COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	
CITY OF NEWTON	Case No. MUP-05-4529
and	Date Issued: November 13, 2012
NEWTON FIREFIGHTERS, LOCAL 863, IAFF	

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

James M. Pender, Esq.	-	Representing the City of Newton
Paul T. Hynes, Esq.	-	Representing the Newton Firefighters, Local 863, IAFF

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

The issues are whether the City of Newton (City or Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by failing to bargain in good faith with the Newton Firefighters, Local 863, IAFF (Union) when it: (1) it assigned street light repair, maintenance and replacement duties[1] to bargaining unit members without giving the Union prior notice and an opportunity to bargain to resolution or impasse over that decision and, (2) created two new Signal Maintenance Technician

[1] All references to street light maintenance also refer to traffic signal and specialty light maintenance.

positions and upgraded one existing Signal Maintenance Technician position to a Working Foreman position without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the impacts of those decisions. Based on the record and for the reasons explained below, I conclude that the City: (1) assigned street light repair, maintenance and replacement duties to bargaining unit members without giving the Union prior notice and an opportunity to bargain to resolution or impasse over that decision; and, (2) created two new Signal Maintenance Technician positions and upgraded one existing Signal Maintenance Technician position to a Working Foreman position without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the impacts of those decisions in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

STATEMENT OF THE CASE

On September 21, 2005,[2] the Union filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR)[3] alleging that the City had violated Sections 10(a)(5) and 10(a)(1) of the Law. Following an investigation, the Commonwealth Employment Relations Board (Board)[4] issued a Complaint of Prohibited Practice (Complaint) on July 24, 2008, alleging that the City had violated Sections 10(a)(5) and 10(a)(1) of the Law

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[2] Pursuant to Standing Order 2009-1 and 456 CMR 13.01(1) of the Rules and Regulations of the Department of Labor Relations, the Commonwealth Employment Relations Board (Board) designates Hearing Officers to preside over hearings and decide the allegations set forth in complaints for prohibited practice charges filed on or before November 14, 2007.

[3] Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the DLR.

[4] Pursuant to Chapter 145 of the Acts of 2007, the DLR "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Board is the body within the DLR charged with deciding adjudicatory matters. References in this decision to the Board include the former Labor Relations Commission.

by assigning street light repair, maintenance and replacement duties to bargaining unit members without bargaining to resolution or impasse over that decision, and by creating two new Signal Maintenance Technician bargaining unit positions and upgrading one existing Signal Maintenance Technician position to a Working Foreman position without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the impacts of those decisions. On December 3, 2009, the City filed its Answer and, on August 3, 2010, the City filed a Motion to Dismiss the Complaint (Motion). On August 10, 2010, the Union filed its Opposition to the Motion. On August 5 and 19, 2010, and December 22, 2010, I conducted a hearing at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. On February 16 and 17, 2011, the City and the Union filed post-hearing briefs, respectively. On the entire record, I make the following findings and render the following decision.

ADMISSIONS OF FACT

The City admitted to the following facts:

1. The City 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 representative of the uniformed employees of the Newton Fire Department (Department), including Signal Maintenance Technicians employed in the Department's Wire Division.

4. Before July 19, 2005, the City did not require the members of the bargaining unit described in paragraph 3, above, including the Signal Maintenance Technicians, to maintain, repair or replace the City's streetlights, including roadway, traffic signal and specialty lighting.

5. On or about July 19, 2005, the City began to require the bargaining unit members described in paragraphs 3 and 4, above, to maintain, repair and replace the City's streetlights.

6. Job duties, safety and workload are mandatory subjects of bargaining.

7. On or about July 19, 2005, the City created two new Signal Maintenance Technician positions and upgraded one existing Signal Maintenance Technician position to a working foreman.

8. The impacts of the decision to create new positions on bargaining unit members' terms and conditions of employment, including wages, are mandatory subjects of bargaining.

FINDINGS OF FACT

Background

The Union and the City were parties to a collective bargaining agreement (Agreement) effective from July 1, 2000 to June 30, 2003. The parties began negotiations for a successor contract around the time when the Agreement expired; however, negotiation sessions between the parties occurred sporadically until the spring of 2005, resuming in the summer and fall of 2005 and contining into January of 2006.

The City's FY 2006 Budget Discussions

In February of 2005, Department Chief Joseph LaCroix (Chief LaCroix) held a staff meeting with the Assistant Chief Bruce Proia (Proia) and the four Deputy Chiefs. At that meeting, Chief LaCroix informed Proia and the Deputy Chiefs that the City anticipated the removal of Engine #6 and was considering the assumption of street light maintenance after its contract with Wellesley Light expired on June 30, 2005. Sometime after that meeting, Chief LaCroix took a medical leave of absence. Chief Administrative Officer Michael Rourke (Rourke) and Chief Financial Officer Sandy Pooler (Pooler) informed Proia that he would serve as Acting Fire Chief for the duration of Chief LaCroix's medical leave between February and September, 2005. Rourke and Pooler also informed Proia of the City's proposed fiscal year (FY) 2006 budget for the Department, which included the deactivation of Engine # 6 and assumption of street light maintenance by the Department's Wire Division.

In February or March of 2005, Rourke and Pooler asked Proia if the Department could perform the street light maintenance duties by using its existing staff. After conducting a study, Proia informed Rourke and Pooler that the Department would need two hire additional Wire Division employees and a new bucket truck to effectively accomplish those duties. Rourke and Pooler agreed with the study and, in March of 2005, prepared an initial FY 2006 budget for Mayor David Cohen (Mayor Cohen), recommending that the City hire two additional personnel in the Wire Division and create one working foreman position to oversee the new hires. In or about late March or early April of 2005, Mayor Cohen submitted a FY 2006 proposed budget to the Board of Alderman with Rourke and Pooler's recommendations. By letter on March 29, 2005, Mayor Cohen also informed the Board of Alderman that in addition to the FY 2006 proposed budget, the Department's Wire Division would be assuming street light maintenance and traffic signal maintenance. On April 19, 2005, Mayor Cohen presented the FY 2006 budget before the Board of Alderman and, by letter dated the same day, memorialized that presentation.

Proia's meeting with the Union

On or about March 28, 2005, Proia met with Union President Francis Capello (Capello) to discuss the City's FY 2006 proposed budget, including the deactivation of Engine #6, the assumption of street light maintenance work, the hiring of two additional employees and the creation of one new position. By letters dated April 26, 2005, May 13, 2005, June 20, 2005 and July 11, 2005 the Union demanded to bargain with the City over the Department's assumption of street light maintenance.

By letter on June 8, 2005, the City responded to the Union's May 13, 2005 demand to bargain by stating that it would bargain with the Union over the issue of street light

maintenance only if the City failed to reach a separate agreement on the issue with any other bargaining unit(s) in the City. By letter on July 7, 2005, the City responded to the Union's June 20, 2005 demand letter, stating that that it was ready to resume bargaining over the issue of street light maintenance during successor contract negotiations.

The May 3, 2005 Collective Bargaining Session

On May 3, 2005, the Union and the City met to negotiate a successor contract. During that bargaining session, Rourke informed the Union that the City faced a July 1, 2005 deadline to assume the street light maintenance work because its contract with Wellesley Light would expire on June 30, 2005. The Union responded that it would consider agreeing to the issue of street light maintenance if the City offered a continuance of the sick leave buy-back program. The City rejected the Union's proposal and the bargaining session ended without resolution of the street light maintenance issue.

On May 18, 2005, Proia met with the Board of Alderman and described the impact that the FY 2006 budget cuts would have on the Department. Proia also described how the City's assumption of street light maintenance would result in a "win-win" situation for both parties through realizing substantial budgetary savings for the Department and avoiding the loss of approximately 10 to 12 bargaining unit positions for the Union. On June 13, 2012, the City held a public hearing to address the FY 2006 budget and, in or about mid-June of 2005, the Board of Alderman voted to pass the FY 2006 budget.

The July 8, 2005 Collective Bargaining Session

On July 8, 2005, the parties held their second successor bargaining session and specifically discussed the assumption of street light maintenance by the Wire Division. During the meeting, the City informed the Union that it planned to assume street light

maintenance as soon as possible and provided the Union with an operational plan and a job description of the Signal Maintenance Technician position. At some point between the conclusion of the parties' July 8, 2005 bargaining session and July 18, 2005, the City hired Patrick McDonough (McDonough) and Eric (Rockey) (Rockey) as Signal Maintenance Technicians and promoted unit member Joseph Longbottom (Longbottom) to the position of Working Foreman. By letter on July 19, 2005, the City confirmed these changes and notified the Union that it had declared impasse.

Duration of the City's Assumption of Street Light Maintenance

Between June 30, 2005 and early August of 2005, no City employee performed the street light maintenance function. In early August of 2005, McDonough, Rockey and Longbottom commenced their street light maintenance duties, which they performed for approximately three years. In July of 2008, the City transferred McDonough and Rockey from the Fire Department to the Department of Public Works (DPW)[5] where they continued to perform street light maintenance until the City entered into an agreement with a private contractor to assume the City's street light maintenance. The City also terminated McDonough's and Rockey's employment around that time.

DECISION

Mootness

The Board will not dismiss a case as moot if there is a real and existing controversy calling for an adjudication involving present rights for which specific relief is sought that may be granted. Commonwealth of Massachusetts, 12 MLC 1590, 1595 (1986). Although an alleged transgressor may render a case moot by correcting its actions, it must establish that

[5] The parties did not present evidence indicating whether the City placed McDonough and Rockey in a different bargaining unit when they were transferred to the DPW.

there is no reasonable expectation that the conduct will be repeated. Boston School Committee, 15 MLC 1541, 1546 (1989). The public interest favors adjudication of a controversy over the legality of an employer's actions, even when the employer corrects the complained of action, when there is a possibility that the conduct will recur and where a Board remedial order could prevent the employer from reverting to its prior allegedly unlawful conduct. Chief Justice for the Administration and Management of the Trial Court, 35 MLC 230, 234, (2009) (citations omitted).

Here, the City contends that I should dismiss the Complaint based on mootness. However, the evidence shows that the City hired McDonough and Rocky to perform street light maintenance for the Department on or about July 19, 2005, and transferred them to the DPW to perform the same work in July of 2008. Although the City terminated McDonough and Rocky's employment after securing an agreement with a private contractor to assume the street light maintenance, I find that the public interest favors an adjudication of the Union's claim because there is a possibility that the complained of conduct will recur after the City's agreement with the private contractor expires and a Board remedial order could prevent the City from reverting to its prior allegedly unlawful conduct. Chief Justice for the Administration and Management of the Trial Court, 35 MLC at 234. Accordingly, I deny the City's Motion.

10(a)(5)

A public employer violates Section 10(a)(5) and, derivatively, 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 giving its employees' exclusive bargaining representative notice and an opportunity to bargain to resolution or

impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); Commonwealth of Massachusetts, 30 MLC 64 (2003). To establish a violation, the Union must show that: (1) the Employer changed an existing practice or instituted a new one; (2) the change had an impact on a mandatory subject of bargaining; and, (3) the Employer implemented the change without prior notice to the union or an opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts, 30 MLC at 64; Town of Shrewsbury, 28 MLC 44, 45 (2001); Commonwealth of Massachusetts, 27 MLC 11, 13 (2000).

It is undisputed that prior to July 19, 2005, the City did not require members of the bargaining unit to repair, replace or maintain the City's street lights, traffic signals and specialty lights. It is also undisputed that on or about July 19, 2005, the City: (1) required unit members to repair, replace and maintain the City's street lights, traffic signals and specialty lights; (2) hired two additional Signal Maintenance Technicians; and, (3) created a new Working Foreman position to oversee the new hires. Last, it is undisputed that job duties, safety and workload, and the impacts of the decisions to create new bargaining unit positions and upgrade existing unit positions are mandatory subjects of bargaining.

The City argues that it was not required to give the Union notice and an opportunity to bargain to resolution or impasse because it had a managerial right to make a "level of services" decision when it assigned street light maintenance to the Wire Division, created new Signal Maintenance Technician positions and upgraded one existing unit position to Working Foreman. In the alternative, the City argues that it satisfied its bargaining obligations on July 19, 2005 because the parties reached impasse. Last, the City argues that

the Union waived its right to bargain or, alternatively, bargained in bad faith by waiting until April 26, 2005 to request impact bargaining with the City and waiting until July 8, 2005 to submit impact bargaining proposals.

Managerial Rights

The City asserts that it had a managerial right to make a "level of services" decision when it assigned street light maintenance to the Wire Division, created new Signal Maintenance Technician positions and upgraded one existing unit position to Working Foreman. In support of its argument, the City asserted that Signal Maintenance Electricians are licensed by the Commonwealth Board of State Examiners and Electricians, familiar with safety hazards involving electrical work—including street light maintenance—and, as part of their regular duties and responsibilities, have always performed work on ladders, in bucket trucks and around energized electrical power lines. However, the City admits that decisions affecting job duties, safety and workloads are mandatory subjects of bargaining. See Medford School Committee, 1 MLC 1250, 1252-53 (1975); Town of Danvers, 3 MLC 1559, 1576 (1977)). Further, the issue of initial wages for new positions is also a mandatory subject of bargaining. Melrose School Committee, 3 MLC 1302 (1976). Consequently, I do not find that the City had a managerial right to make those changes without first bargaining with the Union to resolution or impasse over the decision to assume street light maintenance and the impacts of the decisions to create new bargaining unit positions and upgrade an existing unit position. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 564 (1983); Higher Education Coordinating Council, 22 MLC 1662, 1668 (1996) (where managerial decision lies outside the sphere of collective bargaining, public employer still required to bargain over the impact of that managerial decision if it affects employees' wages,

hours, and other terms and conditions of employment).

Impasse

Section 6 of the Law requires public employers and unions to meet and negotiate in good faith over mandatory subjects of bargaining. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572 (1983). After good faith negotiations have exhausted the prospects of concluding an agreement, an employer may implement changes in terms and conditions of employment which are reasonably comprehended within its pre-impasse proposals. City of Leominster, 23 MLC 62, 66 (1996) (citing Hanson School Committee, 5 MLC 1671 (1979)). The factors to be weighed in determining whether an impasse exists are: (1) the good faith of the parties in negotiations; (2) the length of the negotiations; (3) the importance of the issue or issues as to which there are disagreement; and, (4) the contemporaneous understanding of the parties as to the state of negotiations. Ashburnham-Westminster Regional School District, 29 MLC 191, 195 (2003) (citing Town of Westborough, 25 MLC 81, 88 (1997); Town of Weymouth, 23 MLC 70, 71 (1996); City of Leominster, 23 MLC 62, 66 (1996)).

Impasse exists only where both parties have bargained in good faith on negotiable issues to the point where it is clear that further negotiations would be fruitless, because the parties are deadlocked. Ashburnham-Westminster Regional School District, 29 MLC at 195 (citing Commonwealth of Massachusetts, 25 MLC 201, 205 (1999); Town of Brookline, 20 MLC 1570, 1594 (1994)). An analysis of whether the parties are at impasse requires an assessment of the likelihood of further movement by either side and whether they have exhausted all possibility of compromise. Ashburnham-Westminster Regional School District, 29 MLC at 195 (citing Town of Plymouth, 26 MLC 220, 223 (2000); Woods Hole, Martha's

Vineyard and Nantucket Steamship Authority, 14 MLC 1518, 1529-1530 (1988)). If one party to the negotiations indicates a desire to continue bargaining, it demonstrates that the parties have not exhausted all possibilities of compromise and precludes a finding of impasse. Commonwealth of Massachusetts, 25 MLC at 205 (1999) (citing City of Boston, 21 MLC 1350 (1994)).

The City argues that the parties reached impasse at the July 8, 2005 bargaining session because the parties had failed to resolve the street light maintenance issue at that point, and the City faced a July 1, 2005 deadline to assume those duties and hire additional employees. However, the evidence shows that the Department did not give the Union notice of the proposed FY 2006 budget changes until Proia's March 28, 2005 meeting with Capello, at the earliest, and by Mayor Cohen's confirmation of these changes on April 19, 2005, at the latest. One week after the Mayor's April 19, 2005 announcement, the Union requested to bargain with the City by letter dated April 26, 2005, and the parties held their first two bargaining sessions on May 3, 2005 and July 8, 2005. Although the Union made four total requests to bargain over the City's proposed changes (April 26, May 13, June 20 and July 11, 2005), the City proceeded to implement the changes on July 19, 2005 and declared impasse after meeting only twice with the Union. Further, the evidence shows that although the City stressed the July 1, 2005 deadline at the parties' May 3, 2005 bargaining table, it waited almost 30 days to respond to the Union's May 13, 2005 bargaining demand and waited another 45 days to respond the Union's June 20, 2005 demand letter, totaling almost three months between the parties' first and second bargaining sessions.

Even if the City reasonably believed that assigning street light maintenance duties to the Wire Division was a positive, "win-win" outcome, this belief does not fulfill the City's

Section 6 bargaining obligation because the parties were not deadlocked when the City implemented its proposal. Although the Union and the City had rejected each other's initial proposals, the record reveals that the parties wished to continue bargaining. Ashburnham-Westminster Regional School District, 29 MLC at 195 (no impasse found where parties were not deadlocked and not clear that further negotiations would be fruitless); Commonwealth of Massachusetts, 25 MLC at 205 (Board will not find impasse when one party to the negotiations indicates a desire to continue bargaining).

Based on this evidence, I find that the parties commenced bargaining in good faith over the street light maintenance issue on May 3, 2005. However, given the brief length of the parties' bargaining negotiations (only two bargaining sessions) coupled with the importance of the issues (changed duties regarding street light maintenance and the impact of the creation of new unit positions) and the parties' disagreement over those issues as of July 19, 2005, I do not find that the parties were at impasse when the City implemented its changes on July 1, 2005. Ashburnham-Westminster Regional School District, 29 MLC at 195.

Waiver by Inaction

If a public employer asserts the affirmative defense of waiver by inaction, it must establish by a preponderance of the evidence that an employee organization had: (1) actual knowledge or notice of the proposed action; (2) a reasonable opportunity to negotiate about the subject; and, (3) unreasonably or inexplicably failed to bargain or request bargaining. Commonwealth of Massachusetts, 28 MLC 36, 40 (2001); Town of Dennis, 26 MLC 203, 204 (2000); Holyoke School Committee, 12 MLC 1443, 1452 (1985); Boston School Committee, 4 MLC 1912, 1915 (1978).

The City argues that it provided the Union with notice and an opportunity to bargain over the issue of street light maintenance, but the Union waived its right to bargain or, in the alternative, bargained in bad faith when it: (1) failed to request impact bargaining with the City between the March 28, 2005 meeting and the Union's April 26, 2005 demand letter; (2) refused to bargain over the issue at the parties' first successor bargaining session on May 3, 2005; and, (3) failed to submit any impact bargaining proposals to the City until the parties' second bargaining session on July 8, 2005.

First, the evidence shows that at the March 28, 2005 meeting with Proia, the Union had actual knowledge of the City's plan to assume street light maintenance and hire/create additional positions to perform that work. The Union also had notice that the City planned to make those changes when Mayor Cohen made that announcement during his FY 2006 Budget Address on April 19, 2005. However, the City failed to satisfy the second element of this affirmative defense of waiver because the Union did not have a reasonable opportunity to negotiate with the City over the issue of street light maintenance. Town of Dennis, 26 MLC at 204; Holyoke School Committee, 12 MLC at 1452. Seven days after the Mayor's April 19, 2005 announcement, the Union demanded to bargain with the City. At the end of the parties' first negotiation session, the Union sent its second and third demands to bargain on May 13 and June 20, 2005, to which the Department did not respond until June 8 and July 7, 2005, respectively. The parties conducted their second bargaining session on July 8, 2005 and the Union promptly demanded to continue bargaining three days later by letter on July 11, 2005. The City failed to respond and implemented its changes on July 19, 2005. Consequently, I do not find that the Union waived by inaction its rights to bargain with the City over the issue of street light maintenance because the Union promptly demanded to bargain with the City

over that issue and continued to seek further bargaining after the parties' second bargaining session.

Good Faith Bargaining

Section 6 of the Law requires public employers and unions to meet and negotiate in good faith over mandatory subjects of bargaining. School Committee of, 388 Mass. at 572. The duty to bargain requires the parties to enter into negotiations with an open mind and a sincere desire to reach an agreement and to make efforts to compromise differences. Boston School Committee, 25 MLC 181, 187 (1999) (citing Commonwealth of Massachusetts, 8 MLC 1499, 1510 (1981)); Brockton School Committee, 23 MLC 43 (1996) (citing Holbrook Education Association, 14 MLC 1737, 1740 (1988)). The Board examines the totality of the parties' conduct, including acts away from the bargaining table, to assess whether a public employer or a union has bargained in good faith pursuant to Section 10 (a) (5) of the Law. Higher Education Coordinating Council, 25 MLC 69 (1998) (citing King Philip Regional School Committee, 2 MLC 1393 (1976)).

The evidence shows that the Union had an open mind and a sincere desire to reach an agreement with the City at the parties' May 3, 2005 bargaining negotiations because the Union considered the City's initial proposals, rejected them and offered counter-proposals. See Boston School Committee, 25 MLC at 187. The Union then made two subsequent demands to continue bargaining on May 13 and June 20, 2005. However, when the parties met on July 8, 2005 and the City informed the Union that it intended to implement the street light maintenance changes as soon as possible, the evidence reveals that the City implemented the changes after ignoring the Union's July 11, 2005 demand letter and unilaterally declaring impasse on July 19, 2005. Consequently, I find that the Union did not

bargain in bad faith over the issue of street light maintenance. Instead, I find that the City failed to satisfy its statutory duty to bargain in good faith when it determined to maintain a set position on that issue at the parties' July 8, 2005 bargaining session, failed to allow the Union an opportunity to explain the reasons for its initial counter proposal or any additional counter proposals, and proceeded to implement the changes. Town of Braintree, 8 MLC at 1197 (where a party is determined to maintain a set position, it must approach the subject with an open mind by allowing the other side to explain the reasons for a proposal and by fully articulating its own reasons for rejecting the proposal).

CONCLUSION

Based on the record and for the reasons explained above, I conclude that the City: assigned street light repair, maintenance and replacement duties to bargaining unit members without giving the Union prior notice and an opportunity to bargain to resolution or impasse over that decision; and, (2) created two new Signal Maintenance Technician positions and upgraded one existing Signal Maintenance Technician position to a Working Foreman position without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the impacts of those decisions in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

REMEDY[6]

The traditional remedy for an unlawful unilateral change is restoration of the status quo ante. Massachusetts Board of Regents of Higher Education, 14 MLC 1459, 1486 (1988) (citing Framingham School Committee, 4 MLC 1809 (1978)). Here, restoration of the status quo is not possible because in July of 2008, the City contracted out the work to a private

[6] As a remedy, the Union asks the DLR to order the City to provide economic compensation for the harm caused to the bargaining unit. However, the record does not show that any bargaining unit member was harmed economically by the City's changes; thus, I decline to order an economic remedy in this case.

contractor and terminated McDonough's and Rockey's employment. Therefore, I do not order the City to restore the status quo ante.

ORDER

WHEREFORE, based on the foregoing, it is hereby ordered that the City of Newton shall:

1. Cease and desist from:

   a. Unilaterally assigning the duties of street light repair, maintenance and replacement to bargaining unit members without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and the impact of the decisions to create two new Signal Maintenance Technician unit positions, and upgrade one unit member from Signal Maintenance Technician to Working Foreman.

   b. Unilaterally creating two new Signal Maintenance Technician positions and hiring additional employees to fill those positions without first giving the Union notice and an opportunity to bargain to resolution or impasse over the impacts of that decision.

   c. Unilaterally upgrading one unit member from the position of Signal Maintenance Technician to the position of Working Foreman without first giving the Union notice and an opportunity to bargain to resolution or impasse over the impacts of that decision.

   d. In any like or similar manner interfering with, restraining or coercing employees in the exercise of their rights protected under the Law.

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

   a. Upon request, bargain with the Union in good faith to resolution or impasse before implementing any changes regarding the assumption of street light repair, maintenance and replacement duties, and over the impacts of creating two new Signal Maintenance Technician unit positions, and upgrading one unit member from Signal Maintenance Technician to Working Foreman.

   b. Sign and post immediately in conspicuous places employees usually congregate or where notices to employees are usually posted, including electronically, if the Employer customarily communicates to its employees via intranet or e-mail, and maintain for a period of thirty (30) consecutive days thereafter signed copies of the attached Notice to Employees;

c. Notify the DLR in writing of the steps taken to comply with this decision within thirty (30) of the steps taken by the City to comply with the Order.

SO ORDERED.

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. 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
NOTICE TO EMPLOYEES
POSTED BY ORDER OF A HEARING OFFICER OF THE
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A Hearing Officer of the Massachusetts Department of Labor Relations has held that the City of Newton (City) violated Sections 10(a)(5) and, derivatively, 10(a)(1) of G.L. Chapter 150E by assigning street light repair, maintenance and replacement duties to bargaining unit members without bargaining to resolution or impasse; and, (2) creating two new Signal Maintenance Technician bargaining unit positions and upgrading one existing Signal Maintenance Technician position to a Working Foreman without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the impacts of those decisions. The City posts this Notice to Employees in compliance with the Hearing Officer's order.

Section 2 of the Law gives all employees: (1) the right to engage in concerted protected activity, including the right to form, join and assist unions, to improve wages, hours, working conditions, and other terms of employment, without fear of interference, restraint, coercion or discrimination; and, (2) the right to refrain from either engaging in concerted protected activity, or forming or joining or assisting unions.

WE WILL NOT unilaterally transfer the duties of street light repair, maintenance and replacement to bargaining unit members without first giving the Union notice and an opportunity to bargain to resolution or impasse over that decision.

WE WILL NOT unilaterally create two new Signal Maintenance Technician positions and hire additional employees to fill those positions without first giving the Union notice and an opportunity to bargain to resolution or impasse over the impacts of that decision.

WE WILL NOT unilaterally upgrade one unit member from the position of Signal Maintenance Technician to the position of Working Foreman without first giving the Union notice and an opportunity to bargain to resolution or impasse over the impacts of that decision.

WE WILL NOT in any like or similar manner interfering with, restraining or coercing employees in the exercise of their rights protected under the Law.

WE WILL upon request, bargain with the Union in good faith to resolution or impasse before implementing any changes regarding the assumption of street light repair, maintenance and replacement duties, and over the impacts of creating two new Signal Maintenance Technician unit positions and upgrading one unit member from Signal Maintenance Technician to Working Foreman.

______________________________ _______________
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 Department Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).