

TOWN OF HOPEDALE AND HOPEDALE PERMANENT FIRE FIGHTERS ASSOCIATION, LOCAL 2225, IAFF, MUP-5564 (2/8/85). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

67. Refusal to Bargain
67.161 pending litigation
82.122 expenses, counsel fees
82.2 cease and desist orders
91.4 procedure and rules
92.36 failure to appear at hearing
92.51 appeals to full commission

Commissioners participating:

Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Robert S. Phillips, Esq. - Representing the Town of Hopedale
Dennis R. Brown, Esq. - Representing the Hopedale Permanent Firefighters, Local 2225, IAFF

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

Statement of the Case

On August 22, 1984, Hearing Officer Timothy J. Buckalew issued his decision in the above-captioned matter.¹ He found that the Town of Hopedale (Town) had violated Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law) by suspending negotiations with the Hopedale Permanent Fire Fighters Association, Local 2225, IAFF (Union) during the pendency of a civil action in the Worcester Superior Court and refusing to reinstate those negotiations until that litigation was completed. The hearing officer also denied the "Cross Complaint" of the Town² and declined to consider factual allegations made by the Town in ex parte

¹ The full text of the hearing officer's decision is reported at 11 MLC 1130 (H.O. 1984).

² The Town's Answer presented a "Cross Complaint" which alleged that the Union had filed litigation, during negotiations, which was calculated to have a chilling effect on those negotiations. Presumably, the Town wished the hearing officer to consider this as a counterclaim, similar to those claims brought in civil actions under MRCP Rule 13. The Commission will not entertain such cross claims. "The proper way for a respondent to allege a violation of c.150E is to file a charge of prohibited practice with the Commission and if the Commission finds there is probable cause to believe that the Law has been violated, the Commission will issue a complaint in its own name." Town of Wilmington, 9 MLC 1694 at 1701, fn. 8 (1983).



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correspondence with the Commission.³ Finally, the hearing officer declined to award attorneys' fees and costs to the Union in light of the Massachusetts Appeals Court's determination that the Commission lacks the authority to do so. City of Boston v. Labor Relations Commission, 15 Mass. App. Ct. 122, 125 (1983).

The Town filed a timely notice of appeal pursuant to 402 CMR 13.13(4) and subsequently filed a supplementary statement contesting several of the hearing officer's conclusions of law. The Union did not file a supplementary statement. The Town's supplementary statement does not dispute the facts as found by the hearing officer, so we adopt them pursuant to 402 CMR 13.13(7). Town of Dedham, 3 MLC 1332 (1977). We have reviewed the hearing officer's decision and the Town's supplementary statement and we find no error in the hearing officer's legal conclusions. We therefore affirm his decision and order.

Findings of Fact

The Town and the Union were parties to a collective bargaining agreement, due to expire on or about June 30, 1984. For some time prior to March 19, 1984, they have been engaged in collective bargaining over the terms of a successor agreement.

On March 19, 1984, the Union met with the Town for a previously scheduled bargaining session. At that session, a representative of the Town refused to bargain with the Union because of the pendency of a civil suit filed by the Union and/or its individual members in Worcester Superior Court. The Selectmen subsequently voted to refuse to bargain as long as the suit was pending. The Union objected that the Town's action constituted a violation of the Law.

Opinion

The Town is obligated to bargain in good faith with the Union over "wages, hours, standards of productivity and performance, and any other terms and conditions of employment." G.L. c.150E, Section 6. The hearing officer concluded that, by refusing to bargain until litigation between the parties was completed, the Town had failed to meet this obligation. In its supplementary statement, the Town objects to the hearing officer's conclusion and to the procedures followed by the hearing officer. Having reviewed the hearing officer's decision, we find the Town's objections to be without merit.

The Town contends that the hearing officer erred procedurally by not admitting as evidence or as argument, a letter from Town Counsel to the Commission dated

³The Town chose not to participate in the hearing and attempted instead to present its case in writing to the Commission. The Town neglected to serve its correspondence on the Union, in violation of our regulations. As discussed in the opinion section of the decision, we affirm the hearing officer's refusal to consider the Employer's ex parte submission.



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August 7, 1984. The Town filed the letter after the close of the hearing. The Town argues that the hearing officer applied the Rules of Evidence too strictly and that, pursuant to Section 11 of the Law, the letter should have been admitted both as evidence and as argument.⁴ The hearing officer ruled that the letter was inadmissible on the grounds that it had not been served on the Union pursuant to 402 CMR 12.02.

We concur with the hearing officer's ruling that the August 7 letter is inadmissible. The Town failed to serve that letter on the Union in spite of our requirement that it do so. This requirement is designed to protect the rights of the parties to Commission proceedings to have fair and equal access to the Commission. To permit the parties to ignore this rule would endanger the fairness of our process.

The Town contends that the hearing officer erred when he relied upon Town of Ipswich, 4 MLC 1600 (1977), to find a violation of the Law. In Town of Ipswich the Commission observed that litigation cannot be used to delay the collective bargaining process. Ipswich had filed suit to vacate an arbitrator's award and then unlawfully refused to bargain over a successor contract pending resolution of the litigation. The Town does not suggest that the hearing officer misinterpreted Ipswich; rather, it argues that Ipswich is inapplicable because the Town initiated the litigation, whereas in the instant case litigation was initiated by the Union. The Town's argument is without merit. While we agree that there is a factual distinction between Ipswich and the present case, regarding who initiated the litigation we reject the Town's suggestion that this distinction justifies a different result. Ipswich does not turn on the fact that the employer was initiating litigation, but rather on the fact that it was using the litigation to delay bargaining. In this respect, the cases are identical.

The Town in this case conditioned bargaining upon its demand that the Union relinquish its right to pursue civil remedies at law. By so conditioning the continuation of negotiations the Town delayed collective bargaining by refusing to meet. It is the Town's unjustified refusal to meet with the Union which violates the Law.⁵

While denying that it has committed a prohibited practice, the Town defends its conduct by noting that it suspended bargaining on the advice of counsel, and arguing that therefore it must have been acting in good faith. We disagree. The fact that the Town acted on advice from its attorney does not relieve it of liability for its actions.

⁴Section 11 of the Law states, in pertinent part, "In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts."

⁵Whether delays pending resolution of disputes between the parties which are central to the parties' bargaining concerns may ever be justified is a question not presented by this case. Cf. Watertown School Committee, 9 MLC 1468 (H.O. 1983). We therefore decline to address it.



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The Town also seeks to exculpate itself by insisting that it has bargained with the Union since March 19, 1984. The record does not support the Town's contention, and no motion was properly filed to reopen the record before us. Therefore, we do not consider this averment by the Town. We note, however, that if the parties resumed bargaining subsequent to the Town's March 19 suspension of negotiations, that fact would not alter our conclusion. The violation in this case occurred when the Town suspended negotiations. A subsequent resumption of negotiations would comport with part of the remedy which we order in this case, but would not vitiate the need for a full remedial order. Nor would the existence of subsequent bargaining alter the fact of the earlier violation.⁶

Finally, the Town appeals the remedy ordered by the hearing officer. Specifically the Town objects to the order that it post a Notice to Employees and notify the Commission within ten (10) days of the steps taken to comply with the hearing officer's decision. The Town argues that these aspects of the order are "Draconian" and "calculated to inflame and punish one side for a relatively ephemeral act." The Commission is charged with the statutory responsibility to protect employee rights to bargain collectively, inter alia. The Commission routinely orders that employees be given notice that their statutory rights will not be violated. Such a posting is appropriate here. The Town has violated the Law. The Town can remedy that violation only by ceasing its refusal to negotiate, bargaining upon request, and publicly renouncing its unlawful conduct while assuring employees and their Union of compliance with the Law in the future. The notice ordered by the hearing officer serves to inform employees and their Union of three things: 1) that the Town recognizes that its conduct has been found to be unlawful; 2) that the Town will not engage in such conduct in the future; and 3) that the Labor Relations Commission will enforce the Law. The Notice serves a critical remedial purpose and we will enforce the order to post it.

Conclusion

We have reviewed the hearing officer's decision and the arguments raised by the Town. We conclude that the hearing officer correctly interpreted and applied the Law to the facts in this case, and that his order is appropriate and effectuates the purposes of the Law. For the reasons discussed above, we hereby affirm the hearing officer's decision and order in its entirety.

⁶The Town also avers that its "good faith" compliance with the Law is demonstrated by the fact that the Union filed for a determination that an impasse existed. We do not know whether the Union filed for a determination that the parties were at impasse because the record before us contains no evidence on this point. We note however that filing for a determination of impasse does not demonstrate that the parties must have bargained in good faith. To the contrary, the refusal of one party to bargain in good faith can lead quickly to the existence of an impasse in bargaining.



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Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town of Hopedale shall:

1. Cease and desist from:
 - (a) Refusing or failing to bargain in good faith with the Union over all mandatory subjects of bargaining by refusing to meet while litigation concerning fire fighters' overtime, or any other similar civil litigation, is pending.
 - (b) In any like or similar manner, interfering with, restraining, or coercing members of the Union in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action to effectuate the purposes of the Law:
 - (a) Upon request, bargain in good faith with the Union with regard to all mandatory subjects of bargaining;
 - (b) Immediately post the attached Notice to Employees in conspicuous locations, where notices to employees are usually posted, and leave the notice posted for a period of not less than thirty (30) days;
 - (c) Notify the Commission within thirty (30) days of receipt of this Decision and Order, of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner



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NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

After a hearing, the Labor Relations Commission has found that the Town of Hopedale (Town) has refused to bargain in good faith with the Hopedale Permanent Fire Fighters Association, Local 2225, IAFF (Union) in violation of Sections 10(a) (5) and (1) of G.L. Chapter 150E (the Public Employee Collective Bargaining Law), by refusing to negotiate with the Union during the pendency of a civil suit in Worcester Superior Court.

WE WILL NOT refuse to bargain with the Union during the pendency of the suit in Worcester Superior Court or any appeal of that case.

WE WILL NOT interfere with, restrain, and coerce employees in the exercise of their rights guaranteed under G.L. c.150E.

WE WILL bargain collectively in good faith with the Union, upon request, over all mandatory subjects of bargaining.

Edward Scott, Selectman

Robert Barrows, Selectman

Eugene Phillips, Selectman

