

Appeals Court Holds Procedural Process for Selecting Fire Chief Falls Outside of Union's Bargaining Powers

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On October 27, 2022, the Appeals Court of Massachusetts issued a decision in City of Everett v. Commonwealth Employment Relations Board (CERB), holding that the City had “no duty to bargain with” the Firefighter’s Union in regard to the procedures it enacted for the selection of fire chiefs, reversing a prior decision of the CERB. In particular, Everett overruled an earlier CERB decision that certain aspects, of the promotional process put in place by the City, specifically the non-managerial aspects, required collective bargaining with the Union as they affected the promotional process for members of the Union’s bargaining unit. Here, the court considered whether all aspects of the procedure for a promotional process to a managerial position that is outside of the Union’s bargaining unit are ‘terms and conditions of employment’ that would require collective bargaining. The court concluded that they are not, and therefore, that no collective bargaining was required.

Previously, the City of Everett established eligibility lists for all Fire Department promotions based 80% on the score a candidate received on a written examination and 20% on their education and experience. In 2019, the City sought to change the process to use of an assessment center in which a candidate would perform a variety of exercises and be evaluated on each of them. The City informed the Union of this and asked for its feedback. The Union responded with a request that the City first discuss the changes with the Commonwealth’s Human Resources Division (“HRD”) and then, if the City still planned to implement the changes, with the Union. After the City received authorization from HRD to conduct assessment center evaluations, the Union was not notified of or involved in any further discussions.

Upon discovering the changes, the Union filed a prohibited practice charge with the Department of Labor Relations (“DLR”), alleging a violation of G.L. c. 150E, §7, the public sector labor relations and collective bargaining statute. The DLR investigated, issued a complaint and held a full evidentiary hearing. The DLR hearing officer found that the Union did not prove that the City’s decision to use assessment centers “directly impacted a mandatory subject of bargaining”, and thus found no violation of G.L. c. 150E. On appeal, CERB reversed this decision, finding that although no duty exists to bargain over managerial rights, the process involved the only way for the Union’s bargaining unit to get a promotion, thus affecting its members terms and conditions of employment. Specifically, CERB justified its decision by citing precedent that promotions relate to issues such as “increased pay, benefits and prestige and movement on a career ladder.” The City subsequently appealed this decision to the Massachusetts Appeals Court.

On appeal, the Court analyzed prior DLR and CERB decisions and found that procedures for promotion in some instances do affect conditions of employment for promotions within a bargaining unit. However, the Court also noted that prior decisions held that while pre-conditions to promotions from one bargaining unit to another required collective bargaining, this standard did not apply if the promotion was for a managerial position excluded from collective bargaining. The Court went on to discuss that the fire chief position is not a part of any bargaining unit, and thus is not covered by G.L. c. 150E. For these reasons, the Court held that the process for selecting a fire chief did not impact the terms and conditions of employment for members of the Union seeking promotion, as such member would, if promoted, be at odds with the unit. The Court emphasized that fire chiefs, as opposed to deputy chiefs and others in the fire department, work “under the direction of the mayor... assist[s] city officials in the collective bargaining process, and [are] a member of the city’s management team.” For all of these reasons, the Court reversed CERB’s decision.

The City of Everett decision is the first of its kind at the appellate level, and is of importance for all municipalities. The Court established a standard for when promotions to managerial positions fall outside of collective bargaining requirements and protections, by drawing a clear distinction between members of a collective bargaining unit and their exempt managers. The degree to which this decision applies outside of municipal fire departments remains to be seen. However, it is likely that the same rationale and analysis will be applied to comparable “head of agency” positions such as police chiefs, who also manage a largely unionized work force and where internal candidates are often considered for promotion. Ultimately, application of the Court’s analysis to any particular promotional opportunity will require an examination of whether the position at issue is typically considered a “managerial” position otherwise exempt from collective bargaining under G.L. c. 150E.

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