



**State of New Hampshire**  
Public Employee Labor Relations Board

**United Steelworkers of America**

v.

**Manchester Water Works**

**Case No. G-0058-23**

**Decision No. 2015-225**

**Appearances:**

Vincent A. Wenners, Jr., Esq.,  
Manchester, New Hampshire for the Complainant

Thomas I. Arnold, III, Esq.,  
Deputy City Solicitor  
Manchester, New Hampshire for the Respondent

**Background:**

On March 30, 2015, the United Steelworkers of America (Union) filed an unfair labor practice complaint, alleging that the Manchester Water Works (MWW) improperly refused to impact bargain the City's decision to install AVL/GPS (automatic vehicle locator/global positioning system) devices (GPS devices) on certain MWW vehicles operated by bargaining unit employees. The Union did not demand impact bargaining when the MWW was on the verge of installing the GPS devices in late 2012/3 because it believed the use of GPS data would not be used in connection with disciplinary matters based upon information provided by the MWW at that time. However, the Union subsequently demanded impact bargaining after the MWW used GPS data during the course of an investigation into possible employee misconduct which ultimately resulted in a one-day suspension of the involved employee.

The Union charges that the MWW has violated RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter); (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations); (g)(to fail to comply with this chapter or any rule adopted under this chapter); (h)(to breach a collective bargaining agreement); and (i)(to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule). The Union requests that the PELRB order the MWW to bargain with the Union over the impact of the installation and use of the GPS devices and order the MWW to restore “the status quo ante of the working conditions of bargaining unit employees without the installation and use of AVLs.”

The MWW denies the charges and claims it has no obligation to impact bargain. The MWW contends that the GPS devices were installed for purposes of efficiency and safety and have not changed or impacted working conditions to a degree that requires it to engage in impact bargaining as demanded by the Union. The MWW also disputes that at the time the GPS devices were introduced in the MWW workplace it represented that GPS data would never be used as part of disciplinary proceedings as happened in the referenced incident. The MWW also argues that it justifiably used GPS data in a personnel matter in a manner that was consistent with any prior discussions and that it has not used, and does not intend to use, GPS data to initiate disciplinary action. The MWW requests that the PELRB dismiss the complaint.

This case was originally scheduled for hearing on May 12, 2015 but the hearing was continued several times at the parties' request. On August 25, 2015 the undersigned held a

hearing at which time the parties presented evidence and provided oral argument in lieu of post-hearing briefs.

### **Findings of Fact**

1. The MWW is a public employer within the meaning of RSA 273-A, and the Union is the exclusive representative of certain employees of the MWW bargaining unit.

2. In late 2012 the MWW informed bargaining unit employees that it was going to install AVL/GPS (automatic vehicle locator/global positioning system) devices (GPS devices) devices on some MWW vehicles operated by bargaining unit employees. The Union was concerned that the MWW would use the technology as a means to track and monitor employee behavior for disciplinary purposes. However, MWW management explained that the GPS devices were intended to improve efficiency and safety and were not being installed for disciplinary purposes.

3. MWW management statements at the 2012 meeting assuaged Union concerns about how the MWW was going to use the GPS data, and on this basis the Union did not ask the MWW to impact bargain over the introduction of the GPS devices in the workplace.

4. Article 28 of the parties' October 15, 2013 to June 30, 2015 CBA is titled "Disciplinary Procedures." Section 28.1 provides that "[a]ll disciplinary actions shall be applied in a fair manner and shall be consistent with the infraction for which disciplinary action is being taken." The Article contains further detail about normal disciplinary procedures and the different phases of progressive discipline.

5. In 2014 the MWW used GPS data during the course of an investigation into alleged employee misconduct (working on a personal project during work hours). The MWW compared the data with the employee's patrol log, concluded the patrol log contained false entries, and issued a one-day suspension for falsification of the patrol log.

6. The Union filed a grievance, complaining that the MWW had improperly used GPS data to discipline a bargaining unit employee contrary to the MWW's prior assurances and the understandings and agreements reached in 2012. The Union's grievance proceeded to arbitration and resulted in a Decision and Award issued in early 2015. See Union Exhibit F. The arbitrator concluded that the MWW had not violated the CBA and had not made a unilateral change in working conditions contrary to past practice. The arbitrator did recommend that "if there is a request by the Union to bargain over the use of the AVLs, then the Department should agree to do so."

7. By letter dated February 26, 2015 the Union demanded that the MWW negotiate over the impact of the GPS devices. The MWW did not respond to the Union's letter.

8. The parties were negotiating over a successor CBA by the time of the hearing in this case but the MWW was still unwilling to impact bargain over its' decision to install the GPS devices.

### **Decision and Order**

#### **Decision Summary:**

The MWW has committed an unfair labor practice in violation of RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations) and (g)(to fail to comply with this chapter or any rule adopted under this chapter). The MWW is ordered to bargain with the Union in good faith over the impact of the GPS devices on working conditions. However, the Union's request to restore "the status quo ante of the working conditions of the bargaining unit employees without the installation and use of AVLs" is denied. The MWW shall post this decision in a conspicuous place where unit employees work for 60 days.

**Jurisdiction:**

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

**Discussion:**

The MWW has an obligation under the Public Employee Labor Relations Act to bargain with the Union over the impact of unilateral decisions within its managerial prerogative which have an effect on working conditions or the terms and conditions of employment. See, e.g. *Derry Police Patrolman's Association, NEPBA Local 38 v. Town of Derry*, PELRB Decision No. 2011-278 (November 8, 2011). *Derry* also involved the installation of AVL (and video) equipment. In *Derry* the Union claimed that the decision to use the technology, as well as the impact of the technology, must be negotiated. The PELRB determined in *Derry* that the Town did not have to negotiate the decision to use the technology but did have to bargain over its impact:

The Town's decision to install Digital In-Car Video Camera Systems and Automatic Vehicle Location Equipment in police cruisers operated by bargaining unit employees is a matter of managerial policy within the exclusive prerogative of the public employer in this case under RSA 273-A:1, XI. This decision constituted a permissive, not mandatory, subject of bargaining and the Town did not commit an unfair labor practice when it refused to bargain whether to utilize this technology with the Union. However, the Town did commit an unfair labor practice on account of its failure to bargain the impact of this managerial decision on the terms and conditions of employment of bargaining unit employees. The parties are ordered to proceed with impact bargaining but the Union's request to suspend use of the new equipment pending the outcome of impact bargaining is denied.

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They [the parties] shall commence the impact bargaining process by meeting to define and agree upon appropriate impact bargaining proposals and subjects. By "appropriate impact bargaining proposals and subjects" I mean, for example, bargaining topics like employee privacy concerns stemming from the camera capture of an Officer's face, procedures for Town storage of and employee access to data, data retention practices, notice and procedure in the event data may or will be used in conjunction with employee evaluation or discipline, and similar matters consistent with the findings and determinations made in this decision. The preliminary impact bargaining session shall take place within 30 days unless a different schedule is agreed to by the parties and should include a review of the

Union's proposed subjects of impact bargaining and notation of the Town's acceptance or objection to any proposed topics. The parties should then proceed with the bargaining process with the good faith intention of reaching agreement.

*Id.*

In the MWW case, prior to late 2012 none of the MWW vehicles operated by bargaining unit employees were equipped with GPS devices and until 2014 the MWW had never used GPS data during the course of disciplinary proceedings to help investigate and make determinations about alleged employee misconduct. Moreover, in 2012 the Union reasonably believed that the purpose of the new technology was to address workplace safety and efficiency issues and that it would not be used in conjunction with disciplinary matters. The fact that the Union did not demand impact bargaining in 2012 was justified in these circumstances.

However, the MWW's use of GPS data in 2014 to evaluate the accuracy of an employee's patrol log in the context of an investigation which led to the issuance of discipline (one-day suspension) means the Union has now legitimately requested<sup>1</sup> impact bargaining. It is clear that the MWW used GPS data to reach conclusions about possible employee misconduct, and also that the GPS devices have an effect on working conditions and the terms and conditions of employment beyond safety and efficiency issues. In this case, the GPS technology has had a sufficient impact on working conditions and the terms and conditions of employment, particularly in the area of Article 28 Disciplinary Procedures, so as to justify impact bargaining as the Union has requested. The fact that the MWW does not plan to use GPS data for surveillance purposes or to initiate employee investigations does not mean, as the MWW suggests, that there is no employer obligation to engage in impact bargaining.

Accordingly, I find that the MWW's continuing refusal to impact bargain as the Union has demanded constitutes an unfair labor practice in violation of RSA 273-A:5, I (e) and (g).

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<sup>1</sup> After first attempting to address its concerns through the contractual grievance process.

The parties shall meet within 30 days to begin the impact bargaining process, and shall meet thereafter as necessary until impact bargaining is complete. It appears the parties have a long history of collective bargaining and also that they are experienced and sophisticated negotiators. There does not seem to be any need to define the specific parameters of impact bargaining in this case except to say that the MWW is ordered to bargain with the Union in good faith over the impact of the GPS devices on working conditions and the terms and conditions of employment. Notwithstanding the foregoing, the Union's request to restore "the status quo ante of the working conditions of the bargaining unit employees without the installation and use of AVLs" is denied. The MWW is also ordered to post this decision in a conspicuous place where unit employees work for 60 days.

So ordered.

Date: 10-1-2015

Doug Ingersoll  
Douglas L. Ingersoll, Esq.  
Executive Director/Presiding Officer

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