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VIA ELECTRONIC MAIL

Paul J. Fahey
Chief of Staff, Office of the Mayor
City of Methuen
41 Pleasant Street
Methuen, MA 01844

Dear Paul:

The Police Superior Officer's Association is in receipt of your recent letter, in which you give notice of the City's intent to repudiate the parties' current CBA, as modified by the current MOU reached last Summer, and for which funds were appropriated shortly thereafter. As before, the City is claiming that it was completely in the dark about the terms negotiated under the current CBA, and now, as of very recently, is claiming that an opinion letter written by the Commonwealth Inspector General, mostly alleging negligence against City officials, justifies the City's breach of the current contract. The Union disagrees. The parties are both subject to the terms of the current contract, approved by a unanimous City council, all of whom had advice, as well as plenty of time and opportunity to review and question the contract. The varying opinions sought out by the City to avoid its obligations notwithstanding, the contract remains binding.

With regard to your request that the Union return to the re-start bargaining over a new, successor CBA (in other words, agree to the position that there is no current CBA), the Union declines. The CBA is in place, as modified by the MOU as to the process for calculating wages. Should the City breach its obligations under the contract, the Union and its members will take all action to enforce the contract, including as we had indicated before, moving forward with the arbitration process, and pursuing claims under the Massachusetts Wage Act, which as you know, if successful, mandate the payment of triple damages and attorney's fees. Also, the Act provides for personal liability against responsible officers and agents of the City.

Also, you have given the Union notice that the city intends to stop paying the Superior Officer's the reduced salary rates that were negotiated in the MOU. As you recall, the Superior Officer's gave back to the City considerable wage benefits, resulting in the guaranteed reduction of salary under the CBA. **Please be advised that – should the City revert to the prior CBA in effect (the old contract), under the prior language, because of the method required to calculate the salaries, the Superior Officer's salaries will actually be the same and in many instances will be greater than the reduced rates under the MOU. In other words, the City**

may be spending more than they currently are under the MOU. While I can only assume that the City has reviewed the financial impact of making this change, I have not been made aware that my assumption is accurate. Of course, should the City breach that prior agreement, it may incur additional Wage Act claims and triple damages claims, etc.

As you know, the recent opinion letter from the Commonwealth IG's Office is advisory in nature, speculative, and does not relieve the City of any of its' contractual obligations. In order to attempt a rescission of the CBA, the City will of course need to litigate before the Ethics Commission the issues raised in the opinion, and must obtain findings, after a full adjudicatory process, that several individual councilors and other officials are guilty of violating the state ethics laws under GL c. 268A. In considering this action, I am assuming that the City has fully costed-out the salary figures that will be due the Superior Officer's under the old CBA. To this end, the City and OIG have cited to a City rule that requires that the Counsel be provided with a complete cost analysis of the financial impact of its votes on contracts – I expect the Council will want to comply with this rule and be presented with the cost of implementing the prior contract's wages, particularly in light of how they are impacted by the other current departmental salaries.

The Office of the IG was critical of the provision in the current CBA where the union bargained to have Quinn Bill payments characterized as base pay – suggesting it seems that this new benefit resulted in an inflated base pay. I would like to point out – and I am sure that the City's counsel will agree - that Quinn Bill payments, by law, are required to be part of the base pay. In fact, for many years, the City in the past did not treat Quinn payments as base pay for all purposes, and for years the Superior Officer's benefits were calculated separate and apart from their Quinn Bill salaries. The last contract negotiation attempted to remedy that improper calculation method used by the City. Accordingly, characterizing the Quinn payments as base pay is not some contract trick designed to artificially inflate base salary – it is merely a contractual statement of what the law has been in the Commonwealth dating back to the creation of GL. c. 41, Sec. 108L. The MOU gave the City relief from this provision, and should the City repudiate the MOU, it would no longer have the benefit of that relief. It must adhere to the law, which mandates Quinn Bill payments to be base salary, upon which other benefits are to be calculated.

In your letter, you state that the Council was completely in the dark as to the terms and conditions of the police contract. Such a statement has no basis in fact.

1. Bargaining History of the Supervisor's Contract.

The contract was the result of several meetings between the two bargaining teams. The City team was very knowledgeable, and included the Mayor, the Chief of Police, and two (2) experienced employment attorneys (both the City Solicitor and the HR Director who is also lawyer). The Union team was comprised of only two (2) police supervisors – no attorneys were ever present with them. All meetings took place between the two complete bargaining teams (no individual meetings or side-meetings ever took place). The contract proposals were discussed at length, at the table, by both sides, and, in fact, the prior Mayor insisted that the entire proposed agreement be physically reviewed page-

by-page at the table, with both full teams reading through the contract changes, before any final agreement was reached. A specific discussion of these base wage calculation changes took place at the bargaining table (the so-called “stacking” as the Mayor has referred to it publically) and all parties reached a knowing, voluntary agreement.

2. The City Council knowingly voted to approve the Contract.

The actual written police contract was provided to the Council two weeks prior to its vote to approve it, and the contract itself has a separate section entitled “compensation” that spells out in black and white language the meaning and intent of the base pay calculation changes. In fact, the contract identifies in many places those changes, as they are introduced and highlighted with language stating “effective July 1, 2018,” putting anyone reading it (or voting on it) on clear notice of the changes about to take place. Of course, any Councilor who had questions or concerns as to the meaning needed only ask the Mayor, the Solicitor, the Police Chief or the HR Director at the time, or as it seems, the City Auditor who also had the document prior to the vote.

Regarding the City Auditor, it is clear that he not only read the agreement, but he fully understood it, and he did his job when he identified his concerns to the Mayor and to multiple councilors prior to the Council’s vote to approve the agreement. The auditor recently told this current council that his concerns “fell on deaf ears,” and that the prior Council, despite his warnings, went ahead and approved the agreement at the following meeting. None of this is the fault of the Union, who advocated for their members, put everything in writing, gave two weeks to the council to review, and the Council voted after being advised by its financial expert, the Auditor.

Any suggestion that the City was unaware is not supported by the facts and is an unfair attempt to explain away or justify its vote. The truth is that this was the agreement that was negotiated in a transparent manner by both sides, and one that had both sides well represented, and one that gave each approving body (union members and City Council) every opportunity to review, inquire and reject.

3. Appropriation of funds. The City has apparently sought and received several opinions on ways to get out from under this contract. The most recent suggestion is that no funds were appropriated for the first year cost items. This is not accurate. The Council approved the CBA. At the time, several new cost items were, as you know, included in the CBA and set to be implemented in year one. All of those cost items were paid in year-one, with funds appropriated by the Council. On April 17, 2018, the Council gave blanket appropriation authority to the Mayor to appropriate funds from Department to Department, or intra-departmentally, to pay cost items due in FY17. Throughout the course of 2018, including subsequent to the Council’s April 17, 2018, vote to allow the Mayor to unilaterally appropriate funds, money was appropriated to the Police Department to satisfy all of those contractual, year-one, obligations.

In addition, the Council voted to approve the Mayor’s recent budget, the final version of which appropriated funds to pay all of MOU designated positions and salaries. The

Council ultimately reduced the overall police budget number, taking 1.8 Million from the patrolman's salaries, but in the end the whole budget was approved and the MOU salaries and positions were specifically included. The Council had the option to not vote to approve the budget. It did not do that. The budget is in place now with the MOU terms reflected in the police budget as funded. The City appropriated funds to pay the Superiors, did pay the Superiors for several months, and the original contract, as modified by the MOU, is entirely valid and enforceable. In addition, the MOU is not a separate contract – it is merely a document reflecting the parties understanding as to the application of the original CBA. Accordingly, the Council need not approve it. The Council approved, unanimously, the original CBA, and this document merely reflects a discussion by the Union and the City, memorializing an agreement by the Superiors to waive claims and benefits, etc. Funds were subsequently appropriated to pay those cost items, and the agreement remains in full force. Given that the City is seeking to rescind the vote on the CBA and rescind the contract, I can only assume that, at least on some level, the City agrees that the current contract is enforceable.

4. Non-payment of wage issues. While the Supervisor's Union does not wish this issue to result in litigation, it would like to remind the Council that the failure to pay proper wages in Massachusetts has very severe penalties, including mandatory triple damages plus attorney's fees for each employee deprived of his or her contractual wages. There is also individual liability under the wage laws, as any manager who controls, directs, and participates to a substantial degree in formulating and determining the financial policy may be a person having "employees in his service" and thus may be subject to liability for unpaid wages. I urge you to consider these penalties, most of which will be laid on the shoulders of the Methuen taxpayer. Should the City unilaterally reduce wages, and moreover, begin paying wages based on an arbitrary method, the Union will necessarily need to move these claims forward.

5. Civil Service Law. As you know, G.L. c. 31, Sec. 41 states that the City may not lower an employee's compensation without first conducting a full hearing for each affected employee before the appointing authority. Accordingly, should the City reduce the compensation without complying with these procedural statutory rules, the City will be in violation of the Civil Service law.

Sincerely,



Gary G. Nolan

cc: Methuen Police Supervisor's Union
NEPBA, Inc.
Office of the City Solicitor, Methuen, MA