

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

TOWN OF CHELMSFORD

and

NEPBA LOCAL 20

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Case No.: MUP-19-7227  
MUP-19-7361

Date Issued: July 3, 2019

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CONSOLIDATED COMPLAINT OF PROHIBITED PRACTICE

On March 22, 2019, the NEPBA (Union) filed a charge with the Department of Labor Relations (DLR), alleging that the Town of Chelmsford (Town) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and 10(a)(6) of Massachusetts General Laws, Chapter 150E (the Law). On May 30, 2019, the Union filed a second charge, alleging that the Town violated Sections 10(a)(1), (5) and (6) of the Law. Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.05 of the DLR's Rules, I conducted an in-person investigation of the allegations on June 16, 2018.<sup>1</sup> Based on the evidence presented, I find probable cause to believe that violations occurred.<sup>2</sup> Therefore, this Complaint of Prohibited Practice shall

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<sup>1</sup> The Union also filed a third charge, MUP-19-7313, which was consolidated with the above-referenced charges for the in-person investigation. I am referring that charge to DLR mediation separately.

<sup>2</sup> In its charge, the Union alleged that Andrew Flanagan, a representative of the Joint Labor Management Committee (JLMC), violated M.G.L. c. 268A. Because the DLR does not have jurisdiction over this statute, I have not considered this allegation. Further, because the Union's charge is against the Town, and Flanagan is not a Town employee, I have not alleged that his actions specifically violated the Law.

issue and the parties will be given an opportunity to be heard for the purpose of determining the following allegations:

COUNT I

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for police sergeants employed by the Town.
4. On or about September 22, 2016, the Union submitted a Petition for Exercise of Jurisdiction to the JLMC in connection with its successor contract negotiations with the Town.
5. On or about December 1, 2016, the JLMC voted to exercise formal jurisdiction in the matter referenced in paragraph 4.
6. In or about June 2018, the JLMC determined that there was an apparent exhaustion of the processes of collective bargaining, and ordered the parties to tripartite arbitration. The tripartite arbitration panel included Alan Andrews (Andrews), a JLMC labor representative, Andrew Flanagan (Flanagan), a JLMC management representative, and Beth Ann Wolfson (Wolfson), a neutral arbitrator.
7. On October 19, 2018, the tripartite arbitration was held, after which the arbitration panel engaged in confidential deliberations.
8. On or about October 22, 2018, Chelmsford Town Counsel (Town Counsel) discussed a potential wage step increase in connection with the pending arbitration decision and award (award) with Flanagan.
9. By email dated December 11, 2018, Town Counsel attached a draft of the Town's post-arbitration brief to Flanagan, and requested feedback.
10. By email to Flanagan and Andrews dated January 8, 2019, Wolfson attached a draft arbitration award, stating, "According to my notes we talked about a 2%, 1.65%, and 5.7% wage increase, but after reviewing all the material I suggest 2%, 2%, 2%, and 3%, effective 1/1/19."
11. By email dated January 12, 2019, Flanagan forwarded the draft arbitration award, referenced in paragraph 10, to Town Counsel, and stated, "let's discuss."

12. By email dated January 14, 2019, Town Counsel responded to Flanagan's January 12 email stating, "You have got to be kidding me! I'm in meetings this morning, but will call this afternoon."
13. By email dated January 16, 2019, Town Counsel advised Flanagan of several concerns he had with Wolfson's draft award, including her proposed wage increases. Town Counsel also noted that, "...we only addressed the cost valuation of the steps because she indicated to you early on that she was going to go with the original MOA and saw the steps as fair exchange for the wage package."
14. By two emails dated January 16 and 17, 2019, Flanagan advised Wolfson that he had some concerns with the draft award, and then listed the same concerns set forth by Town Counsel, as described in paragraph 13. Flanagan also advised Wolfson, "Short of resolving some of these concerns, I won't be signing the award."
15. By email dated January 17, 2019, Wolfson advised Flanagan that in reaching the draft award, she "worked on the draft off the notes I made of our panel discussion after the hearing," and offered to meet with him and Andrews to discuss Flanagan's concerns.
16. By email dated January 22, 2019, Town Counsel thanked Flanagan for his "continued advocacy on behalf of the Town," and provided additional thoughts on a wage increase to include in the award.
17. By email dated January 30, 2019, Flanagan advised Town Counsel and the Chelmsford Town Manager (Town Manager) that he was going back and forth with Wolfson and Andrews, and that he hoped to have a resolution the next day. He also advised them that he had maintained a position "that the total package has to be valued at or close to 7% if I'm going to sign the award."
18. By email dated January 31, 2019, Flanagan asked Town Counsel for the Town's interpretation of the value of the patrol officers' JLMC award.
19. By email dated February 1, 2019, Town Counsel replied to Flanagan's email referenced in paragraph 18, and attached a copy of the patrol officers' JLMC award.
20. By email to Flanagan dated February 1, 2019, and marked "Confidential," Wolfson attached a final draft of the award, noting that she hoped her reasoning in the discussion section would convince Flanagan that they should have a unanimous decision. She also advised him that she needed to know by 5PM if Flanagan would join in the decision, or if he would dissent,

and that she would need a written dissent by 5PM the following day in order to issue the award in time to meet the second extension allowed by the parties of Monday, February 4, 2019.

21. Following receipt of Wolfson's final draft of the award, Flanagan spoke with Town Counsel to advise him of the terms of the award.
22. During the conversation referenced in paragraph 21, Town Counsel asked Flanagan if he would consider dissenting from the award, and agreed to draft a dissent for Flanagan.
23. By email dated February 3, 2019, Town Counsel forwarded Flanagan a dissenting opinion based on Town Counsel's "understanding of the likely award."
24. By email dated February 4, 2019, Wolfson forwarded the final award to the parties, including Flanagan's dissent, which Town Counsel had written for Flanagan.
25. The Town's ex parte communications with Flanagan following the tripartite arbitration on October 19, 2018, which were unbeknownst to Wolfson and the Union, interfered with the arbitration panel's confidential deliberative process.
26. By the conduct described in paragraphs 8, 9, 12, 13, 16, 19, 22, 23, and 25, the Town has failed to bargain in good faith by engaging in ex parte communications with Flanagan, which interfered with the JLMC arbitration panel's confidential deliberative process, in violation of Section 10(a)(5) of the Law.
27. By the conduct described in paragraphs 8, 9, 12, 13, 16, 19, 22, 23, and 25, the Town has failed to bargain in good faith by engaging in ex parte communications with Flanagan, which interfered with the JLMC arbitration panel's confidential deliberative process, in violation of Section 10(a)(6) of the Law.
28. By the conduct described in paragraphs 8, 9, 12, 16, 19, 22, 23, and 25, the Town has derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count II

29. The allegations in paragraphs 1 – 25 are reallaged.

30. By email dated February 4, 2019, the Town Manager emailed the arbitration award and dissent to the Town's Finance Committee, stating, "Under the provisions of Massachusetts General Laws, the Board of Selectmen and Town Manager are required to favorably present the decision to Town Meeting. However, you have no such constraint."
31. Although the Town typically provides the Finance Committee with at least seven days to consider a JLMC award, the Town scheduled the vote on the award at a Special Town Meeting that was held later on February 4, 2019.
32. During the Special Town Meeting, the Finance Committee distributed copies of the arbitration dissent to the Town Meeting representatives who would ultimately vote on the award, and read it aloud, but did not distribute or read aloud the majority portion of the award, or any part thereof.
33. Also during the Special Town Meeting, the Finance Committee explained to the Town Meeting representatives that it was unanimously rejecting the award based on the dissenting portion of the award.
34. After hearing the dissent, Town Meeting representatives made statements suggesting that the arbitration panel must not have considered the dissent in reaching the award.
35. The Town Manager neither clarified that the arbitration panel had, in fact, considered the dissent, in response to the Town Meeting representatives' statements described in paragraph 34, nor did he inform the Town Meeting representatives that Town Counsel had drafted the dissent.
36. The Town Meeting representatives voted to not fund the JLMC award.
37. By the totality of the conduct described in paragraphs 31, 32, 35, and 36, the Town has failed to bargain in good faith by misrepresenting the arbitration award and misleading the Town Meeting representatives prior to their vote on the award at the Special Town Meeting in violation of Section 10(a)(5) of the Law.
38. By the totality of the conduct described in paragraphs 31, 32, 35, and 36, the Town has failed to bargain in good faith by misrepresenting the arbitration award and misleading the Town Meeting representatives prior to their vote on the award at the Special Town Meeting in violation of Section 10(a)(6) of the Law.
39. By the conduct described in paragraphs 31, 32, 35, and 36, the Town has derivatively interfered with, restrained and coerced its employees in the

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

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
KERRY BONNER, INVESTIGATOR