

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

In the Matter of

BOSTON POLICE PATROLMEN'S
ASSOCIATION

and

CITY OF BOSTON

*
*
*
*
*
*
*
*
*
*

Case No. MUP-1085

Date Issued:

August 20, 2010

Appearances:

John M. Becker, Esq. - Representing Boston Police Patrolmen's Association

John Foskett, Esq. - Representing City of Boston

STIPULATED ORDER ON COMPLIANCE

Stipulations of the Parties

1. The City of Boston ("City") and the Boston Police Patrolmen's Association ("Union") hereby stipulate as follows:
2. The City is a public employer within the meaning of G.L. c. 150E, Section 1.
3. The Union is an employee organization within the meaning of G.L. c. 150E, Section 1.
4. The City began using the services of Boston Municipal police in the Boston Housing Authority ("BHA") housing developments as part of the Special Police Division that was informally established in September 1994 and then formally established through a three-party memorandum of understanding in September 1995.

5. The Union filed an unfair labor practice with the Division of Labor Relations (then the Massachusetts Labor Relations Commission) ("Commission", "DLR")¹ over this transfer of bargaining unit work in December 1994.
6. The Commission issued a complaint in the matter and held hearings in May and June 1996.
7. A Commission hearing officer ruled on December 4, 1996 that the City had violated G.L. c. 150E, Sections 10(a)(5) and, derivatively, Section 10(a)(1) by failing to give the Union notice and an opportunity to bargain over the transfer of bargaining unit work to the Boston Municipal police.
8. The City appealed the decision to the full Commission, which affirmed the hearing officer's ruling in a decision dated March 10, 2000. In its decision the Commission issued an order that "the parties must jointly determine the proper amount of compensation due" bargaining unit employees who suffered a monetary loss.
9. The City appealed the Commission's decision to the Massachusetts Appeals Court, which affirmed it by decision dated May 12, 2003.
10. The City removed the municipal police from the BHA developments in September 2003.

¹ Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission."

11. In 2005, the City and the Union sought the assistance of the Commission in resolving their dispute over the damages owed to Union members as a result of the Commission's decision.
12. The City and the Union engaged in mediation in this matter under the auspices of the DLR on June 30, 2010 and July 7, 2010.
13. The DLR held a compliance hearing in this matter on July 13, 14 and 15, 2010 before Hearing Officer Erica Crystal, Esq.
14. The City will pay a total of \$16,500,000 in damages to certain current and former Boston Police patrol officers, to be distributed as described below.
15. Damages payments will be distributed as follows:
 - (a) the damages period shall be divided into 36 quarters, beginning October 1, 1994 and ending September 30, 2003;
 - (b) individuals shall receive an equal payment for every one of the 36 quarters described in paragraph 15(a) in which he or she was an active employee of the Boston Police Department and also a member of the Union (including employees paying both dues and agency fees to the Union) on the first day of that quarter; an individual may receive damages for a maximum of 36 quarters;
 - (c) the damages payment for each quarter shall be determined by dividing the total amount of damages by the total number of quarters for which all the individuals described in paragraph 15(b) are entitled to payment; *(for example, if the total amount of damages were \$1000 and there were a total of three individuals entitled to damages under paragraph 15(b), such*

that Officer A was entitled to payment for 10 of the 36 quarters, Officer B was entitled to payment for 15 quarters, and Officer C was entitled to payment for 25 quarters, then the payment per quarter would be calculated by dividing \$1000 by 50 quarters (10+15+25) for a payment of \$20 per quarter; in this example, Officer A would receive a total damages payment of \$200; Officer B would receive \$300, and Officer C would receive \$500).

(d) From the \$16,500,000 total of damages, and prior to the calculation to be performed in accordance with paragraph 15(c), above, the City shall withhold \$100,000. In the event that, within 180 days of the original disbursements made pursuant to paragraphs 15(a)-(c), above, an employee submits a claim that he or she was inadvertently excluded from the initial disbursement and establishes that he or she is entitled to a payment under this Stipulation, such payment shall be made from the withheld \$100,000 in accordance with paragraphs 15(a)-(c), above. Upon the expiration of such 180 day period, any amount remaining from the withheld \$100,000 shall be distributed in accordance with paragraphs 15(a)-(c), above, to the employees who were paid thereunder initially.

16. Upon the Hearing Officer's adoption of these stipulations and issuance of an Order, the Order will constitute a full and final resolution, with prejudice of case MUP-1085. The City and the Union agree to waive their right to appeal this Order.

ORDER

I will adopt the parties' stipulations, since the issues raised in the Compliance case before me are resolved by stipulation of the parties and the stipulations do not appear to conflict with the Law or with established Board precedent or policy. Town of Hopedale, 20 MLC 1059, 1067 (1993) (citing Board of Trustees, State Colleges, 4 MLC 1427, 1428 (1977)). Here, the parties' stipulations do not appear to involve any such conflict.

WHEREFORE, based on the stipulations of the parties, IT IS HEREBY ORDERED THAT the City of Boston, shall:

1. pay a total of \$16,500,000 in damages to certain current and former Boston Police patrol officers, to be distributed as described below.
2. Damages payments will be distributed as follows:
 - (a) the damages period shall be divided into 36 quarters, beginning October 1, 1994 and ending September 30, 2003;
 - (b) individuals shall receive an equal payment for every one of the 36 quarters described in paragraph 15(a) in which he or she was an active employee of the Boston Police Department and also a member of the Union (including employees paying both dues and agency fees to the Union) on the first day of that quarter; an individual may receive damages for a maximum of 36 quarters;

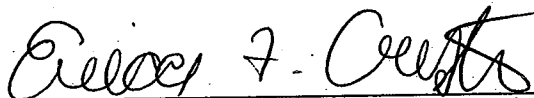
(c) the damages payment for each quarter shall be determined by dividing the total amount of damages by the total number of quarters for which all the individuals described in paragraph 15(b) are entitled to payment; *(for example, if the total amount of damages were \$1000 and there were a total of three individuals entitled to damages under paragraph 15(b), such that Officer A was entitled to payment for 10 of the 36 quarters, Officer B was entitled to payment for 15 quarters, and Officer C was entitled to payment for 25 quarters, then the payment per quarter would be calculated by dividing \$1000 by 50 quarters (10+15+25) for a payment of \$20 per quarter; in this example, Officer A would receive a total damages payment of \$200; Officer B would receive \$300, and Officer C would receive \$500).*

(d) From the \$16,500,000 total of damages, and prior to the calculation to be performed in accordance with paragraph 15(c), above, the City shall withhold \$100,000. In the event that, within 180 days of the original disbursements made pursuant to paragraphs (a)-(c), above, an employee submits a claim that he or she was inadvertently excluded from the initial disbursement and establishes that he or she is entitled to a payment under this Stipulation, such payment shall be made from the withheld \$100,000 in accordance with

paragraphs 15(a)-(c), above. Upon the expiration of such 180 day period, any amount remaining from the withheld \$100,000 shall be distributed in accordance with paragraphs 15(a)-(c), above, to the employees who were paid thereunder initially.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS



ERICA F. CRYSTAL, HEARING OFFICER