 24-hour shifts were a topic of
6 discussion at bargaining because it had proposed eliminating the circuit breaker at the
7 May 14 meeting, and also raised the issue of eliminating the circuit breaker informally at
8 the March 27 meeting. However, Arrighi did not say anything about the circuit breaker
9 at the July 3 meeting, or ask Cusack his opinion of it. Nor did she disclose her opinion,
10 or the Town's position, on 24-hour shifts. Because there were no other discussions at
11 bargaining, as of July 3, concerning the broader issue of 24-hour shifts in general, I do
12 not find that Arrighi violated the ground rules when she asked Cusack his opinion of 24-
13 hour shifts. Accordingly, I dismiss this portion of the complaint.

14 Direct Dealing

15 It is well-established that the duty to bargain collectively with the employees'
16 exclusive bargaining representative prohibits the employer from dealing directly with
17 employees in the bargaining unit on matters that are properly the subject of negotiations
18 with the bargaining unit's exclusive representative. City of Lowell, 28 MLC 157, 158
19 (2001) (citing Millis School Committee, 23 MLC 99, 99-100 (1996)). An employer's
20 direct dealing with the employees in the bargaining unit undermines the effectiveness of
21 the bargaining representative and creates the possibility of conflict between individually

1 negotiated gains and the terms of the contract. Millis School Committee, 23 MLC at 100
2 (citing Lawrence School Committee, 3 MLC 1304, 1312 (1976)). Direct dealing is
3 impermissible for at least two reasons. First, direct dealing violates the union's statutory
4 right to speak exclusively for the employees who have elected it to serve as their sole
5 representative. Suffolk County Sheriff's Department, 28 MLC 253, 259 (2002) (citing
6 Service Employees International Union v. Labor Relations Commission, 431 Mass. 710,
7 715 (2000)). Second, direct dealing undermines employees' belief that the union
8 actually possesses the power of exclusive representation to which the statute entitles it.
9 Suffolk County Sheriff's Department, 28 MLC at 259; Service Employees International
10 Union, 431 Mass. at 715. The employer's duty to bargain about mandatory subjects of
11 bargaining goes hand-in-hand with its duty to refrain from bargaining directly with
12 individual employees represented by the union. City of Springfield, 17 MLC 1380, 1384-
13 85 (1990).

14 However, there are limits on what is considered direct dealing. An employer
15 does not engage in impermissible direct dealing by merely communicating its bargaining
16 position to employees. Service Employees International Union 431 Mass. at 715.
17 Surveys of employees as to mandatory subjects of negotiation are a different matter, at
18 least if bargaining discussions have begun or are expected to begin. Id. at 716.
19 Exchanging information about employees' views on these subjects is a crucial element
20 of any negotiation between an employer and a union. Id. Employers who solicit this
21 information directly from employees vitiate the union's role as the exclusive voice of

1 employees in negotiations. Id. They also obtain a valuable index of employees'
2 willingness to consider a combination of bargaining terms from the employer. Id.

3 *Shift Swaps*

4 There is no dispute that bargaining discussions between the Union and Town
5 had begun as of July 3. The Town also does not dispute that shift swaps are a
6 mandatory subject of bargaining. See City of Boston, 10 MLC 1189, 1193 (1983) (the
7 generic topic of hours of work, including the hours of work each day and organization of
8 such hours into shifts or tours of duty, is a mandatory subject of bargaining).

9 In their July 3 meeting, Arrighi asked Cusack for his opinion on shift swaps.²⁴
10 This conversation is similar in nature to an employer surveying employees on their
11 opinions on subjects of negotiations. Although Arrighi only solicited information from
12 one member, this does not change the fact that she was seeking a unit member's view
13 on a what was a crucial element of negotiation between the Town and the Union. In
14 Harris-Tecter Super Markets, Inc. and United Food and Commercial Workers Union,
15 Local 204, 310 N.L.R.B. 216 (1993), the National Labor Relations Board (NLRB) held
16 that an employer engaged in direct dealing when a manager asked three unit members
17 if they liked their temporary work schedule, if they had a comment, and who "was for it,"
18 as the employer was obligated to bargain with the union over that subject. According to
19 the NLRB, "by soliciting the sentiment of the employees on a subject to be discussed at

²⁴ The Town argues that even if there was a discussion, it was about coverages, and not shift swaps. However, as explained above, these terms are used interchangeably by the parties.

1 the bargaining table, the employer was usurping the union's function and attempting to
2 arm itself for upcoming negotiations." Id. at 217.

3 Similarly, Arrighi solicited Cusack's opinion on shift swaps, a mandatory subject
4 of bargaining, while successor negotiations that included that issue were ongoing.
5 Accordingly, I find that this conduct constituted direct dealing in violation of Section
6 10(a)(5) of the Law.

7 *24-Hour Shifts*

8 There is no dispute that Arrighi asked Cusack what he thought of 24-hour shifts.
9 Further, the Town does not contend that it is not a mandatory subject of bargaining.
10 See, City of Boston, 10 MLC at 1193. Rather, the Town argues that it was not a topic of
11 successor bargaining because it had not made a proposal regarding 24-hour shifts, and
12 the Union had only proposed to eliminate the circuit breaker. Citing Commonwealth of
13 Massachusetts, 25 MLC 48 (1998), the Town therefore asserts that the Union has failed
14 to establish the Town's intent to erode the Union's bargaining position over a particular
15 proposal that was pending during negotiations. However, in Service Employees
16 International Union, the Court held that the intent to erode the bargaining position of the
17 union is not a necessary element of direct dealing, explaining that intent of this kind is
18 extraordinarily difficult to prove and unions are harmed by direct dealing regardless of
19 whether it was intended by the employer. 431 Mass. at 717. Further, the fact that there
20 were no pending proposals regarding 24-hour shifts at the time of the July 3
21 conversation is irrelevant. See, e.g., Harris-Tector, 210 N.L.R.B. at 217 ("[b]y seeking

1 to ascertain employee sentiment on the changed work schedule *in advance of*
2 *presenting the proposed change to the Union*, the Respondent engaged in direct
3 dealing...) (Emphasis added).²⁵

4 For these reasons, I find that the Town engaged in impermissible direct dealing
5 when Arrighi asked Cusack his opinion on 24-hour shifts at their July 3 meeting.

6 Conclusion

7 Based on the record and for the reasons explained above, I conclude that the
8 Town 1) repudiated the parties' ground rules when the Town Manager asked a unit
9 member his opinion on shift swaps and 2) dealt directly with a unit member over shift
10 swaps and 24-hour shifts in violation of Section 10(a)(5) of the Law. I further conclude
11 that the Town did not repudiate the ground rules when the Town Manager asked the
12 unit member his opinion on 24-hour shifts and dismiss this portion of the complaint.

13 Order

14 Based on the foregoing, IT IS HEREBY ORDERED THAT the Town shall:

15 1. Cease and desist from:

- 16
17 a. Failing to bargain in good faith by repudiating the bargaining ground
18 rules.

²⁵ Moreover, the Court held in Service Employees International Union that "a public employer may not survey its employees about mandatory subjects of collective bargaining...at a time when the union is engaged or *preparing to engage* in collective bargaining with the employer." (Emphasis added). 431 Mass. at 710. It logically follows that if the parties are only preparing to engage in collective bargaining, they would not have any proposals pending, yet it would still be impermissible for the employer to survey the employees about a mandatory subject.

1 b. Dealing directly with unit members over mandatory subjects of
2 bargaining.

3
4 c. In any like manner, interfering, restraining, and coercing its employees
5 in the exercise of their rights guaranteed under the Law.
6

7 2. Take the following action that will effectuate the purposes of the Law:
8

9 a. Bargain in good faith with the employees' exclusive representative to
10 resolution or impasse over shift swaps and 24-hour shifts during
11 successor negotiations, and adhere to the agreed-upon ground rules.
12

13 b. Post immediately in all conspicuous places where members of the
14 Union's bargaining unit usually congregate and where notices to these
15 employees are usually posted, including electronically, if the Town
16 customarily communicates with these unit members via intranet or
17 email, and display for a period of thirty (30) days thereafter, signed
18 copies of the attached Notice to Employees.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


KERRY BONNER, ESQ.

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 Town of Plymouth has violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: a) failing to bargain in good faith by repudiating the bargaining ground rules and b) dealing directly with a unit member over mandatory subjects of bargaining during ongoing successor negotiations.

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 with the Plymouth Firefighters (Union) by repudiating the bargaining ground rules.

WE WILL NOT deal directly with unit members over mandatory subjects of bargaining.

WE WILL NOT otherwise interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

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

Bargain in good faith with the Union to resolution or impasse over shift swaps and 24-hour shifts during successor negotiations, and adhere to all bargaining ground rules.

Melissa Arrighi, Town Manager
Town of Plymouth

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