

TOWN OF DRACUT AND INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2586, MUP-6619
(8/19/87). AMENDED DECISION.

67. Refusal to Bargain
67.161 pending litigation
92.48 motion for summary judgment

Commissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

Edward J. Owens, Esq.	- Representing the Town of Dracut
William Lafferty, Esq.	- Representing the International Association of Fire Fighters, Local 2586

AMENDED DECISION

Statement of the Case

On April 16, 1987, the International Association of Fire Fighters, Local 2586 (Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Town of Dracut (Respondent) had engaged in a prohibited practice within the meaning of Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law) by refusing to bargain in good faith with the Union during negotiations for a new contract. The Union subsequently amended its charge to allege that the Town further violated the Law by refusing to conduct any bargaining sessions while the charge in this case was pending. Following investigation of the charge, the Commission issued a Complaint and Notice of Hearing on May 20, 1987, on the amended portion of the charge but dismissed the initial allegations in the charge. In its Answer to the Complaint, the Respondent admitted each of the factual allegations contained in the Complaint, but denied the legal conclusions alleged therein. The Respondent's Answer offered no affirmative defenses. On May 27, 1987, the Union moved for summary judgment, asserting that there was no genuine issue as to any material fact warranting a hearing and that the Commission should find a violation as a matter of law. In response to a request to show cause why the Union's Motion should not be granted, the Respondent opposed the Motion, indicating that it would rely upon the denials in its Answer as a response. Accordingly, based upon the record in the case¹ the Commission makes the following findings.

¹The record in the case consists of the Complaint, the Answer, the Union's Motion for Summary Judgment and the Town's opposition to the Union's Motion.



Findings of Fact²

The Respondent admitted all of the factual allegations in the Complaint, which included in pertinent part the following:

* * * * *

- 3. The Union is the exclusive representative for the purpose of collective bargaining of certain fire fighters employed by the Respondent in its Fire Department.
- 4. The Union and the Respondent are parties to a collective bargaining agreement effective by its terms from July 1, 1984, through June 30, 1987 that covers the employees referred to in paragraph 3, above.
- 5. On March 17, 1987, the parties commenced bargaining for a successor to the agreement referred to in paragraph 4, above, and met for purposes of collective bargaining on April 2, 1987, and April 9, 1987.
- 6. On April 16, 1987, the Union filed this charge with the Commission, alleging that the Respondent unlawfully refused to bargain with the Union at the meetings referred to in paragraph 5, above.
- 7. The parties met for the purpose of collective bargaining on April 16, 1987, after the Union had filed the charge referred to in paragraph 6, above.
- 8. At the meeting referred to in paragraph 7, above, Town Manager Dennis E. Plendak, an agent of the Respondent for purposes of collective bargaining, stated that the Town did not want to negotiate for a successor contract with a prohibited practice charge hanging over the Town's head and that further negotiations would be temporarily held in abeyance pending resolution of the charge referred to in paragraph 6, above.
- 9. By letter of April 23, 1987, Town Manager Plendak stated to Leo T. Gaudette, President of the Union, that negotiations had temporarily been held in abeyance pending resolution of the charge referred to in paragraph 6, above.

DISCUSSION

Section 6 of the Law requires public employers to "negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment." The Commission has previously held that a

²Neither party contests the jurisdiction of the Commission in this matter.



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party may not refuse to bargain because a prohibited practice charge is pending against it. Southern Worcester Regional Vocational School District, 2 MLC 1488, 1499 (1976). See, also, Town of Hopedale, 11 MLC 1415 (1985); Town of Ipswich, 4 MLC 1600 (1977); Berlin-Boylston Regional School Committee, 3 MLC 1700, 1707 (H.O. 1977). As we said in Town of Ipswich,

Sound labor policy requires that litigation not delay bargaining. If the law were otherwise, a party before the Commission or the courts could indefinitely postpone bargaining through prolonged litigation. Such built-in delays would frustrate the intent of the law that collective bargaining be continuously available as a mechanism to forestall serious labor disputes through mutual agreement.

Town of Ipswich, 4 MLC 1600, 1603-1604 (1977).

At the April 16, 1987 negotiation session between the parties, Town Manager Dennis Plendak conditioned the continuation of bargaining upon the resolution of the refusal to bargain charge filed that morning by the Union. He expressly reinforced this pre-condition by his follow-up letter to Union President Leo Gaudette on April 23, 1987. Temporarily holding negotiations in abeyance pending resolution of a prohibited practice charge unjustifiably delayed collective bargaining and constitutes both a refusal to bargain in violation of Section 10(a)(5) of the Law, and derivatively, an interference with the exercise of employee rights in violation of Section 10(a)(1) of the Law.

ORDER

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

1. Cease and desist from:

(a) refusing or failing to bargain in good faith with the Union over wages, hours, standards of productivity and performance, and other terms and conditions of employment by refusing to meet while any prohibited practice charges filed by the Union are pending before the Labor Relations Commission.

(b) In any like or similar manner, interfering with, restraining, or coercing employees represented by the Union in the exercise of rights guaranteed under the Law.

2. Take the following affirmative action to effectuate the purposes of the Law:

(a) 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;



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(b) Upon request, meet and bargain in good faith with the Union concerning wages, hours, standards of productivity and performance and other terms and conditions of employment;

(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**

**PAUL T. EDGAR, CHAIRMAN
MARIA C. WALSH, COMMISSIONER
ELIZABETH K. BOYER, COMMISSIONER**

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

After an adjudicatory proceeding, the Labor Relations Commission (Commission) has found that the Town of Dracut (Town) has refused to bargain in good faith with the International Association of Fire Fighters, Local 2586 (Union) in violation of Sections 10(a)(5) and (1) of Mass. General Laws, Chapter 150E (the Public Employee Collective Bargaining Law), by refusing to negotiate with the Union while a prohibited practice charge filed by the Union was pending before the Commission.

Chapter 150E gives all employees the following rights:

The right to be free from interference, restraint or coercion in the exercise of rights guaranteed by c.150E; the right to form, join or assist unions free from employer interference, restraint, coercion or domination; the right to organize and bargain collectively through a representative; the right to file charges, testify or assist in pursuing a charge with the Labor Relations Commission; the right to refrain from any of the above.

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

WE WILL NOT refuse to meet or bargain with the Union during the pendency of a prohibited practice charge before the Commission.

WE WILL bargain collectively in good faith with the Union over wages, hours, standards of productivity and performance and other terms and conditions of employment.

Town Manager

