

NEWS LOCAL NEWS

Chelmsford can't count on insurance coverage in fight with superior officers

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CHELMSFORD — The Massachusetts Interlocal Insurance Association will not cover the town's potential civil claims filed against it for a failed collective bargaining negotiation with the town's Police Superior Officer's Union, a letter given to the Sun shows.

The five-page rejection letter from the MIIA, a membership service of the Massachusetts Municipal Association, comes after the Massachusetts Department of Labor found multiple labor law violations the town allegedly performed during contract negotiations in 2016 and prior to special Town Meeting in February, union attorney Gary Nolan wrote to the Sun Wednesday morning. Those violations include "unlawful cooperation with a Commonwealth's Joint Labor Management Committee panel member during confidential arbitration deliberations," according to a website run by Nolan, Peroni P.C., the law firm representing the union.

"MIIA regrets to advise you that it will not provide the Town Defendants with a defense and/or any indemnification for the claims asserted by the Union in the Demand under the Public Officials Liability Coverage Form," according to the letter addressed to Town Manager Paul Cohen and received in a public records request filed by the union.

"While MIIA takes no position regarding the truth or validity of the allegations, we are obligated to compare the allegations as set forth by the Union to the Coverage Form to reach a coverage determination," the letter, filed under the nonprofits' Property & Casualty group and dated June 20, adds.

Cohen said the letter "speaks for itself" and is a typical response from the MIIA regarding civil claims made against the town.

He said there has been "no litigation officially filed" and that the union declined the town's request to sit with an arbitration panel a week ago.

"There is no basis for coverage and the town accepts that position," Cohen said. "The town continues to hope the sergeants union will come back to the table for productive talks and to reach a six-year agreement."

Sgt. Frank Goode, president of the Superior Officers Union, said that it is "not surprising that the insurance company won't defend this deceitful conduct especially since the union's investigation exposed them so thoroughly."

"It was clear that the insurance companies legal team has a solid grasp of what the town and town manager did," Goode wrote in an email to The Sun. "This was a very definitive 'NO' from the insurance company. It is too bad that the taxpayers of Chelmsford will now have to foot the whole bill."

The two parties are expected to meet in Boston with the Department of Labor Relations in February to potentially resolve an ongoing dispute that began three years ago.

In 2016, the town and union negotiated, and signed, a memorandum of agreement for a successor collective bargaining agreement prior to the Board of Selectman failing to approve the agreement.

After further negotiations failed, the two parties filed for mediation with the Commonwealth's Joint Labor Management Committee. Mediation attempts also failed — sending the parties to traditional arbitration where one of the three arbitrators selected, Andover Town Manager Andrew Flanagan, sent a successfully negotiated, confidential draft award to the town with a note stating, "Let's discuss."

The town and Flanagan then allegedly had a series of "ex parte communications," according to the letter from MIIA.

The town was "unhappy with the draft award" and allegedly provided Flanagan with detailed arguments against the draft award, according to the MIIA letter.

Flanagan allegedly "cut and pasted" the town's arguments against the draft award in correspondence with the other arbitrators making it look like the town's arguments were his own. Flanagan also allegedly shared confidential communications and deliberations between the arbitrators with the town.

Flanagan was unable to convince the other arbitrators to alter the draft award and the other two arbitrators asked Flanagan to write a dissenting opinion when a consensus could not be reached. The town then allegedly drafted Flanagan's dissenting opinion and attached it to the final award for funding at special Town Meeting on Feb. 4. The award was voted down after town representatives were not given a full copy of the award and were instead given a copy of Flanagan's dissenting opinion allegedly written by the town, the MIIA letter states.

The union alleges that it was damaged from the town's actions and has potential claims against the town for "negligence, tortious interference with contractual relations and tortious interference with advantageous relations," according to the letter.

"The union also alleges that Cohen violated the town's code of ethics and is demanding that the town conduct an investigation regarding Mr. Cohen's alleged conduct," the letter says.