

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

MASSACHUSETTS LIBRARY STAFF
ASSOCIATION

Charging Party,

v.

TOWN OF WINTHROP/WINTHROP
LIBRARY

Respondent.

Case No.: MUP-23-9870

RESPONDENT TOWN OF WINTHROP'S RESPONSE

On February 15, 2023, the Massachusetts Library Staff Association (“Union” or “Charging Party”) filed a charge of prohibited practice with the Department of Labor Relations (the “DLR”) alleging that the Town of Winthrop (the “Town”), through the Winthrop Public Library and Museum (the “Library”) (collectively with the Town, “Respondent”), violated Sections 10(a)(1) and 10(a)(5) of Massachusetts General Laws Chapter 150E (the “Law”) when it assigned an employee and member of the Union to work offsite during work hours. On February 23, 2023, the Town received Notice that the charge had been docketed.

The charge alleges that this assignment was a unilateral change of duties as well as a change in work location that required bargaining. The Respondent denies all allegations of unlawful conduct contained in the charge and submits this response.

FACTS

The Town is a municipality of the Commonwealth of Massachusetts, located in Suffolk County. The Library provides the Town’s citizens with an array of library services and operates as a museum, curating and displaying various art exhibitions. The Massachusetts Library Staff Association is a labor organization that serves as the exclusive bargaining representative for a

group of permanent full-time and permanent part-time employees of the Library. The Union and Town are parties to a collective bargaining agreement in effect from July 1, 2022, through June 30, 2025 (the “CBA”).

On or about November 2022, the Library developed an outreach initiative involving various art and history programs at the E.B. Newton School Cultural Center (the “Cultural Center”). The Cultural Center is less than two tenths (0.2) of a mile from the Library and walking between the two buildings takes approximately three (3) minutes.

The Library held its first program as part of the outreach initiative at the Cultural Center in December of 2022, which was an event hosting the Boston Typewriter Orchestra. This event was staffed by the Assistant Director and Library Assistant, both Library staff.

The Cultural Center holds two rooms that are currently displaying art and history exhibits, which are open to the public. The first exhibit is inside the Heritage Room and it focuses on the history of Winthrop. The exhibit is managed by the Winthrop Historical Commission, and this Commission agreed to allow the Library to evaluate its exhibition for potential display at the Library. The second exhibit is a display of local art inside the Clock Tower Art Gallery which is managed by the Winthrop Cultural Council with assistance from the Winthrop Art Association.

The Winthrop Historical Commission and the Winthrop Cultural Council have agreed to allow the Library to host a number of programs involving the displays at the Heritage Room and Clock Tower Art Gallery. The Library intends to invite the Library Friends Group as well as other local community history and art groups to participate in this program.

In addition to programing, the Library will do limited outreach at the Cultural Center, which will involve two library employees: a Library Assistant and the Technical Services and Local History Librarian (“Local History Librarian”).

The outreach involving the Library Assistant involves hosting two (2) to four (4) open hours at the Clock Tower Gallery every other week. During this time, the Library Assistant is to be available to discuss the art on display and hand out material regarding art displays at the Library and various art associations in the community. These duties are consistent with the Library Assistant job description which is attached as Exhibit 1. Per the job description, the Library Assistant is a responsible position “involving support services and direct services to patrons.” See Exhibit 1. “The purpose of the position is to assist patrons in a variety of ways, and to handle library materials as they circulate in and out of the library.” Id. The Library Assistant “helps to build and maintain a positive image of the library by providing courteous, equal and appropriate service to all.” Id. The job description also provides the following non-exhaustive list of job duties:

- Checks library materials out to patron efficiently.
- Handles payments for fines, lost items.
- Directs patrons to specific resources.
- Label, cover and general processing of materials as needed.
- Registers new patrons for library cards.
- Retrieves materials for the daily paging list.
- Shelves materials returned to the library accurately.
- Performs related work as required, including special projects.

Id. These duties are consistent with the Library Assistant’s normal and actual work duties.

The Library outreach involving the Local History Librarian is for the Librarian to host two (2) to four (4) open hours at the Heritage Room every other week, opposite the Library Assistant. The Local History Librarian will be available to discuss local history, genealogy research, the Library's museum collection, and a variety of Library resources on history. Also, as stated above, the Local History Librarian is also expected to spend time evaluating the collection being kept at the Heritage Room, which has already been agreed to be put on loan at the Library for temporary display.

These duties are within those duties outlined in the Local History Librarian's job description. See Exhibit 2. Per the job description, the Local History Librarian, among other responsibilities, "plans and implements archival projects for the Museum" and "select[s] and promote[s] historical materials", and "make[s] use of and work[s] with volunteers as available in the preservation of historical materials." See Id. A non-exhaustive list of the Local History Librarian's job duties is in the job description as follows:

- Works with a variety of social media products.
- Uses Wordpress in basic web design.
- Assists in cataloging newly acquired materials.
- Maintenance of all staff and public computers and printers.
- Training of staff and public on a variety of devices and software products.
- Runs reports, tracks computer use statistics for annual reports.
- Cover service desks as needed.
- Attends related network meetings as needed.
- Performs related work as needed.

Id. These duties are consistent with the Local History Librarian's normal and actual work duties.

On January 11, 2023, Union Representative Jennifer Doe (“Ms. Doe”) sent Town Manager Anthony Marino (“Mr. Marino”) a demand to bargain the impacts of the Town’s decision to implement the outreach program. Mr. Marino responded on January 14, 2023, explaining that the Town’s position was that it did not have a duty to bargain with regard to the work being done in the Cultural Center, but he would nevertheless meet with Ms. Doe to bargain over the matter. Ms. Doe and Mr. Marino met to discuss these employees’ work location on January 24, 2023. Subsequently, on January 27, 2023, Ms. Doe contacted Mr. Marino to revise the Union’s demand to bargain to include a purported change in job description. Ms. Doe alleged that Library Director Greg McClay had “renegotiated” the job description of a bargaining unit employee to work three hours per week in the Cultural Center on non-library related tasks. Mr. McClay replied by explaining that work done at the Cultural Center as part of the outreach initiative is the same work being done as part of the employee’s normal work duties. Ms. Doe again demanded to bargain and insisted that the Library cease and desist from implementing the outreach initiative. Mr. Marino responded by stating the Town’s position is that this is not an expansion of work and, therefore, does not need to be bargained. The Union then filed the charge, initiating this matter.

ARGUMENT

I. Standard of Review

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 over the decision or its impacts. *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 63, 64, SP-4784 (October 9, 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 change was implemented without notice or an opportunity to bargain to resolution or impasse. *Commonwealth of Massachusetts*, 30 MLC at 64; *Town of Shrewsbury*, 28 MLC 44, 45, MUP-1704 (June 29, 2001); *Commonwealth of Massachusetts*, 27 MLC 11, 13, SUP-4378 (Aug. 24, 2000).

II. The Town Did Not Violate Sections 10(a)(1) and 10(a)(5) of the Law

The Union alleges that the Town failed to bargain over “a unilateral change of duties as well as other working conditions (location).” As fully developed below, the Town did not change work duties, whether unilaterally or otherwise, and did not violate the law with respect to any other working conditions.

a. The Town Did Not Unilaterally Expand Any Employee’s Duties.

The Union alleges that the Town unilaterally changed or expanded an employee’s work duties. *Commonwealth of Massachusetts*, 30 MLC at 64. The proposed outreach initiative does not involve a change in work duties for any bargaining unit employee, therefore the Department should dismiss the Charge.

The Library Assistant is tasked with promoting art in the Library’s museum and supporting Library patrons. The Library Assistant job description states that this is a responsible position “involving support services and direct services to patrons.” See Exhibit 1. Among other responsibilities, the Library Assistant “assist[s] patrons in a variety of ways,” “helps to build and maintain a positive image of the library,” and “directs patrons to specific resources”. Id. This

includes engaging with the Town's citizens on art exhibits and programs available in the Library and elsewhere in the community. As part of their work duties, the Library Assistant regularly has conversations with citizens regarding local art exhibits and programs and hands out material regarding the same. As part of the outreach initiative, the Library Assistant is to walk across the street once every other week to engage with citizens at the Clock Tower Gallery and Heritage Room about art in the Library and greater Winthrop community. The work the Library Assistant is expected to perform – community engagement about local art – is the same as the work performed within the physical library.

Similarly, there is no change in the Local History Librarian's expected work duties. Per the job description, the Local History Librarian, among other responsibilities, "plans and implements archival projects for the Museum" and "select[s] and promote[s] historical materials" relevant to Winthrop and its community. See Exhibit 2. Part of this job involves discussing Library resources and materials with the Town's citizens. This is precisely what the Local History Librarian will do as part of the outreach initiative, albeit across the street at the Heritage Room for a few hours every other week. Further, a crucial part of the Local History Librarian's job is identifying relevant historical materials and coordinating their display in the museum. Id. The Town had already reached an agreement to temporarily display some items from the Heritage Room in the Library on loan. Therefore, these items need to be evaluated and their display must be coordinated. This work is squarely within the job description of the Local History Librarian.

Accordingly, the Town has not changed or added to either employee's work duties.

b. Any Alleged Change in Duties is Within the Town's Management Rights.

Even if the outreach program expanded work duties as alleged, the Town has the right to make these changes under the clear and unambiguous language of the CBA. No charge of unilateral change has merit where there is clear and unambiguous contract language giving management the right to make that change. *See Town of Hull*, 2014 MLRC LEXIS 45, (September 3, 2014).

Here, Article 3 of the CBA, Rights of the Employer, grants the Town the express right “to assign any added, lessened or differed work or responsibility to” union members. This Article, by its plain language, gives the Town the right to change union members’ work and responsibilities. To the extent that the charge alleges that work assigned to employees as part of the outreach program “differed” from their usual work duties, the right to assign such differed work rests solely with the Town. Article 3 was negotiated into the CBA and accepted by both parties, and it clearly and unmistakably gives the Town the right to change work duties as alleged in the charge. Accordingly, this portion of the charge must be dismissed.

c. The Town Does Not Have an Obligation to Bargain with the Union Over the Change in Location.

There is no case law to support the proposition that an employer must bargain over the requirement that an employee fulfill their work duties by occasionally traveling to another employer owned building across the street. Such an obligation would require bargaining every time an employee needs to travel somewhere to perform their work duties and would significantly reduce operational efficiency.

Admittedly, there is case law to suggest that work location is a mandatory subject of bargaining. *See Town of Plymouth*, 23 MLC 29 (September 5, 1996). However, the facts at issue here materially differ from the facts at issue in *Town of Plymouth* because the Library employees

are not considered dual site employees. In *Town of Plymouth*, a Town unilaterally changed the job description of a position to include a dual worksite assignment in both the Personnel Office and the Data Center, which were in different buildings. The Personnel Office employee was assigned to work in conjunction with the Data Center and was considered to have itinerant, secondary assignments in the Data Center. The CERB held that there was a duty to bargain precisely because the job was posted and functioned as a dual work assignment in both buildings. This is different from employees occasionally needing to travel outside of their main work location to perform their job duties.

Here, employees are only being asked to fulfill their community engagement duties by spending two (2) to four (4) hours every other week promoting the Library work and engaging with citizens across the street at the Cultural Center. Both the Library Assistant and the Local History Librarian already engage in conversations with the public as part of their established work duties. Both positions are expected to be active members in their community and be knowledgeable about local art and history programs at the Library and elsewhere in the Town. Occasional travel to other Town buildings may be necessary to accomplish these established work duties and is different from the kind of dual worksite assignment for which bargaining is admittedly required. In fact, the Local History Librarian's core job function of selecting and promoting historical materials requires work in the Heritage Room because there are historically significant items there that need to be inspected before they are to appear in the Library on loan. The fact that a historically significant item or piece of art may need to be inspected at a different location does not make the employee doing the inspection a dual worksite employee. Similarly, occasional biweekly trips across the street to engage with the community and promote Library work does not amount to a change in work location that needs to be bargained.

d. The Town Satisfied Any Bargaining Obligation it May Have Had With Respect to the Change in Location.

Even if the Town had an obligation to bargain over the requirement that employees occasionally cross the street to work for a few hours at the Community Center, the Town satisfied that obligation and showed a willingness to bargain. Indeed, the Town and Union met to bargain over work location on January 24, 2023. Bargaining over this matter would have continued to resolution or impasse if not for the Union's revised demand to bargain over a supposed change in duties on January 27, 2023.

The Town's response to the Union's initial demand to bargain was to state and reserve its position that it does not have a duty to bargain over the work location and, nevertheless, to offer available dates to meet. This response shows a clear willingness to bargain the impacts of the change in work location and is all that is required to satisfy the Town's obligation. Accordingly, the charge should be dismissed even if there is an obligation to bargain over the work at the Community Center.

CONCLUSION

For the reasons set forth herein, the charge must be dismissed.

TOWN OF WINTRHOP
By Its attorney,

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Dated: March 8, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following attorney of record for each party by **electronic mail** on this date, March 8, 2023.

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Exhibit 1

Part Time Library Assistant Job Description

General Description

This is a responsible position in a public library involving support services and direct services to patrons. The purpose of this position is to assist patrons in a variety of ways, and to handle library materials as they circulate in and out of the library. This position helps to build and maintain a positive image of the library by providing courteous, equal and appropriate service to all.

Work involves responsibility for service desk functions using an automated circulation system, including checking materials in and out, collecting fines, locating materials, answering phones, providing direction on computer, copier and printer use and library functions. This position is typically part-time therefore requires flexibility in scheduling. Evenings and weekends required.

Supervision Received

Works under the direction of the Circulation or Children's Supervisor and other senior staff.

Examples of Duties

- Checks library materials out to patron efficiently.
- Handles payments for fines, lost items.
- Directs patrons to specific resources.
- Label, cover and general processing of materials as needed.
- Registers new patrons for library cards.
- Retrieves materials for the daily paging list.
- Shelves materials returned to the library accurately.
- Performs related work as required, including special projects.

Knowledge, Skills and Abilities

- Strong customer service skills.
- A comfortable level of skill in computer use.
- Able to learn new computer and database skills in order to perform circulation functions, and to assist patrons with public computers.
- Ability to understand and follow written and oral instructions.
- Ability to work well independently or as part of a team.
- Desire to learn new skills necessary.

Qualifications

High School diplomas or equivalent required. Previous customer service experience a plus. Employee should be pleasant, eager to help, dependable, reliable and must enjoy serving the public.

Updated June, 2021

Exhibit 2

Winthrop Public Library & Museum
2 Metcalf Square Winthrop, MA 02152

Technical Services and Local History Librarian
Job Description

General Description

The essential responsibility of this position is to provide software and hardware technical expertise to library operations, and coordinates with NOBLE network and all departments to plan and execute computer repair, upgrades, and routine maintenance. Assists the Director and/or Assistant Director in equipment purchasing decisions. Coordinates with local cable access in creating and supplying library content for broadcast.

Plans and implements archival projects for the Museum. Select and promote historical materials both within the library and in a variety of online forums. To make use of and work with volunteers as available in the preservation of historical materials.

Supervision Received

Works under the direction of the Library Director and/or Assistant Library Director.

Examples of Duties

- Works with a variety of social media products
- Uses Wordpress in basic web design
- Assists in cataloging newly acquired materials.
- Maintenance of all staff and public computers and printers.
- Training of staff and public on a variety of devices and software products.
- Runs reports, tracks computer use statistics for annual reports.
- Cover service desks as needed.
- Attends related network meetings as needed.
- Performs related work as needed.

Knowledge, Skills and Abilities

- Excellent computer skills.
- Ability to understand and follow written and oral instructions.
- Ability learn and implement Evergreen practices and procedures.
- Ability to learn Omeka as a cataloging source of local history items.
- Ability to work well independently or as part of a team.
- Ability to establish and maintain effective working relationships.
- Provide positive service to a wide variety of patrons of all ages.

- Desire to learn new skills and ability to train others necessary.
- Able to effectively prioritize tasks and handle interruptions skillfully.
- Ability to identify and analyze complex issues, and develop appropriate resolutions.

Qualifications

A+ Certification or equivalent experience. Previous customer service experience very helpful. Employee should be pleasant, eager to help, dependable, reliable and must enjoy serving the public.

Updated August 2022

