

WORCESTER SCHOOL COMMITTEE AND WORCESTER PUBLIC SCHOOL ADMINISTRATIVE SECRETARIAL PERSONNEL ASSOCIATION, MUP-2260 (6/21/78).

(60 Prohibited Practices by Employer)
67.2 failure to support contract
67.4 good faith test (totality of employer's conduct)

Commissioners participating: James S. Cooper, Chairman; Garry J. Wonters, Commissioner

Appearances:

Richard W. Murphy, Esq. - Counsel to the School Committee
Sandra C. Quinn, Esq. - Counsel to the Association

DECISION

Statement of the Case

On May 20, 1975, the Worcester Public School Administrative Secretarial Association (Association) filed a Complaint of Prohibited Practice with the Labor Relations Commission (Commission) alleging that the School Committee of the City of Worcester (School Committee) had engaged in certain practices prohibited by section 10 of Chapter 150E of the General Laws (Law). The Commission investigated the Complaint pursuant to its authority under section 11 of the Law and on August 7, 1975 issued a Formal Complaint, alleging that the School Committee had violated sections 10(a)(1) and (5) of the Law by failing to fund a salary increase negotiated between the Association and the School Committee. On September 4, 1975 a hearing was held before Katherine M. Noonan, a duly designated Hearing Officer of the Commission. By decision of October 20, 1975, the Hearing Officer concluded that there had been no agreement reached between the School Committee and the Association as to the mechanism for funding pay increases due for the months of January through June of 1975. Absent such agreement the Hearing Officer concluded that the School Committee was under no obligation to fund, and directed that the complaint be dismissed. The Association appealed to the full Commission pursuant to section 11 of the Law and the Rules and Regulations of the Commission. The Commission reversed the Hearing Officer, Commissioner Henry C. Alarie dissenting, finding that the School Committee had available to it funds sufficient to implement the memorandum of agreement entered into by the parties, and that the refusal to pay the contract rates constituted a violation of sections 10(a)(1) and (5) of the Law.

The School Committee appealed the Commission determination pursuant to G.L. c.30A, sec. 14. The Superior Court remanded the matter for reconsideration by the Commission based upon a transcript of the September 4, 1975 hearing, together with the exhibits introduced.¹ Early v. Cooper, Worcester Superior

¹Pursuant to the Rules and Regulations of the Commission the members comprising the majority in the January 8, 1976 Decision considered the Hearing Officer's Decision, the exhibits from the hearing, and the Supplementary Statements of the parties. Commissioner Alarie, in his dissent, indicated that he had reviewed all of the testimony. In its decision, the Superior Court indicated



Worcester School Committee and Worcester Public School Administrative Secretarial Personnel Association, 5 MLC 1080

Court, Civil Action No. 4745. Additional briefs were filed and have been considered. Upon all of the testimony and the record before the hearing officer and the supplementary statements and briefs of the parties in this matter we make the following findings of fact, and render the following opinion.

Jurisdictional Findings

1. The City of Worcester is a municipal corporation situated in the County of Worcester, and is a "public employer" within the meaning of section 1 of the Law.
2. The Worcester School Committee is the representative of the City of Worcester in matters relating to public school employees.
3. The Worcester Public School Administrative Secretarial Personnel Association is an employee organization within the meaning of section 1 of the Law, and is the exclusive representative for the purposes of collective bargaining of "all full time personnel engaged in administrative secretarial and clerical work" employed by the School Committee.

Findings of Fact

The relevant facts in this case may be summarized as follows. When the Worcester School Committee completed preparation of its budget for fiscal year 1975 (July 1, 1974 through June 30, 1975) it had not yet concluded negotiations with a number of bargaining units of its employees. This budget did not contain any money earmarked for funding future contract settlements. As the municipal tax rate did not have to be set until August of 1974 the City Manager indicated to the School Committee that contracts negotiated before that date could be funded. Funding of agreements negotiated after that time was speculative. The negotiator for the School Committee conveyed this information to all the unions with whom he was bargaining, hoping to create additional pressure for settlement before the August 1974 "deadline" for setting the tax rate. All employee organizations negotiated contracts with the exceptions of the administrative secretaries (52-week secretaries) and the mechanics.

Negotiation of these agreements proceeded into 1975 with the aid of a state mediator. On January 20, 1975 agreement was reached. The mediator drew up a short

¹(cont) concern that the majority and dissent had relied on differing records. Hence the remand order. The Commission has accepted the remand order as the law of the case, but differs with that opinion insofar as it would require the Commission in future cases to examine all of the testimony taken before the Hearing Officer. It is and remains the policy of the Commission to examine on appeal only those portions of the record before the Hearing Officer as are necessary to resolve material issues of fact, timely raised through a supplementary statement. Town of Dedham, 3 MLC 1332 (1976); City of Medford, 3 MLC 1584 (1977). On May 15, 1978 the Commission adopted regulations specifying the procedure for appealing decisions of its hearing officers, 402 CMR 13.13, and the record on review, 402 CMR 13.13(6).

Worcester School Committee and Worcester Public School Administrative Secretaries
Personnel Association, 5 MLC 1080

memorandum, indicating the terms of the settlement. The last item of the memo read: "Subject to ratification and funding by the respective groups." It is the meaning of the quoted language which forms the central dispute in this case. At its meeting on February 20, 1975, the School Committee voted to "ratify" the agreement. They further voted to request a supplemental appropriation in the amount of \$44,906 to fund the secretaries' contract and that of the mechanics, which had also been settled. Of the \$44,906, \$31,774 represented the funds required to implement the salary provisions of the Association's contract from January 1, 1975 through June 30, 1975. In order to understand subsequent events, it is necessary to examine the state of the School Committee's budget during 1974-75 school year.

The School Committee underbudgeted in 1974-75 due to several factors. As noted above, it did not request funds to cover contracts yet to be settled. Further, it anticipated a large amount of funds from the state in order to pay for programs mandated by Chapter 766 of the Acts of 1973. In addition, the School Committee failed to anticipate inflationary increases, especially in the cost of fuel. In December of 1974 the budget manager for the School Committee projected a deficit of approximately \$990,000. In February of 1975, the "Chapter 766" money had not been received, and large deficits were still projected in a number of accounts.

These deficits were eventually (subsequent to February 20, 1975) covered from several sources. The Chapter 766 money was received from the state. In addition, large transfers were made into School Committee accounts in June of 1975 from two sources: local aid funds from the state, and a discretionary account controlled by the City Manager. The School Committee closed its books on July 10, 1975, and filed a statement of accounts in the first week of August. These figures showed a surplus of \$53,597. At the time the books were closed, the School Committee had pending with the City Manager a request for \$107,000 from his discretionary account to cover the last installment under the School Committee's contract with the teachers which would come due early in September. This request had not been acted upon, and the expected obligation under the teachers' contract was not reflected in the Committee's closing statement.

In part because of the considerations outlined above, the February 20, 1975 request of the School Committee for a supplementary appropriation to fund the secretaries' wage increase from January through June of 1975 was not acted upon. The City Manager indicated in March of 1975 that action on the supplemental budget request would be deferred "to await the final decision on the 766 Interpretation and your [School Committee's] final projected deficit for 1974-75." By May 1, 1975 the final draft of the contract had been prepared by the Association, and again was "ratified" by the School Committee. On May 9, 1975, however, counsel to the School Committee advised that the contract as drafted by the Association did not contain the "subject to funding" language and should not be executed until this was added. The School Committee voted that the contract would only be funded if a specific supplemental appropriation were passed by the City Council. Such a request was rejected, and the contract remains unexecuted. The funds for the 1975-76 school year were included in the budget, and have been paid. The parties have honored all other provisions of the contract, although it is still executory.



Worcester School Committee and Worcester Public School Administrative Secretarial Personnel Association, 5 MLC 1080

On May 20, 1975, the Association filed its Complaint with the Commission giving rise to this extended litigation.

Opinion

On this record we conclude that the School Committee violated sections 10(a)(1) and (5) of the Law by failing to take appropriate action to fund a collective bargaining agreement.

We begin with the assumption that, absent any specific language in the agreement of the parties, a municipal employer has the obligation to take all steps necessary to secure funding for a negotiated agreement. We base this conclusion on the language of Section 7 of the Law, and the decision of the Supreme Judicial Court in Mendes v. City of Taunton, 366 Mass. 109, 315 N.E. 2d 865 (1975). In this case, the disputed language of the memorandum of agreement indicated, at minimum, the concern of the parties that funds for the contract might not be available. This interpretation is consistent with the communication by the City Manager in August 1974 that funding was certain only for contracts negotiated prior to August. The reservation indicated by this language may not logically be read as a limitation on the obligation of the School Committee to take all steps reasonably required to fund the agreement. The Court stated in the Mendes case,

We agree with the commission that emphasis should be placed on the obligation of parties to a municipal collective bargaining contract to implement its provision...

There is no question that the actions of the parties on January 20, 1975 and February 20, 1975 created a binding contract. In spite of the failure of funding for the January 1 through June 30, 1975 period, the parties honored all other provisions of the still executory agreement. The School Committee budgeted for and paid contract salary rates for the remainder of the contract. The School Committee never communicated to the Association any position or opinion that the contract was not in full force and binding with respect to all terms other than the January to June wage increases. On other facts the phrase "subject to ratification and finding [sic] by the respective groups" might be ambiguous; on these facts it is clear that it was not a condition precedent to the existence of a contract. Rather, the phrase indicated the understanding of the parties that some part of the contract was contingent. Once the agreement had been reached, the statutory obligation to seek funding for it became unconditional. This obligation includes the obligation to take affirmative steps designed to obtain funding to implement the cost items of the contract. Mendes v. City of Taunton, supra. It may require affirmative support for an appropriation or other legislative or administrative action. See Labor Relations Commission v. Board of Selectmen of Dracut, 1978 Mass. Adv. Sh. 657, 664 to 665. The School Committee had agreed to pay their secretarial employees a wage increase. It was then their ministerial obligation to seek these funds through a request for an appropriation or through any available source when its preferred method of funding failed.

We find no fault in the actions of the School Committee through February 20, 1975. With large projected deficits in various accounts, and no assurance of

sufficient state or municipal funds to cover these debts, it was entirely appropriate for the School Committee to request specific funds for increased costs due to the negotiated agreements. With the total budget in deficit there was no obligation to promote the obligations under this contract at the expense of other obligations of the School Committee. Events subsequent to February 20, 1975 altered both the fiscal situation of the School Committee and the obligation to seek funding for the contract from sources other than a supplemental appropriation.

On March 13, 1975, the Business Manager wrote to the Secretary of the Committee indicating that the City Manager had told him that the request for a supplementary appropriation would not be acted upon promptly. Rather, the memo indicated that the Manager intended to await resolution of the "766" dispute with the state and final School Committee deficit figures. Thus, the School Committee knew as of this date that the school secretaries' contract would not receive separate consideration and specific funding by the City Council. The entire School Committee budget would be considered as a whole, and appropriate transfers and appropriations made. In spite of this knowledge, the School Committee took no steps to secure funding for the contract. Instead, in May it took the position that the contract could only be funded through a specific supplemental appropriation. Such action was not only unrealistic, but in conflict with the statutory duty to take "appropriate" measures to fund the agreement.

The concept of good faith has not been easy to delineate, in either the private or public sector of labor relations. However, the notion of good faith must include, at minimum, more than token efforts at funding or stubborn adherence to a preferred funding mechanism which the employer knows, or should know, is likely to fail. When the School Committee learned that its request for a supplemental appropriation was unlikely to receive either prompt or favorable consideration it would not then restrict its obligations to only that funding mechanism.

The record in this matter indicates that other sources of funding were available to the School Committee. Local aid money from the state could be applied to any account. In addition, the City Manager had a substantial discretionary account. The School Committee might have been able to transfer funds within its own accounts to cover this obligation.

The record is unclear whether there were funds potentially available to the School Committee from which all of its obligations could have been met without any supplemental appropriation from the City Council. There are striking suggestions that such sources existed. Following the transfers into School Committee accounts on June 19, 1975, the City Manager had within his control a discretionary fund of more than one hundred thousand dollars. Some of this money had been "earmarked" to cover anticipated costs in the professional salary account. The School Committee had requested a transfer from this fund to cover that contract obligation. They made no similar request to cover the no less binding obligations under the school secretaries' contract. It appears from the record that the School Committee could have transferred some of the \$53,000 returned to the City at the close of the year to cover the costs of the secretaries' contract. They did not do so. Instead, the School Committee insisted on a single method of funding to the exclusion of all others. The refusal to use other funding sources may well have been the cause of the City Council's ultimate rejection of the supplemental budget request. Why should the City Council appropriate additional funds when the



Worcester School Committee and Worcester Public School Administrative Secretarial Personnel Association, 5 MLC 1080

School Committee is returning \$53,000?

The obligation to seek funding is not static. What is reasonable at one point in time may become unreasonable or inadequate because of subsequent events. In this case, it was proper for the School Committee to seek a supplementary appropriation in February to cover the costs of the two recent settlements. When the School Committee was informed that this request would not receive prompt attention, however, it was unreasonable to rely on this funding vehicle to the exclusion of all others. At this point the School Committee had an obligation to broaden its approach to the funding problem. Instead of searching for some other means of funding the contract, the School Committee attempted to limit its obligations by voting in May of 1975, that only one method of funding was suitable--a specific supplementary appropriation. This was done in spite of the School Committee's knowledge that such an approach was entirely unrealistic. The clear intent of the City Manager and City Council was to cover budget deficits by transfers from within and without the School Committee accounts. Only if these measures were insufficient in sum to cover all budget deficits was a supplementary budget to be requested. In any event such a supplementary appropriation would not be specifically for the funding of the two contracts. For a public employer to adopt a method of securing funding which it knows or has good reason to believe will fail cannot satisfy the obligation to seek funding in good faith. The action of the School Committee in failing to seek alternative methods of funding the contract violates sections 10(a)(1) and (5) of the Law.

ORDER

Wherefore, on the basis of the foregoing,

IT IS HEREBY ORDERED, pursuant to section 11 of the Law that the City of Worcester School Committee shall:

1. Cease and desist from:
 - (a) Refusing to bargain in good faith by failing to implement the salary increases for January 1 - June 30, 1975 contained in the agreement negotiated with the Worcester Public School Administrative Secretarial Personnel Association and ratified by the School Committee.
 - (b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their protected rights under the Law.
2. Take the following affirmative action which is found will effectuate the policies of the Law:
 - (a) Make whole the employees for the loss of earnings they suffered as a result of the School Committee's refusal to pay the salary increase negotiated for the January 1 - June 30, 1975 period, including in the payment interest on the earnings at the rate of six (6) percent per annum computed from July 1, 1975.

Worcester School Committee and Worcester Public School Administrative Secretarial
Personnel Association, 5 MLC 1080

- (b) Notify the Commission in writing within ten (10) days of the service of this Decision and Order of the steps taken to comply therewith.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

James S. Cooper, Chairman
Garry J. Wooters, Commissioner

