

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

FRANKLIN COUNTY TECHNICAL
REGIONAL SCHOOL COMMITTEE

and

FRANKLIN COUNTY TECHNICAL
TEACHERS ASSOCIATION

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Case No. MUP-14-3867

Date Issued: October 9, 2015

Hearing Officer:

Brian K. Harrington, Esq.

Appearances:

- Fernand J. Dupere, Esq. - Representing the Franklin County Technical Regional School Committee
- Matthew D. Jones, Esq. - Representing the Franklin County Technical Teachers Association

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issue is whether the Franklin County Technical Regional School Committee
2 (School Committee or Employer), bargained in bad faith when, following a grievance
3 settlement, Superintendent James Laverty (Laverty) made a formal recommendation to the
4 School Committee's Finance Subcommittee to fund the settlement but allowed his
5 subordinate to immediately make a non-funding recommendation, in violation of Section

1 10(a)(5) and derivatively Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the
2 Law). I find that the School Committee violated the Law in the manner alleged.

3 STATEMENT OF THE CASE

4 On July 21, 2014, the Franklin County Technical Teachers Association (FCTTA, or
5 Union) filed a charge with the Department of Labor Relations (DLR) alleging that the
6 Employer had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law. The
7 Employer filed a Written Response to this charge on August 5, 2014. Following an
8 investigation, the DLR issued a Complaint of Prohibited Practice and Partial Dismissal¹ on
9 October 24, 2014, alleging that the Employer had violated Section 10(a)(5) and derivatively,
10 Section 10 (a)(1) of the Law by failing to bargain in good faith when Laverty and Assistant
11 Superintendent and Principal Richard Martin (Martin) failed to offer unconditional support of a
12 grievance settlement to the School Committee. The Employer filed an Answer to the
13 Complaint on May 8, 2015.

14 I conducted one day of hearing on May 11, 2015, at which both parties had the
15 opportunity to be heard, to examine witnesses and to introduce evidence. The parties filed
16 post-hearing briefs on or about July 17, 2015. Upon review of the entire record, including my
17 observation of the demeanor of the witnesses, I make the following findings of fact and
18 render the following decision.

19 FACTS

- 20 1. The School Committee is a public employer within the meaning of Section 1 of
21 the Law.
- 22 2. The Union is an employee organization within the meaning of Section 1 of the
23 Law.

¹ Those allegations which were dismissed by the investigator were not appealed to the Commonwealth Employment Relations Board (Board) and are therefore not part of this decision.

1 2014.³ At that meeting, the parties agreed to place a specific substitute teacher in Hyson's
2 shop full time for the remainder of the 2013-2014 school year. Lavery and Cann also agreed
3 that Lavery would recommend to the Finance Subcommittee of the School Committee that
4 an additional full time certified or certifiable instructor be hired in the business technology
5 shop for the 2014-2015 school year. If the Finance Subcommittee approved Lavery's
6 request, he would make the same request of the full School Committee.

7 From April 4 through 7, 2014, Cann and Lavery exchanged emails on the subject of
8 the grievance settlement. Lavery offered edits of a document that Cann had prepared.
9 Lavery's final email to Cann on April 7 thanked her for getting back to him on the "proposed
10 compromise," and as a final change, requested deletion of an issue involving classroom
11 space in the business technology shop. Cann agreed to this change by subsequent email
12 that same day, and thanked Lavery for reaching a settlement. There was no evidence of any
13 written or email response from Lavery to Cann's final April 7, 2014 email. The parties never
14 drafted a written document memorializing the terms of their agreement.

15 On May 27, 2014, Lavery called for a special session of the Curriculum Subcommittee
16 of the School Committee to discuss his recommendation to hire a second business
17 technology teacher for the 2014-2015 school year.⁴ At this meeting, Lavery recommended
18 hiring a second business technology teacher for the 2014-2015 academic year, but stated
19 that Martin did not agree with this recommendation. Lavery then yielded the floor to Martin.
20 Martin gave several reasons why FCTS should not hire a second shop teacher in the

³ This meeting started as a hearing of the Hyson grievance but turned into an informal discussion of the best way to resolve the grievance through settlement.

⁴ Although the settlement between the parties specified that Lavery's recommendation would be made to the Finance Subcommittee, both sides subsequently realized that the recommendation needed to be presented to the Curriculum Subcommittee first.

1 business technology shop, including, widely varying enrollment in the shop and the lack of
2 safety issues present in other shops. The members of the Curriculum Subcommittee
3 expressed some confusion due to the conflicting viewpoints of Lavery and Martin, but voted
4 to recommend the hiring of a second shop teacher in the business technology shop by a vote
5 of three in favor with one abstention. This action sent the matter to the Finance
6 Subcommittee.

7 The next scheduled meeting of the Finance Subcommittee took place on June 4,
8 2014. At this meeting, Lavery again recommended hiring a second teacher in the business
9 technology shop for the 2014-2015 academic year. However, Lavery then stated that both
10 Martin and School Business Manager Russ Kaubris (Kaubris) were at the meeting to speak
11 on the matter as well. Kaubris indicated that since the budget for the 2014-2015 school year
12 had already been set, the only way to fund this position would be to make cuts somewhere
13 else in the budget.⁵ Martin spoke next, stating his belief that the students in the business
14 technology shop did not require a second teacher and that in this case, one instructor was
15 capable of teaching two grades during the same class period.

16 Lavery then spoke in response to a question from a Committee member and stated
17 that he was aware of other business technology programs in other districts where there was
18 only one instructor teaching the class. At this point, Cann and Lavery had a disagreement
19 over whether the Curriculum Subcommittee had “recommended” hiring a second teacher for
20 the 2014-2015 school year or had merely “passed over” the issue to the Finance

⁵ Although initially the Union argued that Kaubris’ comments violated the Law as well, Kaubris was employed directly by the School Committee and had no reporting relationship to Lavery. Therefore, I do not reach the issue of the appropriateness of Kaubris’ presentation. I merely note it in the context of Lavery’s comments.

1 Subcommittee.⁶ A motion was made and seconded to not approve the hiring of a second
2 teacher in the business technology shop for the 2014-2015 academic year. This motion
3 passed unanimously. The School Committee did not hire a second teacher for the business
4 technology shop.

5 Opinion

6 The issue in this case is whether the School Committee failed to bargain in good faith
7 in violation of Section 10(a)(5) of the Law when Lavery and Martin failed to offer
8 unconditional support for funding a grievance settlement at the meeting of the Finance
9 Subcommittee of the School Committee. To make this determination, I must first find that the
10 parties reached a settlement to resolve the Hyson grievance. Second, I must determine that
11 the actions of Lavery and/or Martin did not unconditionally support the terms of the
12 settlement. Finally, if the answer to the first two questions is affirmative, I must decide
13 whether the lack of unconditional support by Lavery and Martin constitutes bargaining in bad
14 faith in violation of the Law.

15 The School Committee first argues that Lavery agreed to recommend hiring a second
16 teacher in the business technology shop for the 2014-2015 school year as a result of a
17 discussion he had with Cann, but not as part of settlement of Hyson's grievance. It then
18 argues that there could be no settlement because the parties did not reduce anything to
19 writing. I disagree. First, oral agreements between labor and management can be
20 enforceable under the Law. SEIU, Local 509, 410 Mass. 141, 145 (1991). The Board has
21 long recognized that a meeting of the minds can take place without anything being reduced to

⁶ This dispute arose because the minutes of the May 27, 2014 Curriculum Subcommittee meeting were not yet available on June 4. Those minutes did reflect a recommendation to hire a second instructor.

1 writing or signed by either party. City of Cambridge, 35 MLC 183, MUP-04-4229 (March 5,
2 2009) (citing Town of Ipswich, 11 MLC 1403, 1410, MUP-5248 (February 7, 1985)). It is up
3 to the finder of fact to determine the intent of the parties to effectuate the terms of the
4 settlement agreement. City of Cambridge, 35 MLC at 187.

5 It is clear in this case that the parties intended to reach a settlement agreement and
6 did. At the April 1, 2014 grievance meeting, Cann and Lavery agreed to a two-part
7 settlement. First, Lavery agreed to assign, and did assign, a specific substitute teacher full
8 time to the business technology shop for the remainder of the 2013-2014 school year.
9 Second, at the end of the grievance meeting, Lavery specifically agreed to recommend to
10 the Finance Subcommittee and if successful there, to the full School Committee, the hiring of
11 a second full time certified or certifiable teacher in the business technology shop for the 2014-
12 2015 school year.

13 The School Committee alleges that since further discussion over the terms of the
14 agreement took place between Cann and Lavery from April 4-7, no actual settlement
15 occurred. Again, I disagree. Lavery's last email to Cann on the matter, dated April 7,
16 references the "proposed compromise" and requested only that Cann accept deletion of a
17 third paragraph regarding space for the business technology shop. Cann agreed to his
18 request in her final email, and congratulates Lavery for reaching a settlement. There was no
19 evidence that Lavery responded to her statements by denying that a settlement existed.
20 Therefore, I find that there was an agreement between Lavery and Cann to resolve the
21 Hyson grievance. Part of that agreement required Lavery to submit to the Finance
22 Subcommittee a request to fund a second teacher in the business technology shop for the
23 2014-2015 school year and unconditionally support that request.

1 Next, I consider whether the actions of Lavery and Martin at the Finance
2 Subcommittee meeting of June 4, 2015 constituted the requisite unconditional support. I find
3 that they did not. According to the terms of the settlement between Lavery and Cann,
4 Lavery agreed to “recommend” to the Finance Sub-committee that funding be provided for
5 hiring a second full time certified or certifiable instructor in the business technology shop for
6 the 2014-2015 school year.

7 It is undisputed that management negotiators have an unconditional obligation to seek
8 funding for the cost items of collectively bargained agreements, and can be compelled to do
9 so. Local 1652, IAFF v. Town of Framingham, 442 Mass. 463, 469 (2004); County of Suffolk
10 v. Labor Relations Commission, 15 Mass. App. Ct. 127, 129, 133 (1983), See also, Mendes
11 v. Taunton, 366 Mass. 109, 118 (1974); Town of Rockland, 16 MLC 1001, 1005, MUP-5603
12 (April 24, 1989). This obligation includes a requirement to express support for the funding
13 request in the face of any expressed opposition. Mendes v. Taunton, 366 Mass. at 118;
14 Town of Rockland, 16 MLC at 1005. Failure to do so is a clear violation of the Law. Mendes
15 v. Taunton, 366 Mass. at 118 (1974); City of Melrose, 28 MLC 53, MUP-1838, (June 22,
16 2001).

17 Here, the School Committee did not fulfill its unconditional obligation to seek funding
18 for the settlement of the Hyson grievance. Martin was Lavery’s subordinate and was
19 similarly bound to seek funding for the settlement. Lavery indicated in his own remarks that
20 Martin was opposed to the settlement, demonstrating prior knowledge that Martin would
21 speak against funding the second business technology teacher. Lavery then gave Martin the
22 opportunity to oppose the funding request which would have resolved the Hyson grievance.
23 The actions of Lavery and Martin constituted a clear violation of the Law.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the Franklin County Technical Regional School Committee shall:

1. Cease and desist from;
 - a) Failing or refusing to bargain collectively in good faith with the Union by failing to unconditionally support any funding requests necessary to effectuate grievance settlements;
 - b) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.
2. Take the following action that will effectuate the purposes of the Law:
 - a) Submit a request for funding the settlement of the Hyson grievance with unconditional support to the Finance Subcommittee of the Franklin County Technical Regional School Committee;
 - b) Post immediately in all conspicuous places where members of Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

BRIAN K. HARRINGTON, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.15, and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.

