

TOWN OF WEBSTER AND LOCAL 495, SERVICE EMPLOYEES INTERNATIONAL UNION, MUP-2498
(12/5/77)

(50 Duty to Bargain)
52.52 legislative approval
52.521 relationship between legislature and executive

(60 Prohibited Practices by Employer)
67.2 failure to support contract

Commissioners Participating: James S. Cooper, Chairman
Garry J. Wooters, Commissioner
Joan G. Dolan, Commissioner

Appearances:

James M. Litton, Esq. - Counsel for the Labor Relations Commission
Richard G. Boulanger - Representing Local 495, Service Employees International Union
Joseph F. Gorski, Esq. - Counsel for the Town of Webster

DECISION

Statement of the Case

On May 7, 1976 Local 495, Service Employees International Union (the Union) filed with the Labor Relations Commission a Complaint of Prohibited Practice alleging that the Town of Webster (the Town) had committed certain practices prohibited by S10(a)(3) and (5) of General Laws c.150E (the Law).

After investigation, the Commission, on July 28, 1976 issued its own complaint of Prohibited Practice. The Commission's Complaint alleged that the town had violated Sections 10(a)(1) and (5) of the Law by failing to obtain Advisory Board consideration and endorsement of a request to Town Meeting for an appropriation necessary to fund the cost items in certain collective bargaining agreements. Thereafter, pursuant to Section 11 of the Law and Article III, Section 28 of the Rules and Regulations of the Commission, a Formal Hearing was conducted before Commission agent James M. Litton, Esq. on September 9, 1976. At the Hearing the parties were afforded full opportunity to be heard, to cross-examine witnesses and to introduce evidence. Neither party filed a brief. Upon the entire record herein we make the following findings of fact and render the following opinion.

Findings of Fact

1. The Town of Webster is a municipal corporation in the County of Worcester within the Commonwealth of Massachusetts and is a "Public Employer" within the meaning of Section 1 of the Law.



Town of Webster and Local 495, SEIU, MLC 1543

2. The Board of Selectmen are the chief executive officers of the Town of Webster within the meaning of Section 1 of the Law.
3. Local 495, Service Employees International Union is an "Employee Organization" within the meaning of Section 1 of the Law.
4. Local 495, Service Employees International Union is the exclusive representative for purposes of collective bargaining of clerical employees of the Town of Webster and employees of the Department of Public Works of the Town of Webster.

The Town of Webster and the Union held only two negotiating sessions before coming to agreement on the terms of successor collective bargaining agreements covering clerical workers and employees of the Department of Public Works. The first session was held on the evening of March 22, 1976; the second was held a week later on the evening of March 29, 1976.

Throughout negotiations the Town was represented by its Personnel Board. Notwithstanding the requirement of the Town's by-laws that the Personnel Board have five members (three from the general public, one Town official, and one Advisory Board member) it had for some time been acting as a three member body because of the failure of the Board of Selectmen to appoint a member of the Advisory Board and one person from the general public. Thus, during the first negotiating session with the Union, the Personnel Board lacked the participation of an Advisory Board member. However, the negotiating session was open to the public, and Henry Slota who was a member of the Advisory Board was present throughout the meeting.

At some time between the negotiating sessions of March 22 and 29, 1976 the Chairman of the Personnel Board, Alfred Beland addressed a meeting of the Board of Selectmen and demanded that an Advisory Board member be appointed to the Personnel Board. During this Selectmen's meeting Beland accompanied Selectman Wladyslawski to a meeting of the Advisory Board which was then taking place. When Wladyslawski asked the Chairman of the Advisory Board for recommendations for appointment to the Personnel Board, Chairman Duteau of the Advisory Board responded that nobody on the Advisory Board wanted to serve on the Personnel Board. Nevertheless, after some discussion Raymond Leo volunteered to be the Advisory Board member on the Personnel Board, and he was formally appointed before the meeting of March 29, 1976.

Agreements were reached between the Personnel Board and the Union at the meeting of March 29. This meeting was attended by Mr. Leo, who with the other members of the Personnel Board signed the agreement that night.

Approximately a week after these agreements were signed by the Union and the Personnel Board, Personnel Board Chairman Beland spoke with the Selectmen to tell them what the Personnel Board had agreed to. Selectman Wladyslawski asked Beland if he was going to speak to the Advisory Board about the contract.

Town of Webster and Local 495, SEIU MLC 1543

Beland said that he was going to meet with the Advisory Board that very evening. Immediately thereafter Beland met with Advisory Board Chairman Duteau. Beland explained the details of the Personnel Board's agreements with the Union and stated that the agreements had been presented to the Board of Selectmen who had yet to act upon them. Duteau then responded that what had been agreed to between the Personnel Board and the Union was unimportant because it was not yet signed by the Selectmen. Duteau said that only when the Selectmen had acted on the contracts and had presented them to the Advisory Board, would he and his committee have something to work with.

The collective bargaining agreements with the Union were signed by the Board of Selectmen on the evening of April 13, 1976. On that same evening, immediately after they were signed, the Chairman of the Board of Selectmen Michael F. Mangan presented the signed agreements to the Advisory Board. A meeting then followed at which representatives of the Board of Selectmen, the Advisory Board and the Union participated in a discussion of the contract previously signed by the Board of Selectmen.

Sometime between April 13, 1976 and the occurrence of the Town Meeting on May 4, 1976 the Advisory Board determined that it would not support the cost items of the agreements negotiated between the Town and the Union.

At the Annual Town Meeting of May 4, 1976 two people spoke on the subject of funding the contracts negotiated between the Town and the Union. The Chairman of the Advisory Board Duteau announced that the Advisory Board "disagreed with the contract signed by the Selectmen." Mr. Beland, Chairman of the Personnel Board, spoke in favor of funding the agreements. As the result of a vote of the Town meeting the agreements were not funded.

Opinion

The Union contends that the Town of Webster violated Sections 10(a)(1) and (5) of the Law by failing to take necessary steps to obtain Advisory Board consideration and endorsement of the cost items of certain collective bargaining agreements negotiated and executed by the Town and the Union. We conclude that the Town committed no prohibited practice.

Section 7 of the Law requires the public employer to submit to the appropriate legislative body a request for an appropriation necessary to fund the cost items of a collective bargaining agreement executed by the employer and a union. It is well settled law that an employer's refusal to take affirmative steps to implement and support the terms of a collective bargaining agreement to which it is a party constitutes a per se violation of its duty to bargain. Mendes v. Taunton, Mass. Adv. Sh. (1974) 1291, 315 N.E.2d 865 (1974).

This Commission has held that Town Advisory Boards or Finance Committees are not necessarily designated representatives of the public employer as a matter of law and accordingly cannot be placed under an affirmative obligation

Town of Webster and Local 495, SEIU MLC 1543²

to support the cost items of an executed collective bargaining agreement. Town of Canton, 1 MLC 1384 (1975); Town of Bellingham, MUP-433 (1974).¹

The issue in this case, however, is not whether the Advisory Board has a duty to support a collective bargaining agreement but whether the Town has a duty to support the agreement before the Advisory Board. Nothing in the Law compels the public employer to submit negotiated cost items to a governmental entity other than the appropriate legislative body. The Advisory Board is not a legislative body and the Union makes no allegation to the contrary. The position taken by the Union in this case is that the Advisory Board is part of the executive branch of Town government and that it acts as the designated representative of the Board of Selectmen. Because of this status of the Advisory Board, the Union argues, the Town must support the agreement before the Advisory Board as well as before the Town Meeting.

Notwithstanding its allegation, the Union presented no evidence that the Advisory Board was in fact a designated representative of the Board of Selectmen.² Although all fifteen members of the Advisory Board are appointed by the Board of Selectmen in accordance with the by-laws of the Town, those by-laws make clear that the Advisory Board shall act independently of all other Town boards, officers and committees and shall make its own recommendations and suggestions on items submitted to it. Article IV, Section 5 of the Town's by-laws states:

Section 5. The Advisory Board shall duly consider the estimates and statements submitted to it by the various town boards, officers and committees, and may confer with them, and hold hearings, if deemed advisable. The Board shall thereupon approve or disapprove the amount, in whole or part, of the appropriation so requested, and shall make a report of all matters considered by it, with recommendation or suggestion relative thereto. Said report shall be sent to the Selectmen who shall have it published and distributed on or before the annual business meeting, and shall also contain (a) a statement of the doings of the Board during

¹ This does not mean that a Town cannot be held liable for the acts of an Advisory Board or Finance Committee. Such liability, however, should rest on an agency theory. We do not find such a principal-agent relationship here. There is no showing that the Advisory Board acted as an arm of the Board of Selectmen, the Town's elected representatives.

² If it could be shown that the Personnel Board was a negotiating subcommittee of the Advisory Board it could be argued that the Personnel Board was under a duty to support its agreement before the Advisory Board. See Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (H.O. 1977) in which a Hearing Officer found that a negotiating subcommittee has a duty to support and vote for its own proposals before the committee as a whole.

Town of Webster and Local 495, SEIU MLC 1543

the year, (b) a statement of the bonded indebtedness of the Town and Town's debt limit imposed by law, (c) the amount of free cash in the excess and deficiency account, and (d) its recommendations or suggestions, on those articles in the warrant which shall have been submitted to the Selectmen prior to December 31 of the preceding year.

Furthermore, there is no evidence of any complicity between the Advisory Board and the Board of Selectmen on any of the Advisory Board's recommendations, and there is no evidence of specific complicity by the Board of Selectmen in the Advisory Board decision not to recommend funding of the cost items of the agreements at the Town Meeting.

On the contrary, the Personnel Board and the Board of Selectmen attempted to involve the Advisory Board in the negotiations process. After the first negotiation session with the Union the Chairman of the Personnel Board urged the Board of Selectmen to appoint a member of the Advisory Board to a vacancy on the Personnel Board as required by the by-laws. After agreements were reached between the Union and the Personnel Board the Personnel Board presented them to the Advisory Board. Again, as soon as the agreements were approved by the Board of Selectmen, the Chairman of the Board of Selectmen presented them once again to the Advisory Board.

In the absence of any evidence proving that the Advisory Board was being used by the Board of Selectmen or the Personnel Board as a means of preventing the conditions necessary to fund a collective bargaining agreement we find that the Town has not violated Sections 10(a)(1) and (5) of the Law and therefore the Complaint must be and hereby is dismissed.

COMMONWEALTH OF MASSACHUSETTS
Labor Relations Commission

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

Joan G. Dolan, Commissioner