
TOWN OF ROCKLAND AND LOCAL 1602, IAFF, MUP-5603 (4/24/86).

53.53 transfers of funds
67. Refusal to Bargain
67.15 union waiver of bargaining rights
91.14 waiver/estoppel

Commissioners Participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner

Appearances:

William Squires, Esq. - Representing the Town of Rockland
Robert Schwartz, Esq. - Representing Local 1602, International Association of Fire Fighters

DECISION

Statement of the Case

On May 15, 1984, Local 1602, International Association of Fire Fighters (Association) filed a charge with the Labor Relations Commission¹ (Commission) alleging that the Town of Rockland (Town) failed and refused to convene a Special Town Meeting, or take other necessary action, to fund the 1982-84 collective bargaining agreement between the Town and the Association. On August 8, 1984, following a full investigation pursuant to Section 11 of Massachusetts General Laws, Chapter 150E (the Law), the Commission issued its Complaint and Notice of Hearing alleging that the Town had refused to bargain in good faith in violation of Sections 10(a)(5) and (1) of the Law.

On November 1, 1984, a formal hearing was held before Hearing Officer Diane M. Drapeau, at which both parties were represented by counsel and had full opportunity to present evidence and to examine and cross-examine witnesses. The parties made oral arguments at the close of the hearing in lieu of filing briefs.

We have considered fully the evidence presented by the parties and the legal arguments they assert. We conclude that the Town has not failed and refused to bargain collectively in good faith and we dismiss the Association's charge.

Findings of Fact

In January 1982, the Town² and the Union began negotiations for a collective

¹Neither party disputes the Commission's jurisdiction over this matter.

²The Board of Selectmen is the "chief executive officer" of the Town and is its representatives for the purpose of dealing with employees of the Fire Department.



bargaining agreement covering the period of July 1, 1982 through June 30, 1984. On September 14, 1983 the parties executed a memorandum of agreement effective from July 1, 1982 through June 30, 1984. On April 2, 1984, the Town held a Special Town Meeting in order to clear up any unfinished business from the previous fiscal year. Article 7 on the Town Warrant concerned the funding of the 1982-84 agreement executed in September 1983 and read as follows:

Will the Town vote to raise and appropriate the sum of \$122,760.00 to be added to the Fire Department budtet Salary Accounts to cover increases in accordance with the 1982-1984 fiscal year contract between the Rockland Firefighters Union Local #1602 Rockland Fire Department and the Board of Selectmen, or take any other action relative thereto.

Prior to the vote on Article 7, Luigi Pace, the chairman of the Board of Selectmen, informed the Town Meeting that he and Edward Lapinski, the town accountant, had concluded that there was \$171,000 in the Town's reserve account, but that there were no funds available in the surplus revenue (or "free cash") account. Pace recommended that the Town Meeting fund the collective bargaining agreement from the reserve account. Over his objection, the Town Meeting voted to fund the contract from the surplus revenue account.

A week after the Special Town Meeting, Pace and Lapinski went to a Finance Committee meeting to attempt to transfer \$122,000 from the reserve account to the surplus revenue account. The Finance Committee refused to approve the transfer. At that meeting Ralph Rose, the chairman of the Finance Committee, contended that there were already sufficient monies in the surplus revenue account. The Town Accountant insisted that the surplus revenue account contained insufficient funds. The Finance Committee then voted to use the reserve account to pay other Town bills, which left \$56,000 remaining in the reserve account.

On the Thursday following the Special Town Meeting, the fire fighters expected to receive their wage increase in their paychecks. Their paychecks, however, did not reflect a wage increase. As a result John Sciarra, president of the Union, spoke to the Town Accountant Lapinski, who told Sciarra that he was not sure that the money was in the surplus revenue account. Sciarra told Lapinski that the Finance Committee had assured him that there was money in the surplus revenue account.

Several weeks later, Sciarra spoke with Pauline Pigeon, a member of the Board of Selectmen, and she referred Sciarra back to Lapinski. Sciarra then approached the Finance Committee who assured him that there was money in the surplus revenue account. He spoke to Pigeon again, who told him that the fire fighters were caught in the middle of a battle among the Selectmen, the Town Accountant, and the Finance Committee.

Subsequent to this conversation with Pigeon, Sciarra learned from Lapinski that the State Department of Revenue had determined that the Town had no funds available in the surplus revenue account ("free cash") as of March 31, 1984. Lapinski showed Sciarra the following letter dated April 25, 1984, from the State Department of Revenue:



Town of Rockland and Local 1602, 12 MLC 1740

Mr. Edward L. Lapinski
Town Accountant
242 Union Street
Rockland, MA 02370

Dear Mr. Lapinski:

Following an examination of your projected balance sheet for June 30, 1984, I regret to inform you that the Town has no available "free cash" as of March 31, 1984.

Therefore, the transfers voted from "free cash" at the Special Town Meeting held on April 2, 1984 are invalid and will not be approved on the Assessor's recapitulation sheet for Fiscal 1985.

Very truly yours,
/s/
Kenneth A. Marchurs
Director of Accounts

Lapinski communicated his problem regarding the funding of the contract to the Massachusetts Department of Revenue, Bureau of Accounts. The Bureau informed him that if he could prepare a balance sheet and submit it by June 30, 1984, they would review it and inform the Town whether there would be sufficient funds in the surplus revenue account ("free cash") for future town meetings. Lapinski prepared the balance sheet and hand-delivered it to the Bureau. Subsequently, the Bureau notified him that there were insufficient funds to cover any special town meetings during the fiscal year ending June 30, 1984.

Lapinski informed Sciara of the outcome of his discussions with the Bureau and also promised Sciara that he would monitor the receipts and disbursements to see if he could find any additional funds. On August 21, 1984 Lapinski received a letter from the Bureau that the "free cash" certified as of July 1, 1984 was \$145,798. When Sciara learned of this, he demanded that the retroactive wage increase be paid from that account. Lapinski informed him that this was not possible because the April 2 vote taken at the Special Town Meeting to transfer monies from "free cash" had been declared null and void by the Department of Revenue, and another Special Town Meeting needed to be held. Chairman of Selectmen Pace told the fire fighters that if they could assure him that there would be a quorum by getting their relatives and friends to the meeting, he would call a Special Town Meeting. The Town's bylaws specify that a quorum requires the attendance of 400 citizens, which the Town considered difficult to accomplish in summertime. Pace also told the Union that they could initiate a petition, which the Town's bylaws require be signed by 200 registered voters, to call for a Special Town Meeting.

In September, Lapinski, Sciara and Michael Feinberg, the Union's attorney, went to the state Bureau of Accounts and met with state employees Ken Marchurs and Harold Regan, who told them that the "free cash" could not be used unless another



Town of Rockland and Local 1602, 12 MLC 1740

Special Town Meeting voted to authorize the expenditure.

Sometime in early September the Town informed Sciara that it would hold a Special Town Meeting in October³ and assured Sciara that there would be an article on the town warrant to cover the Union's retroactive pay.

On October 16, 1984 a special Town Meeting was held. The Town approved the Union's retroactive pay and the money was appropriated from the "free cash" account. As of the end of October, the fire fighters had received the retroactive pay covering the period up until the end of April 1984. As of the day of the hearing, they had not received their retroactive pay for May and June 1984.

On September 25, 1984 the Town and the Union reached agreement on a contract covering the period from July 1, 1984 to June 30, 1985 which contained a six percent (6%) wage increase:

AGREEMENT BETWEEN INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1602 AND
THE TOWN OF ROCKLAND

The IAFF Local 1602 and the Town of Rockland agree to a six percent (6%) across the board increase in wages, and EMT payments, for all unit members, effective July 1, 1984. All other demands by either party are withdrawn upon funding of the above increase by the Board of Selectmen and by the Town voting to fund this negotiated increase. This settlement is conditioned on a reduction in the School Department budget for fiscal 1985 at the Special Town Meeting on October 16, 1984, by at least three hundred thousand dollars (\$300,000).

Sciara explained that the "demands" to be withdrawn, referenced in the agreement, did not include the instant charge. Instead, the contractual agreement referred to any Union proposals left unresolved at the time of the agreement. Present on September 25 were Attorney Squires, Chairman of the Board of Selectmen, Luigi Pace, and Selectman Pauline Pigeon, on behalf of the Town, and Attorney Feinberg, Sciara, and three or four fire fighters on behalf of the Union. According to Sciara, it was never the Union's intent to drop the charge as part of reaching an agreement and no reference was made to withdrawal of the instant unfair labor practice charge.

Opinion

The Town argues that the Union actually agreed to withdraw the instant charge during the negotiations for a collective bargaining agreement. As a result, urges

³The Special Town Meeting could not be held until October because the Bureau of Accounts was doing a reevaluation of the Town to find out how much money the Town had. The Town was also waiting for a \$300,000 check from the Commonwealth under a "super-fund allotment" for the School Department.



the Town, the Commission should not decide the case, but should instead dismiss the Complaint based upon the Union's alleged promise to withdraw the underlying charge. Our review of the evidence in this case convinces us that the Union did not agree to withdraw the instant charge. The plain language of the agreement reached between the parties on September 25, 1984 refers to the withdrawal of "all other demands." At the time that this agreement was reached the parties were both aware of the pending unfair labor practice charge. Had either party intended that the unfair labor practice charge be withdrawn they could have so specified. In the absence of such specific language we cannot conclude that the Union had agreed to withdraw the unfair labor practice charge.

A public employer may be found to have bargained in bad faith in violation of Sections 10(a)(5) and (1) of the Law if it fails or refuses to take all necessary and appropriate action to secure the funding of an executed collective bargaining agreement. City of Medford, 9 MLC 1792, 1795 (1983); Worcester School Committee, 5 MLC 1080, 1083 (1978). The Commission has declined to dictate the specific methods by which funding of an agreement must be secured. Rather, the Commission has indicated that each case will be examined on its own merits in order to determine whether the chief executive officer of an employer has satisfied the obligation to seek funding of an agreement in good faith.⁴ City of Medford, *supra* at 1795. Based upon the facts of this case, and for the following reasons, we dismiss the Complaint of Prohibited Practice because we conclude that the Employer made a good faith effort to secure funding of the collective bargaining agreement in compliance with the Law.

The Commission has held that town finance committees are not necessarily designated representatives of the public employer and, accordingly, may not have any affirmative obligation to support the funding of cost items of an executed collective bargaining agreement. Town of Webster, 4 MLC 1543, 1545 (1977). We conclude that the Town of Rockland Finance Committee had no affirmative obligation to support the cost of the collective bargaining agreement. Article XI, Section 2 of the Rockland by-laws specifies that the Finance Committee shall be appointed by the Town Moderator, who presides over the Town Meeting, the legislative body of the Town.⁵

⁴G.L. c.150E Section 1 defines "public employer" as, *inter alia*, any "town... acting through its chief executive officer..." (emphasis added). Section 7(b) of the Law specifies that the "employer...shall submit to the appropriate legislative body...a request for an appropriation necessary to fund the cost items [of a collective bargaining agreement]."

⁵We take administrative notice of the Town's by-laws, which state, in relevant part:

Section 2. At each Annual Town Meeting the Moderator shall appoint from the legal voters dwelling in the Town, five members of [the finance] committee to serve for a term of three years. The terms of office of said members shall expire at the close or dissolution of the Annual Town Meeting at which their successors are appointed... .



The Board of Selectmen does not appoint or control the Finance Committee. Since the Board of Selectmen constitutes the executive branch of Town government for the purposes of c.150E, only agents of the Board of Selectmen can have the affirmative obligation to support the cost of the collective bargaining agreement in submissions to the legislative body. Since the Rockland Finance Committee is part of the legislative body, the Finance Committee had no duty to support the request for funding the collective bargaining agreement either by transferring sufficient funds from the reserve account or by taking any other appropriate action.

We turn now to consider the conduct of the Selectmen. At the April 2 Town Meeting the Chairman of the Board of Selectmen warned that the surplus revenue or "free cash" account held insufficient funds to cover the cost of the collective bargaining agreement. Despite the objection of the Chairman of the Board of Selectmen, the Finance Committee assured the Town Meeting participants that the "free cash" account was sufficient to fund the cost of the agreement. As a result, the Town Meeting voted in favor of funding the collective bargaining agreement by transferring money from the "free cash" account. Following the Town Meeting, Chairman of the Board of Selectmen Pace and Town Accountant Lapinski went before the Finance Committee to attempt to transfer funds from the revenue account to the surplus revenue or "free cash" account to cover the amount of the contract. The Finance Committee rejected the request of the Chairman of the Board of Selectmen and the Town Accountant.

Following receipt of the April 25 letter from the Department of Revenue informing the Town that it had no "free cash," the Town could fund the collective bargaining agreement through only two methods: 1) by transferring money from the reserve account to the surplus revenue or "free cash" account (from which the Town Meeting had authorized the expenditure); or 2) by calling another Special Town Meeting and seeking a different appropriation. Since the Finance Committee had already refused to transfer funds from the reserve account (and since, by April 25, the reserve account had insufficient funds to finance the cost of the agreement) the only realistic alternative through which to seek funding was to call a Special Town Meeting.

Selectman Pace would have been willing to call a Special Town Meeting if the fire fighters had agreed to produce the requisite quorum of citizens at the Special Town Meeting. From past experience Pace knew that it was very difficult to attract a quorum to summertime Special Town Meetings. Accordingly, we do not consider the Selectmen's failure to schedule a Special Town Meeting until October, when they thought they would attract the requisite quorum, as evidence of bad faith or a refusal to take appropriate steps to secure funding for the Collective bargaining agreement. Rather, it appears that the Selectmen made every reasonable effort to seek funding of the agreement and to call for a Special Town Meeting at the earliest possible date.⁶

⁶ Moreover, we note that the fire fighters could have petitioned for an earlier Special Meeting had they been able to secure the necessary number of citizen signatures.



Town of Rockland and Local 1602, 12 MLC 1740

CONCLUSION

Based upon the reasons stated above, we find that the Town did not violate Sections 10(a)(5) and (1) of the Law. Accordingly, the Complaint is hereby dismissed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
MARIA C. WALSH, Commissioner

