

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF DARTMOUTH

and

DARTMOUTH POLICE BROTHERHOOD

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Case No.: MUP-10-5831

Date issued:

August 29, 2011

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Howard L. Greenspan, Esq. - Representing the Town of Dartmouth

William M. Straus, Esq. - Representing the Dartmouth Police
Brotherhood

HEARING OFFICER'S DECISION

1 Summary

2 The issue in this case is whether the Town failed to bargain in good faith by
3 breaching the negotiation ground rules. For the reasons explained below, I find that
4 Chairman of the Select Board Joseph Michaud's radio and newspaper remarks violated
5 the parties' express agreement that there be no press releases until negotiations reach
6 mediation. Thus, I find that the Town violated the Law in the manner alleged.

Statement of the Case

The Dartmouth Police Brotherhood (Union) filed a charge with the Department of Labor Relations¹ on April 9, 2010, alleging that the Town of Dartmouth (Town) had engaged in prohibited practices within the meaning of Sections 10(a)(1) and 10(a)(5) of Massachusetts General Laws, Chapter 150E (the Law). Following an investigation, the Department issued a complaint of prohibited practice on July 14, 2010, alleging that the Town had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by breaching negotiation ground rules. The Town filed its answer to the complaint on July 21, 2010.

On June 6, 2011, the Town and the Union submitted a stipulated record in lieu of a hearing and expressly waived their right to an evidentiary hearing. The stipulated record consists of ten stipulated facts, five documentary exhibits and one audio exhibit. The Union filed its brief on August 2, 2011 and the City filed its brief on August 11, 2011. Based on the stipulated facts and in consideration of the parties' briefs, I find that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law as alleged in the complaint.

Stipulations of Fact

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive collective bargaining representative for certain police officers employed by the Town, including all patrol officers, sergeants, and lieutenants.

¹ Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations (Department).

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4. The Town and the Union are parties to a collective bargaining agreement covering the period from July 1, 2007 through June 30, 2009.
5. On or about July 23, 2009, the Town and the Union started negotiations for a successor to the contract described in paragraph 4.
6. On November 3, 2009, the Town and the Union signed an agreement that contained the ground rules governing their negotiations for a successor to the contract described in paragraph 4. The parties agreed that the negotiations would be closed to the general public and held in executive session.
7. The ground rules described in paragraph 6 include the following provision:
 9. The parties intend that there will be no press releases unless negotiations reach mediation. Each party will give the other prior notice in the event that a press release will be forthcoming.
8. The Town and the Union negotiated over the terms of a successor contract on January 12, 2010 and February 9, 2010. These negotiations are ongoing and the parties had not sought the assistance of a mediator as of June 1, 2010.
9. On or about March 16, 2010, Michaud made the following statement during an interview that was broadcasted on a local radio station:

We held the line in contract negotiations with the police department, a zero percent like we have with every other collective bargaining unit in the Town, and we have a lot of other things that we have to pay for first before we can start funding pay raises for, not only police department members and their Union, but the other town employees' unions as well.
10. In an article that appeared in the March 16, 2010 edition of a local newspaper, Michaud is reported as making the following statements to the reporter:

He said the Select Board has held the line in contract negotiations with all town unions, and not just the police union, and is not offering pay raises at all. "It's not that we

1 don't want to (offer pay raises). We don't have the money,"
2 he said.
3

4 Findings of Fact

5 The stipulated record in this case contains five documentary exhibits. I make the
6 following relevant findings of fact based on those exhibits. Joseph Michaud (Michaud)
7 is Chairman of the Select Board. On an unidentified date, the Union took a no
8 confidence vote in Michaud. In a public written statement, dated March 15, 2010, the
9 Union explained its reasons for its no confidence vote in Michaud. In part, the March
10 15, 2010 document states that the Union objected to certain remarks Michaud allegedly
11 made during an open meeting in 2009 as the parties were commencing successor
12 negotiations. The March 15, 2010 document otherwise does not refer to negotiation
13 sessions or specific contract proposals. Nor does the March 16, 2010 newspaper
14 article entitled "Dartmouth police union votes 'no confidence' in Select Board Chairman
15 Michaud" contain a quote from any Union official regarding successor negotiations or
16 specific contract proposals. Finally, I find that the Union's November 2009 successor
17 negotiation proposals include pay raises.

18 OPINION

19 Statement of Law

20 Section 6 of the Law requires a public employer to meet with the exclusive
21 representative and negotiate in good faith with respect to wages, hours and other terms
22 and conditions of employment. Where an employer violates the parties' agreed-upon
23 ground rules for contract negotiations, the Board holds that such conduct constitutes a
24 refusal to bargain in good faith in violation of Section 10(a)(5) of the Law. Bristol County
25 Sheriff's Department, 31 MLC 6, 21 (2004); North Middlesex School Committee, 28

1 MLC 160, 162 (2001); Boston School Committee, 15 MLC 1541, 1546-1547 (1989). In
2 Town of Maynard, 2 MLC 1281 (1976), the Board found a violation of the duty to
3 bargain in good faith where an employer issued public statements in breach of a pre-
4 established ground rule that no press releases would be issued without approval by
5 both sides.

6 Here, the parties commenced successor negotiations July 23, 2009, and signed
7 ground rules governing such negotiations on November 2, 2009. The ground rules
8 include an agreement that there will be no press releases unless negotiations reach
9 mediation. Thus, the ground rules evince the parties' intent to keep negotiations
10 confidential for a specified period of time. However, Select Board Chairman Joseph
11 Michaud (Michaud) spoke to radio and newspaper press on March 16, 2010 about the
12 ongoing negotiations, which had not reached mediation.

13 The Town first argues that there is no evidence that any individual member of the
14 Select Board, including Michaud, signed or was advised of the ground rules. The Town
15 emphasizes that the record contains no evidence to establish Michaud's knowledge of
16 the ground rules. In support of its position, the Town argues that in Town of Belmont,
17 22 MLC 1636 (1996), the Board found that an individual selectman that did not sign a
18 collective bargaining agreement was not obligated to support a funding amendment for
19 a negotiated settlement.

20 The Town's arguments are unavailing. A municipality is bound by the acts of its
21 agents. City of Lawrence, 13 MLC 1087, 1092 n.6 (1986) (citing Town of Ipswich, 11
22 MLC 1403, 1410 n.7 (1985)). Unless a party communicates a limitation or restriction on
23 its negotiator's authority to the other party, an individual in charge of a transaction has

1 broad apparent authority. Town of Ipswich, 11 MLC at 1410 n.7. Thus, an agent's
2 agreement is binding regardless of the principal's knowledge of the agreement's terms.
3 See Belmont School Committee, 4 MLC 1189, 1192 (1977), *aff'd*, 4 MLC 1707 (1978)
4 (finding that a Union was bound by president's signature on an agreement despite the
5 fact that members who ratified it were unaware of the absence of a key provision).
6 Here, the Town admits that it signed the ground rules on November 3, 2009.²
7 Therefore, I find that members of the Select Board, including Michaud, are bound by the
8 negotiated ground rules.

9 I also reject the Town's argument that Michaud is not obligated to abide by the
10 ground rules pursuant to Town of Belmont, 22 MLC 1636 (1996). Town of Belmont
11 concerns selectmen's funding obligations for negotiated contracts, not adherence to
12 negotiation ground rules.³ The Board's narrow holding in Town of Belmont permits
13 selectmen that do not sign negotiated collective bargaining agreements to speak as

² In its brief, the Town states that Executive Administrator to the Select Board David Cressman and Union attorney William Straus signed the ground rules. However, I do not rely on this assertion for the following reasons. First, the stipulations of fact merely state that the Town and the Union signed the ground rules on November 3, 2009, but do not identify specific signatories. Second, the stipulated record contains only a copy of the ground rules signed by Straus, although there is also a space for the Town's signatory.

³ The Board requires selectmen as a governmental body and as the collective bargaining agent that negotiated an agreement for a town to support funding of the agreement. Town of Rockland, 16 MLC 1001 (1989). However, successor board of selectmen members are not required to adopt a particular position which might not be in accord with their own judgment. Labor Relations Commission v. Board of Selectmen of Dracut, 374 Mass. 619, 625 (1977). Thus, in Town of Belmont, relying on Town of Dracut, the Board found that a selectman that did not sign a collective bargaining agreement did not violate the Law by speaking against a budget amendment as an individual town meeting member.

1 individual town meeting members on related funding issues. Therefore, Town of
2 Belmont is inapplicable to the facts of this case.

3 The Town next argues that Michaud's radio and newspaper comments on March
4 16, 2010 responded to the Union's publicizing its no confidence vote in Michaud. The
5 Town also notes that the March 16, 2010 newspaper article states that the Union held a
6 no confidence vote against Michaud in part because of contract negotiations. The Town
7 insists that Michaud was merely defending himself and argues that Michaud did not
8 disclose the substance of negotiations by commenting on any of the proposals that the
9 parties exchanged in November of 2009.

10 Nevertheless, the evidence demonstrates that on March 16, 2010, Michaud
11 specifically commented on pay raises. The Union's November 2009 negotiation
12 proposals include salary increases. Thus, Michaud's remarks to the press concerned a
13 specific negotiation proposal. Notably, the Union's March 15, 2010 written statement
14 regarding its no confidence vote in Michaud does not reference specific negotiation
15 proposals. Nor does the March 16, 2010 newspaper article contain a quote from any
16 union official commenting on negotiation proposals. Therefore, Michaud's comments
17 unnecessarily disclosed the substance of negotiations and breached the parties' ground
18 rules. The Board has held that the least possible disclosure should be made during the
19 course of negotiations because when either side makes public pronouncements of its
20 position then it must answer to its constituents for any deviation from the stated position.
21 Town of Maynard, 2 MLC 1281 (1976). Such action prolongs negotiations and defeats
22 the normal process of compromise inherent in negotiations. Id.

1 Finally, the Town argues that Michaud's right to free speech is guaranteed by the
2 First Amendment of the United States Constitution and Article 16 of the Massachusetts
3 Declaration of Rights, as amended by Article 77 of the Amendments to the
4 Massachusetts Constitution. Citing Connick v. Meyers, 461 U.S. 138, 142 (1983), the
5 Town argues that Michaud had a right to communicate his response to the Union's no
6 confidence vote because a state cannot condition public employment on a basis that
7 infringes the employee's constitutionally protected interest and freedom of expression.

8 Here, I find that members of the Select Board voluntarily waived their right to
9 discuss ongoing negotiations with the press by agreeing to a ground rule specifying a
10 media blackout. The Supreme Judicial Court has held that public servants must suffer,
11 from time to time, limits on constitutional rights like speech as are appropriate to
12 exercise in given situations of their official duties or functions. In the Matter of Bonin,
13 375 Mass. 680, 709 (1978). Additionally, the Board has stated that public officials are
14 compelled to abide by agreements they have reached without any infringement to
15 constitutionally protected rights. Commonwealth of Massachusetts, SUP-3222, Social
16 Law Library, 6 n.3 (August 7, 1992).⁴ Thus, Michaud's March 16, 2010 radio and
17 newspaper remarks concerning pay raises, a specific aspect of the ongoing
18 negotiations, breached the parties' November 3, 2009 ground rules.

19 For all of the reasons stated above, I find that the Town violated the Law in the
20 manner alleged in the complaint.

⁴ A shorter version of this decision appears as Commonwealth of Massachusetts, 19 MLC 1134 (1992). However, I rely on the electronic version of the published decision.

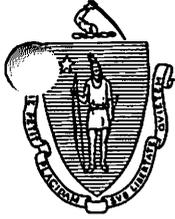
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KATHLEEN GOODBERLET, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j), to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Town of Dartmouth has violated Section 10(a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by breaching negotiation ground rules.

The Town of Dartmouth posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

- to engage in self-organization; to form, join or assist any union;
- to bargain collectively through representatives of their own choosing;
- to act together for the purpose of collective bargaining or other mutual aid or protection;
- and
- to refrain from all of the above.

WE WILL NOT fail to bargain in good faith by breaching the negotiation ground rules.

WE WILL NOT otherwise interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Bargain in good faith by adhering to the negotiation ground rules.

TOWN OF DARTMOUTH

DATE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).