COMMONWEALTH OF MASSACHUSETTS
BEFORE THE DIVISION OF LABOR RELATIONS

In the Matter of	*	
CITY OF NEWTON	*	Case No.: MUP-08-5369
and	*	Date Issued: August 10, 2010
NEWTON FIRE FIGHTERS ASSOCIATION, LOCAL 863, IAFF	*	

Hearing Officer:

Ann T. Moriarty, Esq.

Appearances:

James M. Pender, Esq. - Representing the City of Newton

Leah Marie Barrault, Esq. - Representing the Newton Fire Fighters Association, Local 863, IAFF

HEARING OFFICER'S DECISION AND ORDER

Summary

The issues are whether the City of Newton (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. c.150E (the Law) by banning the use of certain exercise equipment in its fire stations without giving the Newton Fire Fighters Association, Local 863, IAFF (Union) prior notice and an opportunity to bargain to resolution or impasse over its decision to ban the equipment and the impacts of that decision. Based on the record and for the reasons explained below, I conclude that the City altered the workplace benefit of a physical fitness workout area by banning the fire fighters' use of the free weight exercise equipment without first providing the Union with

notice and an opportunity to bargaining to resolution or impasse over the use of the free weight exercise equipment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Statement of the Case

The Union filed a charge with the Division of Labor Relations (Division) on December 22, 2008, alleging that the City had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of the Law. Following an investigation, Michael A. Byrnes, Esq., a duly-designated Division Investigator, issued a complaint of prohibited practice on May 15, 2009, alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) by banning the use of certain exercise equipment in the fire stations without giving the Union prior notice and an opportunity to bargain to resolution or impasse over its decision to ban the equipment and the impacts of that decision. The City filed its answer to the Division's complaint on May 27, 2009.

On January 7, 2010, I conducted a hearing during which both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. Both parties filed post-hearing briefs with the Division on February 8, 2010. After considering all of the evidence and the legal arguments advanced by the parties, I make the following findings of fact and conclusions of law.

Findings of Fact[1]

The Union is the exclusive representative for all uniformed fire fighters employed by the City, excluding the Fire Chief and the Administrative Assistant to the Chief. The City employs 181 fire fighters who are commanded by the Fire Chief. There are six fire

[1] Neither party contests the Division's jurisdiction in this matter. The parties stipulated to certain facts and they are included in the findings.

stations: Newton Corner, Newtonville, West Newton, Newton Highlands, Newton Centre, and Oak Hill. The fire fighters work a twenty-four hour shift starting at 8:00 A.M. one day and ending at 8:00 A.M. the following day. Fire fighters are required to remain at the fire stations for their twenty-four hour shifts, unless they are responding to a call or otherwise performing assigned duties.

For at least ten years prior to December 8, 2010, all of the City's fire stations had exercise equipment that the fire fighters used during their twenty-four hour shift. Some of the six fire stations had a more extensive exercise equipment selection in the work-out area or room, but generally all the fire stations had treadmills, stationary bicycles, nautilus equipment, free weights, chin-up bars, and pull-up bars. Some of the equipment was donated by residents, other equipment was brought in by the fire fighters, and, some equipment was brought from the high school gym. At all times, the City knew that the exercise equipment was in all six fire stations and that the fire fighters used this equipment, including free weights, during their free time, which was generally outside the hours of 8:00 A.M. to 5:00 P.M. and when they were not responding to a call. Prior to September 24, 2007, no on-duty fire fighter was injured while using the exercise equipment, including the free weights.

On November 19, 2008, an arbitrator issued an award (Award) that found the City violated Article IVB of the Agreement[2] when it denied injured on duty status to a fire

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[2] Article IVB, Injured Leave – Limited Duty/Limit on Annual Compensation of the Agreement, in relevant part and as cited by the arbitrator, provides:

> 4B.01 Injured Employees – Whenever a firefighter is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own ... he shall be granted leave without loss of compensation or benefits in accordance with present practice for the period of such incapacity ... .

fighter who was injured on September 24, 2007 while lifting free weights at a fire station. In reaching his decision on the issue presented, the arbitrator did not interpret and apply Article VI, the management rights provision of the Agreement, nor is this provision expressly cited in any part of the Award. In the last paragraph of the Award, the arbitrator included the following section:

> Concerns About Exposure. The City's fear of potential liability is understandable and not unreasonable. Unlike the physical activities done as part of the training academy or fire site drills, which happen under the direct supervision of superior officers, firefighters are left to work out on their own. The City would be within its rights to evaluate its risk and to set reasonable policies governing the use of the workout facilities. Further, Article IVB provides its own limitations on the right to recover for an injury, even one incurred in a work-related setting. Injuries which are the fault of the firefighter are not covered. The City did not introduce evidence which would have supported a finding that Davis' use of a sixty-five pound dumbbell, or his performance of triceps extensions without a spotter, was negligent or imprudent.

The American Arbitration Association sent the Award to both parties on November 24, 2008 and Fire Chief Joseph E. LaCroix (Fire Chief)[3] received the Award shortly after November 24, 2008. The Award was not appealed to the Superior Court or any other legal forum. According to the City's Human Resource Director, the City has incurred a financial liability of about $22,000 to comply with the Award.

For at least ten years prior to December 8, 2008, the City did not have any rules and regulations regarding the type of exercise equipment available for the fire fighter's use in the workout rooms in the fire stations nor any rules and regulations governing the fire fighters' use of the exercise equipment while on-duty. On Wednesday, December 3,

[3] LaCroix has been employed as a fire fighter with the City since January of 1972 and has served as the City's Fire Chief since July of 2003.

2008, Lieutenant Thomas Lopez (Union President),[4] the Union's President since January of 2008, received the following letter from the Fire Chief:

> December 3, 2008
>
> Dear President Lopez:
>
> I am writing regarding the recent Arbitration Award issued by Arbitrator Mark Irvings that awarded injury-on-duty pay to Firefighter Lamont Davis for an injury that resulted from Firefighter Davis' use of free weights while exercising in Station One.
>
> In the Award, Arbitrator Irvings recognized the City's legitimate concern about potential liability resulting from unsupervised use of free weight exercise equipment. Specifically, on page 17 of the Award, Arbitrator Irvings stated, "The City would be within its rights to evaluate its risk and to set reasonable policies governing the use of workout facilities." As such, the City intends to develop and implement such policies. In the interim, because of the risks involved, I plan to order that all free weight exercise equipment in the stations cease to be used by any firefighter until such policies can be developed. I intend to issue this order on Monday, December 8, 2008.
>
> Please contact me if you have any questions. Of course the city will discuss this review and the effects of this review with you and answer any questions you may have. Please contact me to set up a meeting for the beginning of next week.

On December 8, 2008, the Fire Chief issued the following notice to all personnel:

> All free weight exercise equipment in the stations shall cease to be used by any firefighter until such time that a policy can be developed between the city and the union. The policy will address the legitimate concern about potential liability resulting from unsupervised use of free weight exercise equipment. Attached is a copy of the letter sent to Union President Lopez.

As stated, the City's ban covers only the firefighters' use of the free weight exercise equipment, all non-free weight exercise equipment continued to be available for use in the fire stations' workout rooms.

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[4] Lopez has been employed as a fire fighter with the City since July of 1997 and has held the rank of lieutenant since July of 2003.

During a meeting in the Fire Chief's office held a day or two before December 3, 2008 to discuss other issues, not the use of free weights, the Fire Chief showed the Union President a draft of the December 3, 2008 letter and told him that he would issue a ban on the fire fighters' use of free weights on December 8, 2008. In response, the Union President told the Fire Chief that the Union was always open to discussions, but that the ban on the free weight exercise equipment was retaliatory. During their brief discussion on this issue, the Fire Chief cited his concern for the City's financial exposure to claims. In response, the Union President emphasized the absence of any fire fighter injuries on the exercise equipment over the Fire Chief's thirty-year tenure with the City, except the one that was the subject of the Award. The discussion ended with the Fire Chief stating that he would issue the letter on December 3, 2008 and the Union President stating that the Union would have to exercise its legal rights.

At some point between the end of November of 2008 and December 8, 2008, the Fire Chief and the Union President discussed the City's ban on the free weight exercise equipment while walking to their cars after a meeting at City Hall with City officials on other issues. The Fire Chief raised the issue and told the Union President that he was going to implement the ban on free weights. The Union President asked the Fire Chief not to issue the ban. The Fire Chief told the Union President that he had to ban the use of free weights because of the liability issues, but that he wanted to work with the Union to develop a policy. The Union President again asked the Fire Chief not to implement the ban. The Fire Chief considered this request, but he decided to issue the ban on the fire fighters' use of free weights in the fire station workout rooms on December 8, 2008. At no time before December 8, 2008 did the City provide the Union with any proposals

regarding the use of the exercise equipment nor offer to bargain prior to the ban's implementation.

By letter dated December 8, 2008 transmitted to the Fire Chief by facsimile transmission and first class mail, the Union protested the ban on the fire fighters' use of free weights, requested that the Fire Chief rescind the ban and then bargain with the Union over rules governing the use of free weights. The Union notified the Fire Chief that it would "not engage in 'fait accompli' bargaining." In a responsive letter dated December 11, 2008, the City explained that the Fire Chief's ban on free weights until policies are developed for their safe use was in response to the Award and the City's financial liabilities for fire fighter injuries. The City stated that it intended "to move expeditiously in establishing policies for the use of free weights and wants and expects the Union's consultation and input." The City did not rescind the ban on the fire fighters' use of free weights in the workout rooms in the fire stations and the Union filed this charge of prohibited practice.

Collective Bargaining Agreement – Management Rights Provision

The City and the Union are parties to a collective bargaining agreement (Agreement) that was in effect at all times material to the issues in this case. Article VI, Management Rights of the Agreement, in part, provides:

> Article VI
> Management Rights
>
> 6.01 Except where such rights, powers, and authority are specifically relinquished, abridged, or limited by the provisions of this contract, the CITY has and will continue to retain, whether exercised or not, all of the rights, powers and authority heretofore had by it, and except where such rights, powers and authority are specifically relinquished, abridged or limited by the provisions of this contract, it shall have the sole rights, responsibility and prerogative of management of the affairs of the CITY

and direction of the working forces, including but not limited to the following:

A. To determine the care, maintenance and operation of the equipment and property used for and on behalf of the purposes of the City.

B. To establish or continue policies, practices and procedures for the conduct of the CITY business and, from time to time, to change or abolish such policies, practices or procedures.

C. To select and to determine the number and types of employees required to perform the CITY's operations.

D. To prescribe and enforce reasonable rules and regulations for the maintenance of discipline and for the performance of work in accordance with the requirements of the CITY, provided such rules and regulations are made known in a reasonable manner to the employees affected by them.

E. To insure that related duties connected with departmental operations, whether enumerated in job descriptions or not, shall be performed by employees.

F. To establish, continue and/or change policies and/or regulations pertaining to standards for hiring and enforcement thereof.

The foregoing is not to be regarded as a waiver by the Association of its rights under M.G.L. c. 150E.

Opinion

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first affording its employees' exclusive collective bargaining representative prior notice and an opportunity to bargain to resolution or lawful impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124, 127 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572 (1983); City of Boston, 16 MLC 1429,

1434 (1989); City of Holyoke, 13 MLC 1336, 1343 (1986). A public employer's duty to bargain includes working conditions established through custom and practice as well as those governed by the provisions of a collective bargaining agreement. City of Boston, 16 MLC at 1434 (1989); Town of Wilmington, 9 MLC 1694, 1699 (1983).

The Board balances a public employer's legitimate interests in maintaining its managerial prerogative to effectively govern against the impact on employees' terms and conditions of employment when deciding whether a subject properly falls within the scope of bargaining. Town of Danvers, 3 MLC 1559, 1570-1573 (1977). This balancing test is applied on a case by case basis considering such factors as the degree to which the subject has direct impact on terms and conditions of employment, whether the subject involves a core governmental decision, or whether it is far removed from employees' terms and conditions of employment. Id. at 1577. Applying this balancing test, the Board has decided that a decision to prioritize law enforcement details directly implicates the employer's ability to set its law enforcement priorities and, therefore, it does not constitute a mandatory subject of bargaining. City of Boston, 31 MLC 25, 31 (2004). See also, Town of Dennis, 12 MLC 1027 (1985) (decision to discontinue providing certain private police details is a level of services decision that lies within management's exclusive prerogative).

The Board has also decided that certain benefits at the workplace are conditions of employment and, therefore, constitute mandatory subjects of bargaining. See, e.g. Commonwealth of Massachusetts, 27 MLC 11 (2000) (free employee parking); City of Boston, 15 MLC 1209 (H.O. 1988), aff'd 16 MLC 1086 (1989) (choice and amount of food available to correction officers who are required to stay at the workplace during their meal

time); City of Boston, 9 MLC 1021 (1982) (availability of the medical library to interns and residents); County of Middlesex, 6 MLC 2056 (1980) (summer day care program). Further, in Town of Shrewsbury, 28 MLC 44 (2001), the Board decided that the availability of lockers to police officers and the manner in which those lockers may be used, including what may be stored in the locker, is a mandatory subject of bargaining. Applying the balancing test in this case, the availability of a physical fitness workout area to fire fighters who work a twenty-four hour shift and who are required to remain at the fire station unless otherwise directed, or responding to a call for assistance, is a workplace benefit and a condition of employment that constitutes a mandatory subject of bargaining. Further, the Fire Chief's ban on the use of free weights, which the fire fighters had used in the workout areas of all six fire stations for about ten years prior to the ban, constitutes a change in that workplace benefit sufficient to trigger the statutory bargaining obligation. To find otherwise would permit an employer to incrementally alter an employment benefit until it is effectively eliminated. Although the Fire Chief explained that his decision to ban the fire fighters' use of free weights was to prevent future on-duty injuries for which the City would be financially liable, this rationale does not rise to the level of an identifiable core managerial concern, like public safety and other level of services decisions, that outweighs the Union's interest in negotiating over this subject matter.

The facts demonstrate that, for at least ten years prior to December 8, 2008, the fire fighters enjoyed the on-site workplace benefit of free access to an exercise workout area, without restrictions on the type of exercise equipment available for use or any rules or policies governing the use of the exercise equipment. The facts also establish that the City banned the use of the free weight exercise equipment on December 8, 2008, pending

negotiations with the Union over a policy regarding the use of the exercise equipment. Although the Fire Chief had shown the Union President a draft of his December 3, 2008 letter formally notifying the Union of his decision to ban the free weight equipment and inviting the Union to provide input regarding the implementation of a policy governing the use of the exercise equipment during the week following the ban's implementation, both the plain language of the letter and the verbal exchanges between the Union President and the Fire Chief between late November of 2008 and December 8, 2008 evidence that the City had decided to first ban the use of the free weight equipment and then negotiate with the Union over a policy governing the use of the exercise equipment with the ban in effect.

The Union promptly protested the ban each time the City raised the subject during late November of 2008 and December 8, 2008. At no time before December 8, 2008 did the City provide the Union with any proposals regarding the use of the exercise equipment nor offer to bargain prior to the ban's implementation. Further, this short period of time, no more than ten days between the date the Fire Chief told the Union President of his decision to ban the free weights and the effective date of the ban, is insufficient to afford the Union a meaningful opportunity to bargain. City of Everett, 2 MLC 1473, 1476 (1976). By letter dated December 8, 2008, the Union again protested the ban on the fire fighters' use of free weights and requested that the Fire Chief rescind the ban and then bargain with the Union over rules governing the use of free weights. By banning the use of the free weight equipment, the City unilaterally altered a condition of employment that constitutes a mandatory subject of bargaining without first satisfying its bargaining obligations. Absent evidence that circumstances beyond the City's control required

immediate action, such as external, exigent time constraints not present here, post-implementation bargaining does not satisfy the statutory requirements. City of Newton, 35 MLC 296, 298 (2009), citing, Boston School Committee, 4 MLC 1912 (1978).

The City defends its conduct by asserting that it has the contractual managerial right to temporarily prohibit or otherwise regulate the use of free weights in the fire stations without bargaining with the Union. Specifically, the City argues that because the Agreement does not contain a past practices clause and does not expressly address the firefighters' use of the free weight exercise equipment, the Fire Chief's ban of this equipment was permissible because Article VI, Management Rights of the Agreement establishes that, unless "specifically relinquished, abridged or limited by the provisions of this contract," the City maintains "the sole rights, responsibility and prerogative of management of the affairs of the City and direction of the working forces...." The City also argues that the Fire Chief's ban of the free weights until reasonable policies could be implemented governing their safe use is contractually permissible because Article VI of the Agreement expressly provides that the City has the right "to determine the care, maintenance and operation of the equipment and property used for and on behalf of the purposes of the City" and the City, through its Fire Chief, has the express right to "establish or continue policies, practices and procedures for the conduct of the City business and, from time to time, to change or abolish such policies, practices or procedures."

Where an employer raises the affirmative defense of waiver by contract, it bears the burden of proving that the parties consciously considered the situation that has arisen and that the union knowingly and unequivocally waived its bargaining rights. Massachusetts Port Authority, 36 MLC 5, 12 (2009) and cases cited. A union's waiver of its statutory right

to bargain before an employer changes an existing term or condition of employment, or implements a new condition of employment is not lightly inferred. Town of Andover, 4 MLC 1086, 1089 (1977). Rather, it "must be shown clearly, unmistakably, and unequivocably and cannot be found on the basis of a broad, but general, management rights clause." School Committee of Newton v. Labor Relations Commission, 388 Mass. at 569 (1983)[5] and cases cited; City of Boston v. Labor Relations Commission, 48 Mass. App. Ct. 169, 175 (1999). To determine the existence of waiver, the Commission examines the contractual language. Massachusetts Board of Regents, 15 MLC 1265, 1269 (1988), citing, Town of Marblehead, 12 MLC 1667, 1670 (1986). If the language "clearly, unequivocally, and specifically" permits the public employer to make the change, no further inquiry is necessary. City of Worcester, 16 MLC 1327, 1333 (1989), citing, Town of Marblehead, 12 MLC 1667 (1986); Commonwealth of Massachusetts, Chief Administrative Justice of the Trial Court, 11 MLC 1440 (1985); Town of Andover, 4 MLC 1086 (1977). However, if the language is ambiguous, the Board reviews bargaining history to ascertain the parties' intent. Town of Marblehead, 12 MLC at 1670.

In City of Newton, 16 MLC 1036 (1989), the Board examined the identical language in the management rights clause in the contract between the City and the Union that is at issue in this case and rejected the City's argument that the Union had waived its statutory right to bargain to resolution or impasse over the effects of increasing a fire

[5] The management rights clause at issue in this decision provided that "[e]xcept as specifically abridged, delegated, granted or modified by this Agreement, or any supplementary agreements that may hereafter be made, all of the rights, powers, and authority the employer had prior to the signing of this Agreement are retained by the employer, and remain exclusively and without limitation within the rights of management." School Committee of Newton v. Labor Relations Commission, 388 Mass. at 569, fn.7.

inspection program prior to implementation.[6] Id. at 1044. In reaching this conclusion, the Board specifically noted that the management rights clause in the contract expressly provides that its provisions are not to be regarded as a waiver of the Union's rights under the Law. Id. at 1044, fn. 13. Similarly, applying the Board's well-established case law here, I am not persuaded that the language of the management rights clause in the Agreement conferred on the City the right to ban the fire fighters' use of the free weight equipment pending negotiations between the City and the Union over the rules governing the use of the equipment. Further, I decline to ignore or fail to give effect to the bargained-for language that expressly states that none of the provisions of the management rights clause are to be regarded as a waiver by the Union of its rights under the Law.[7] The fact that the arbitrator included in his Award certain language that the City would be within its rights to evaluate its risk and to set reasonable policies governing the use of workout facilities does not require a contrary result. The record establishes that the arbitrator decided only that the City was liable for on-duty injury pay for a fire fighter who was injured while lifting free weights and that its denial of this injury pay violated Article IVB, Injured Leave – Limited Duty/Limit on Annual Compensation provision of the

[6] The Board distinguished the City's decision to increase the level of fire inspections, which is a level of services decision over which the City had no duty to bargain under the Law, from the method of implementing that decision that must be negotiated with the Union to resolution or impasse prior to implementation. City of Newton, 16 MLC at 1042.

[7] The City asserts that the management rights clause in the police officers' contract with the City is virtually identical to the management rights clause in the fire fighters' contract and, therefore, the Board's decision in City of Newton, 29 MLC 135 (2003) that the management rights clause permitted the City to take actions in furtherance of maintaining department discipline without first bargaining with the employees' exclusive bargaining representative is analogous to the facts here. However, there is no evidence in that reported case, nor does the City state that the police officers' contract with the City also contains the identical last sentence in the fire fighters' management rights clause.

Agreement. The arbitrator did not interpret and apply Article VI, the management rights provision of the Agreement, in his decision nor expressly reference that provision of the Agreement anywhere in the Award. Therefore, I decline to infer or speculate that the arbitrator's one sentence statement in his decision that the "The City would be within its rights to evaluate its risk and to set reasonable policies governing the use of workout facilities" constitutes the arbitrator's decision that the management rights clause of the Agreement permits the City to ban the use of the free weight equipment and set reasonable policies governing the use of the workout facilities.[8] Accordingly, absent evidence of bargaining history to support the City's waiver defense, which is not present here, I find that Article VI Management Rights does not require a determination that the Union knowingly, clearly, and unmistakably waived its statutory right to bargain.

Conclusion

Based on this record and for the reasons stated above, I conclude that the City altered the workplace benefit of a physical fitness workout area by banning the fire fighters' use of the free weight exercise equipment without first providing the Union with notice and an opportunity to bargaining to resolution or impasse over the use of the free weight exercise equipment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Order

WHEREFORE, IT IS HEREBY ORDERED that the City shall:

1. Cease and desist from:

[8] If the arbitrator had interpreted and applied Article VI, Management Rights of the Agreement, I would have considered deferring to that interpretation. See, Town of Brookline, 20 MLC 1570, 1593-1594 (1994) (Board defers to an arbitrator's finding about the terms of the parties' contract and then considers further issues under the Law).

a) Banning the fire fighters' use of the free weight exercise equipment in the fire stations without first providing the Union with notice and an opportunity to bargain to resolution or impasse over the use of the equipment.

b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 2 of the Law.

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

a) Immediately rescind the December 8, 2008 ban on the fire fighters' use of the free weight exercise equipment in the fire stations.

b) Upon request, bargain in good faith with the Union to resolution and impasse over the fire fighters' use of the free weight exercise equipment in the fire stations.

c) Post in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, including electronically, if the City customarily communicates with bargaining unit members via intranet or email, and display for a period of thirty consecutive days thereafter, signed copies of the attached Notice to Employees.

d) Notify the Division within ten days of receipt of this Decision and Order of the steps taken to comply with it.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

Ann Moriarty

Ann T. Moriarty, 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 Division 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
DIVISON OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE MASSACHUSETTS DIVISION OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A Hearing Officer of the Massachusetts Division of Labor Relations has held that the City of Newton (City) altered the workplace benefit of a physical fitness workout area by banning the fire fighters' use of the free weight exercise equipment without first providing the Newton Fire Fighters Association, Local 863, IAFF (Union) with notice and an opportunity to bargain to resolution or impasse over the use of the free weight exercise equipment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E.

The City posts this Notice to Employees in compliance with the Hearing Officer's order.

Chapter 150E gives public employees the following rights:

- To form, join or assist a union;
- To participate in proceedings at the Division of Labor Relations;
- To act together with other employees for the purposes of collective bargaining or other mutual aid or protection;
- To choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain in good faith by banning the fire fighters' use of the free weight exercise equipment in the fire stations without first providing the Union with notice and an opportunity to bargain to resolution over the use of the equipment.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of Chapter 150E.

WE WILL immediately rescind the December 8, 2008 ban on the fire fighters' use of the free weight exercise equipment in the fire stations.

WE WILL, upon request, bargain in good faith with the Union to resolution and impasse over the fire fighters' use of the free weight exercise equipment in the fire stations.

_____ _____

For the City of Newton 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 Division Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).