

LOCAL NEWS

State rules Chelmsford violated law in sergeants' union contract battle

Town Manager Paul Cohen, former labor counsel had illegal 'ex-parte communications' with JLMC panel member, according to ruling



Chelmsford Board of Selectmen meets briefly in open session in February 2020 before going into executive session to discuss Town Manager Paul Cohen. From left, then-Assistant Town Manager Michael McCall and Cohen, after the selectmen had left the room. (SUN/Julia Malakie)

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CHELMSFORD — The yearslong battle between the police sergeants' union and town officials may almost be over.

The Chelmsford Superior Officers Union, New England Police Benevolent Association Local 20, alleged the town conspired against them starting in 2016, when they began negotiating for a new contract. Since then, it's been a long back-and-forth, while the officers continue to work without a contract.

The Massachusetts Department of Labor Relations investigated and found that Town Manager Paul Cohen and the town's former labor counsel Marc Terry violated the law "by engaging in ex-parte communications" with a member of the state Joint Labor Management Committee who sat on the three-person arbitration panel from 2018 to 2019, according to the decision issued Sept. 6.

The department also stated it was illegal for the town to participate in drafting a dissenting opinion on behalf of that committee member regarding the arbitration award. The town also was "misleading" Finance Committee members and Town Meeting by not acknowledging the award "had been influenced by the Town's conduct," according to the written decision.

The Finance Committee ultimately decided not to recommend the award.

It's been a year since the department heard eight days' worth of testimony last September, when two post-hearing briefs were issued.

Sara Skibski Hiller, the hearing officer who wrote Monday's decision, stated that "the town acted in bad faith" during that arbitration process and should not have discussed any matters regarding the arbitration award with Andrew Flanagan, the JLMC management representative and Andover town manager.

"Through these communications, the Town gained an unfair advantage by receiving information about the confidential deliberations of the arbitration panel before the Award was issued," Hiller wrote. "Because an arbitration award is ordered upon the parties and is not entered into voluntarily, it is necessary that the parties be bound by a duty to bargain in good faith through the funding of the award. To find otherwise would allow either party to whom the award is not favorable an opportunity to oppose the finality of the Award, and consequently undermine the JLMC's dispute resolution process."

Hiller wrote that the former town counsel gave Flanagan specific feedback regarding his dissenting opinion, while the union did not receive a copy of the draft award and could not make changes. Because of that, Hiller wrote the town purposefully aimed to "modify" the arbitration award in the town's favor.

Now, as a result of the suit, the town is ordered to cease and desist from “failing and refusing to bargain in good faith or participate in arbitration in good faith,” as well as withholding relevant information from the union and “interfering with, restraining or coercing employees.” Officials will also provide Select Board executive session meeting minutes to the union that are “responsive to the union’s request for information” back in February 2019.

Within 30 days of the decision, the town must also resubmit a request to the Finance Committee and Town Meeting representatives at a Town Meeting to fund the arbitration award. They also have 14 days, before those meetings, to mail current members of the Finance Committee and Town Meeting with a copy of the complete decision.

Additionally, the town has to conspicuously post a “notice to employees” that states the hearing officer’s decision.

This is just one of two cases between the union and the town of Chelmsford, the other involving claims that Cohen mischaracterized contract negotiations when he presented memorandums of agreement to the Select Board, who voted against the award. That led to a mediation period, then arbitration.

The town has 10 days to file an appeal, and the Select Board will meet with labor counsel Monday, Sept. 12 in executive session to discuss the matter, Cohen said. Because this is an ongoing conversation, Cohen said he could not comment on Monday’s ruling.

Cohen apparently was aware of communication between town counsel, knew details of communications between Flanagan and Terry and reviewed his dissent, knowing it would be considered in the award decision, according to the decision.

Frank Goode, president of the Chelmsford Superior Officers Union, referred comment to attorney Gary Nolan, who represented the union and NEPBA in the case.

Nolan expressed his satisfaction with the decision, but stated “the union is deeply frustrated with this entire situation” because of how the town dealt with it.

“From a legal perspective, the union is obviously very happy with (the) Labor Board’s decision, as it confirmed everything the union has been saying all along — that the Town secretly and illegally worked with a willing inside-man (arbitration

“Facts are stubborn things. All of the evidence relied upon in the case was known by the Town back in early 2019,” Nolan added. “Rather than step up and take ownership in the face of that knowledge, the Town allowed this legal circus to proceed for years, costing the tax payers some \$250,000.00 in legal expenses.”

Over the last six years, due to inflation, Nolan said the 13 current and former sergeants and their families deserved more financial security. He now estimates the contract arbitration award would be closer to \$400,000 instead of about \$100,000.

Nolan called the whole litigation process an “enormous waste of public funds and good-will” and that the town should “take swift action against those responsible.”

“Integrity is really the issue here,” Nolan wrote. “The deceitful actions of those responsible, and their subsequent stubbornness in forcing this case to a decision, caused difficulties for many people — beyond the police sergeants and their families.”

Regarding the other ongoing case, Nolan wrote he expects a decision soon but has “no crystal ball.”

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