

TOWN OF NORTH ATTLEBOROUGH AND NORTH ATTLEBOROUGH PROFESSIONAL POLICE OFFICERS ASSOCIATION MUP2669 (12/6/77) Appeal of Hearing Officer's Decision.

- (50 Duty to Bargain)
- 52.52 legislative approval
- 53.3 legislative rejection (subsequent bargaining)
- (60 Prohibited Practices by Employer)
- 67.2 failure to support contract
- 67.8 unilateral change by employer
- (90 Commission Practice and Procedure)
- 92.51 appeals to full commission

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

Appearances:

Robert C. Bliss, Esq.	- Counsel for the Town of North Attleborough
David Neal	- Representing the North Attleborough Professional Police Officers Association

DECISION ON APPEAL OF  
HEARING OFFICER'S DECISION

On June 14, 1977, Hearing Officer Stuart A. Kaufman issued a Decision in the above-entitled matter pursuant to the Expedited Hearing procedure established by Section 11 of Chapter 150E (the Law), and Article III, Section 28 of the Commission's Rules and Regulations. The Hearing Officer concluded that the Chairman of the Board of Selectmen demonstrated insufficient support for adoption of G.L. c.32B, Section 7A with the result that the implementation of the insurance provisions of an executed collective bargaining agreement was frustrated. He also concluded that the Town's unilateral reduction of salaries of unit members by a monthly portion of the alleged overpayment of insurance premiums was a unilateral change and as such a violation of the duty to bargain in good faith. Accordingly, the Hearing Officer found violations of G.L. c.150E, Sections 10(a)(1) and (5).

Subsequently, by its Supplementary Statement filed June 24, 1977, the Town requested a review by the full Commission of the Hearing Officer's decision. Upon review of the Hearing Officer's Decision and the Supplementary Statements of the parties, we affirm the Hearing Officer's Findings of Fact, and further affirm his opinion, conclusions and order, as modified below.

Opinion

We affirm the Hearing Officer's conclusion that unilateral reduction of the salaries of unit members in order to recoup the alleged overpayment of insurance premiums was a unilateral change and violated Section 10(a)(5) of the Law. We reverse that portion of the Hearing Officer's Decision wherein he finds that at



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the Town Meeting of August 30, 1976, the Chairman of the Board of Selectmen demonstrated insufficient support for the adoption of G.L. 32B, S.7A, thereby frustrating the implementation of the insurance provisions of an executed collective bargaining agreement with the Police Officers Association.

In April 1975, the Town and the Association executed an Amendment to their 1974 collective bargaining agreement. The amendment increased from 50% to 60% the percentage cost of insurance premiums to be paid by the Town. On June 15, 1976, the Association and the Town executed a new agreement which continued the 1975 insurance provisions. However, subsequent to the execution of the agreement, the Town Treasurer learned that the Town had never adopted G.L. C.32B, S.7A which authorizes the Town to contribute more than 50% of the total cost of group health insurance premiums.<sup>1</sup>

The following items were on the agenda for the Town Meeting scheduled for August 30, 1976: (1) the funding of cost items as a result of collective bargaining (including the insurance provisions), and (2) the adoption of G.L. c.32B, S.7A. Prior to the Town Meeting and at the Town Meeting the Finance Committee recommended that consideration of adoption of G.L. c.32B, S.7A be indefinitely postponed. Arthur Tighe, in his capacity as Chairman of the Board of Selectmen, presented the views of the Board at the Town Meeting.

In reviewing the minutes of the Town Meeting of August 30, 1976, it appears that there was some confusion on the part of the Finance Committee, Tighe, and some residents of the Town as to the implications of adopting G.L. 32B, S.7A. Tighe attempted to explain that by adopting G.L. 32B, S.7A and approving the Police Association contract, the Town did not commit itself to negotiating the same percentage of insurance premium increase for all other town employees.

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<sup>1</sup> General Laws Chapter 32B, Section 7A provides, in part, as follows:

A governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section may, as part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary of additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty percent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

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Although Tighe is incorrect in his interpretation of G.L. 32B, S.7A, we cannot infer from his conduct and his statements that he did not support the agreement. Looking at the totality of Tighe's conduct, it appears that he made a sincere, if erroneous, attempt to explain the implications of the adoption of G.L. 32B, S.7A and we find that these attempts constitute sufficient support of the collective bargaining agreement.

Tighe's conduct is distinguishable from that found unlawful in Mendes v. Taunton, 315 N.E. 2d 865, 366 Mass. 109 (1974) where the Mayor of Taunton refused to submit a request to the City Council for an appropriation to fund the policemen's 1972 wage increases. The Commission and the courts found that this refusal constituted a refusal to bargain in good faith. In the present case, Tighe did not refuse to submit the needed proposals to the town Meeting and he made a sincere effort to have the proposals adopted.

Conclusion

We affirm that part of the Hearing Officer's Decision finding that the monthly salary reduction proportionate to insurance overpayment constitutes a unilateral change in wages in violation of Sections 10(a)(1) and (5) of Chapter 150E. We reverse the conclusions of the Hearing Officer that at a Town Meeting held August 30, 1976, the Chairman of the Board of Selectmen failed to adequately support the collective bargaining agreement executed with the Police Officers Association.

Order

Wherefore, on the basis of the foregoing, IT IS HEREBY ORDERED, pursuant to G.L. c.150E, Section 11, that the Town of North Attleborough shall:

1. Cease and desist from deducting any further money from the salaries of unit members, or in any like or related manner reducing the salaries of unit members as the result of the failure of the August 30, 1976, Town Meeting to accept the provisions of General Laws Chapter 32B, Section 7A.
2. Take the following affirmative action which will effectuate the policies of the Law:
  - (a) Immediately return to each member of the unit represented by the Association the total amounts of money deducted since September 1, 1976, as the result of the failure of the August 30, 1976, Town Meeting to approve Article 3 at said meeting;
  - (b) Upon returning the amounts pursuant to Paragraph 2(a), above, negotiate with the Association over the manner by which the overpayment of insurance premiums will be returned to the Town, until either agreement is achieved or impasse is reached.



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- (c) Post immediately in conspicuous places in its police department buildings where police officers usually congregate or where notices are usually posted, including Town Hall, and maintain for a period of thirty (30) days thereafter, copies of the attached notice to employees.
- (d) Notify the Commission, in writing, within ten (10) days of service of this Decision, of the steps taken to comply with this Order.

COMMONWEALTH OF MASSACHUSETTS  
Labor Relations Commission

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James S. Cooper, Chairman

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Garry J. Wooters, Commissioner

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Joan G. Dolan, Commissioner

Findings of Fact



## NASHOBA VALLEY TECHNICAL HIGH SCHOOL DISTRICT AND NASHOBA VALLEY TEACHERS ASSOCIATION, LOCAL 3234, AFT, MCR-2602 (12/7/77)

(40 Selection of Employee Representative)  
45.1 limitations - contract bar

(50 Duty to Bargain)  
52.35 unsigned agreements

Hearing Officer: Robert McCormack, Esq.

## Appearances:

Charles G. Zarulis, Esq. - Representing Nashoba Valley  
Technical High School District

Jack Carpenter, Esq. - representing Nashoba Valley  
Teachers Association, Local  
3234, AFT

HEARING OFFICER'S DECISION

On September 1, 1977, Nashoba Valley Teachers Association, Local 3234, (Federation) filed a petition with the Massachusetts Labor Relations Commission (Commission) under General Laws Chapter 150E, Section 4 for its certification as representative for the purposes of collective bargaining for certain custodial personnel employed in the Nashoba Valley Technical High School District (Employer).

The petition and accompanying Notice of Hearing were duly served. Pursuant to notice an Expedited Hearing was held before the Labor Relations Commission in Boston on October 13, 1977. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties.

No evidence was introduced by either of the parties. However, the parties entered into an agreement and stipulation for the record. When the parties are in agreement or stipulate as to all or specific issues raised by the petition, it is the policy of the Commission to adopt the agreement of the parties as the basis of its Decision provided that said agreement is not in conflict with the Law or with the rules or established practices of the Commission. Therefore, in conformance with the agreement and stipulation of the parties, I make the following findings of fact:

Findings of Fact

On June 23, 1970 the Commission certified Nashoba Valley Technical High School Support Personnel Association as the collective bargaining representative of three units of employees, viz:

1. Unit A: All clinical employees;
2. Unit B: Cook, baker and cafeteria helpers;



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- (c) Post immediately in conspicuous places in its police department buildings where police officers usually congregate or where notices are usually posted, including Town Hall, and maintain for a period of thirty (30) days thereafter, copies of the attached notice to employees.
- (d) Notify the Commission, in writing, within ten (10) days of service of this Decision, of the steps taken to comply with this Order.

COMMONWEALTH OF MASSACHUSETTS  
Labor Relations Commission

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