

**FOR IMMEDIATE RELEASE**

TO: ALL MEDIA OUTLETS  
FR: Gary G. Nolan, Counsel Methuen Police Superior Officer's Association  
RE: City of Methuen Ethics Complaint  
DATE: September 30, 2019

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The City of Methuen, because an arbitration hearing on October 22<sup>nd</sup> draws near, has filed a complaint with the State Ethics Commission seeking to relieve it of its contractual obligations with the Police Superior Officer's union. Despite having sat on its hands since last February – when it received the Inspector General's report – the City now, as part of an apparent legal strategy, characterizes action by the Ethics Commission as some sort of required urgency. The City has suggested that some sort of trickery played a part in the current contract –that two contracts were actually submitted to the Council, and that someone presumably changed the agreed upon contractual language without informing the Council. Many have commented on this theory, and all could not be more wrong. Without litigating the merits of this case in public, the union would like to point out the following information:

1. As an initial matter, the City has been aware of the Ethics Commission process since last February, and – as a matter of legal strategy – decided against filing a complaint. Moreover, the City had discussions with the Council, at that time, in which the City itself stated that the Inspector General's report was inaccurate. *See attached email amongst City Council dated Feb. 7, 2019.* Now that the City is getting closer to the arbitration hearing, their strategy has apparently changed, and includes this faux emergency.
2. There were never two contracts. The City has suggested that copy of a draft agreement – signed only by the union – is somehow evidence that there were two agreed upon versions of the contract submitted to the Council, and that someone swapped out agreed contract language after the fact. This is ridiculous.

Only one agreement was ever submitted to the City Council. The parties met several times during bargaining and worked through different iterations of the contract. The so-called draft agreement signed only by the union was rejected by the Mayor and returned to the union for further revisions, including suggested edits by the Mayor to highlight COLA increases. Importantly, the union signed that initial draft document not because it wanted new language, but because it would have agreed to it. The Mayor never signed it, and that version was never submitted to the Council. This draft version was not even found at City Hall. Long after the council approval of the contract, that rejected draft document was apparently in the police department and was sent to the Inspector General's Office in connection with its review, and was never part of the City Council materials (of course, if the City council had this document, you would think it would have not waited more than two years to ask questions about it).

Ultimately, after the Mayor would not sign the initial draft, the union hand delivered a new document for review by the Mayor, his bargaining committee, and of course the Council. The Mayor's office and the Council had that one and only final version for several days prior to all of them signing it. Also, the City Auditor was in possession of that one and only version -- and

apparently made multiple councilors aware of its cost – prior to the council vote to approve the contract. There was never any trickery – only one agreement was ever sent to the council – all had the chance to read, review and inquire; some were even alerted by the Auditor. Ultimately none asked a single question. That is not the fault of the union.

3. Added Base Pay language. There has been much discussion about the so-called stacking language in the contract – or the inclusion of certain benefits as part of an officer’s base pay, which then triggers higher salaries because a larger number is used as the base figure. This is an important discussion.

Initially, it is significant to point out that both versions of the contract contain so-called stacking language – meaning the draft rejected by the Mayor as well as the final draft approved by the Council. In fact, the union’s position is that both versions have the exact same cost value, which is why the union signed the first one and would have lived with that one had it not been rejected.

The reason for increased salaries under the contract is that there was an agreement to add certain contractual benefits to supervisors’ and patrol officers’ base salaries. By agreeing to include multiple added contractual benefits into its definition of base pay, the City raised the compensation of its police officers in a significant manner. Auditor Tom Kelly identified this prior to the Council’s vote to approve the contract. In this contract, both patrolmen and supervisors negotiated provisions that “rolled-in” to their base salaries different contractual benefits previously not considered base salary. Because both groups increased their base, the supervisor’s salaries grew. This was a significant gain for the Supervisor’s union, because the City agreed to add such things as Holiday pay (13 Holidays) into base; hazardous duty compensation (3% in 2018) into base; (Quinn Bill education incentive by law is already part of an officer’s base salary).

The City also agreed to increase the rank differential percentages (the percentage increases between supervisor’s ranks). Because the base pay of a Sergeant, for example, was increased, the percentage differential (which the City agreed to also increase) was based off of a larger number. The city agreed to such base and differential increases for all supervisors, and also agreed to make more officers eligible for Master Supervisor increases, all of which were based off of the newly defined base salaries, etc. All of these base salary increases, and so-called stacking differential increases – were agreed to by the City (as reflected in their bargaining notes), and were included in the initial draft version of the contract, which version is now held out by the city as the subject of trickery. I wonder if the City has ever even cost valued that initial version? If so, it is the same value. If not, shame on them. Hopefully someone will ask them.

4. Added Language. The language added in the final version is two-fold. The Mayor suggested adding express language highlighting COLAs of 0/2/2. The union wanted everyone to know in as plain language as possible that the contract was worth more than 0/2/2 – which is why it suggested the explanation regarding calculation. The substantive agreement to include these additional, individual, benefits into supervisors’ base pay is reflected in the City’s bargaining notes, and was specifically spelled out in the rejected draft contract. However, when the Mayor wanted to highlight COLAs, the union wanted there to be no confusion by anyone reading the contract that there was more to this agreement than cost of living raises. The union

highlighted the base pay roll-ins expecting that anyone reading it, specifically the Council who needed to vote on it, would be on notice. The union knew full well that the contract had to be approved by the Mayor, his bargaining team, and the full Council, all of whom had the document in their hands for many days. The union suspects the Mayor's team agreed to the added explanation because it substantively changed nothing - they already agreed to all the provisions rolling the benefits into the base pay - and in fact, this language merely drew more attention to those base increases, not less. If the union were trying to minimize attention to these benefits, it would not have proposed such a detailed explanation. Apparently the Auditor alone read it on behalf of the Council, and he certainly understood the impact. Anyone on the City's team, or from the Council, could have moved to reject the contract. None did.

Even after the City Council began to complain about the police contract, it was certainly on notice of additional benefits rolled into the first year of the agreement. The current Council in April 2018 overwhelmingly passed a funding resolution authorizing the Mayor and the Auditor to fund FY18 budgetary shortfalls, which funding resolution authorized more than \$575,000.00 in transfers to pay for police expenses, including funding the FY18 contractual increases. The Council signed that resolution after an 8-1 vote and, ultimately, authorized its funding. Why would so much extra money be needed to fund police contracts that had a 0% increase? The contract was clear and unambiguous and all were, or certainly should have been, aware of the impacts.

Again, the City and its bargaining team agreed at the table to all of the base pay roll-ins, and agreed to the increased rank differentials triggering the increases salaries. The Council approved the contract unanimously, and then even voted to authorize a funding mechanism for FY18 shortfalls. Rather than hold out a rejected draft version of the contract as some sort of trick, the union requests that those of this belief take the time to cost out the draft version and educate themselves on the substantive agreements, take the time to examine the city's bargaining notes which reflect agreement to the base pay and rank differential increases. Again, the union signed the draft contract because it would have lived with it. The city rejected it, not the union.

The inflated salary figures, often held out by the City to spark outrage, apply to very few individuals, and more importantly have never been demanded or even requested by the police union or any officer. The union had gone to the table despite its binding contract and agreed to radically reduced salaries as compared to the City's worst-case scenarios. Ultimately, the City, not the union, rejected those attempts at settlement.

The union's job is to advocate for increased benefits for its members and their families. Policing in 2019 is a dangerous business. The population is in the midst of an opioid crisis and there are presently more guns in the United States than people. Last year, 158 law enforcement officers were killed in the line of duty. According to the FBI, there were 60,211 assaults against law enforcement officers in 2017, resulting in 17,476 injuries. The union is an advocate for its members who are the only ones asked to wear guns and vests and tackle such dangers on the front lines. The city council, on the other hand - and the Mayor, the Auditor, etc. - those folks are the ones who are responsible for the City's actions.

**From:** Gary gary@nolanperroni.com  
**Subject:** Fwd: Special Meeting - February 8, 2019  
**Date:** August 12, 2019 at 3:55 PM  
**To:** greg gallant ggallant70@yahoo.com



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Begin forwarded message:

**From:** "ortega, c" <cortega@ci.methuen.ma.us>  
**Subject:** FW: Special Meeting - February 8, 2019  
**Date:** August 12, 2019 at 2:46:41 PM EDT  
**To:** "John.Foskett@VDHBoston.com" <John.Foskett@VDHBoston.com>, "gary@nolanperroni.com" <gary@nolanperroni.com>

Attorney Nolan,

Please see email.

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**From:** Gagnon, Linda M.  
**Sent:** Friday, August 02, 2019 11:16 AM  
**To:** ortega, c; D'Agostino, Richard  
**Subject:** FW: Special Meeting - February 8, 2019

REF: MUP-19-7195

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**From:** D'Agostino, Richard  
**Sent:** Thursday, February 07, 2019 1:50 PM  
**To:** Jennifer Kannan; Lynn, Vidler; Kazanjian, George; Zeigler, Eunice; Finocchiaro, Jessica; Mccarty, James; Saba, Steve; Hamilton, Ryan; Campagnone, Joyce  
**Cc:** Gagnon, Linda M.; ortega, c; Randazzo, Anne  
**Subject:** Special Meeting - February 8, 2019

Good Afternoon Councilors:

Yesterday, Councilor Eunice Zeigler spoke with Atty. Eve Slattery, the General Counsel to the Massachusetts State Ethics Commission, to inquire about the Inspector General's report and recommendations. Attorney Slattery informed Councilor Zeigler that the Commission was in possession of the report. It's my understanding that Atty. Slattery then proceeded to explain the Commission's role in response to the IG's recommendations, but began to get into into the legal weeds in order to properly explain. At that point, she suggested that Councilor Zeigler have me call and speak directly with Atty. Slattery.

In his Report conclusion, the Inspector General directed the City Council to request that the State Ethics Commission make a determination regarding the prior City Council's invocation of the Rule of Necessity and rescind the Superior Officers' Collective Bargaining Agreement.

As informed by Atty. Slattery, that is not the proper way to seek a contract rescission by the Commission.

Attorney Slattery explained that there is a case law decision rendered by the Massachusetts Supreme Judicial Court in 2013 that permits the State Ethics Commission to rescind a contract, if in fact it is determined that there was a violation of the State's ethics laws.

The Supreme Judicial Court decision is found in the case of Leder v. Supt. of Schools of Concord, 465 Mass 305 (2013).

In order for the State Ethics Commission to engage such powerful involvement that would lawfully allow them to rescind the contract, an ethics complaint would have to be filed and an entirely new investigation would commence. The investigation would center on whether the Rule of Necessity was improperly invoked in order for all City Councilors with Methuen Police Dept. conflicts to vote to approve the Superior Officers Collective Bargaining Agreement.

Once the investigation was completed, an adjudicatory hearing would then be held to determine whether the conflicted City Councilors properly or improperly invoked the Rule of Necessity in order to establish a quorum and participate in the vote. (It is important to note here that the State Ethics Commission has already advised that Councilor Kannan *would* be conflicted from voting on any matter involving the Methuen Police Department, because her son is a patrolman in the department; his lack of superior officer status is irrelevant. At the outset, that Commission determination alone conflicts with the Inspector General's conclusion that there was a quorum of unconflicted councilors present and available to vote on the CBA, and Councilor Kannan's conflict could have been cured with just a disclosure. This is one of the reasons I do not want to give this advisory in public, as it would not assist our litigation defense). I was also informed that the Inspector General's Office did not collaborate with the Ethics Commission when drafting the Report.

Attorney Slattery stated that the Commission does not normally investigate past conduct.

In order to do so, she stated that a complaint would have to be filed so the commission can commence an investigation. If violations were found, there would need to be an adjudicatory proceeding (I surmise for each individual Councilor), in order for an ultimate determination or finding to be made. As such, all rights of Due Process attach, giving each individual an opportunity to be heard; present defenses; witnesses; mitigating circumstances; etc.

She also said that once the Commission's investigation was completed, it may be determined that no violation occurred, thereby negating the need for a hearing; adverse ruling, or contract rescission by the Commission.

Further, Attorney Slattery stated that the Commission would not respond to a simple letter of request from the Council for an Ethics determination, for such determination could only result from the lengthy process described herein.

Obviously, any decision one year from now does not serve the city's immediate need or purpose. Conversely, I believe it may serve as an offensive tool for the Superior Officers legal position, if/when they choose to challenge the city's invalidation of the contract.

However, it's also my opinion that this information is not fatal to the city's position. There are other reasons contained in the Inspector General's report upon which the City can rely.

Additionally, there are other defenses that can be proffered, that are based in contract law & public policy.

The Administration has already issued notice that the City will not honor the contract or the MOU.

Accordingly, the Council should move forward this evening to acknowledge the Inspector General's report and its recommendations, support the determination that the Superior Officers' contract is invalid and vote to transfer \$1.2M into the Police Dept. Personal Services account (as discussed earlier this week with the City Auditor, Sheryl Wright), in or if you move forward and avoid layoffs.

I reiterate that the State Ethics Commission's General Counsel informed me that she does not want the City Council to send a letter of request as the Inspector General had advised, as that is not the proper manner for the Commission to determine its authority to rescind a contract.

I also advise those Councilors who are currently conflicted to refrain from voting or being in the room during tonight's session. You may even choose to remain home. Attorney Slattery concurs with this advisory.

As always, I am available to respond to any further questions or concerns you may have.

You may also want to meet in an Executive Session, to further explain litigation ramifications and address all concerns.

Regards,

Rick

*Sent from my T-Mobile 4G LTE device*