REVERE SCHOOL COMMITTEE AND AFSCME, COUNCIL 93, MUP-5008 (9/29/83).

16.1 impasse
53.23 Proposition 2-1/2
54.5111 layoff
54.5117 reduction from full to part time
67.44 failure to consider proposals

Commissioners participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner

Appearances:

Francis X. Cunningham - Representing the Revere School Committee

Joseph R. Lettiere, Esq. - Representing the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO

DECISION

Statement of the Case

The issue in this case is whether the Employer fulfilled its bargaining obligation with the union representing full-time cafeteria employees before it terminated twenty-four of them and hired an outside contractor to supply pre-cooked meals.

On October 7, 1982, the American Federation of State, County and Municipal Employees, Council 93 (Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Revere School Committee (School Committee or Employer) had violated certain sections of G.L. c.150E (the Law). On January 5, 1983, following an investigation, the Commission issued a Complaint alleging that the School Committee had violated Sections 10(a)(5) and (1) of the Law by: (a) unilaterally laying off employees without bargaining with the Union to resolution or impasse over the impacts of that layoff; (b) bypassing the Union and dealing directly with employees by offering part-time work to laid-off full-time employees; and (c) repudiating the collective bargaining agreement by unilaterally rehiring laid-off full-time employees on a part-time basis and paying them wages not in accord with the terms of the collective bargaining agreement.

On February 15, 1983, a duly authorized hearing officer of the Commission conducted a formal hearing in this matter.[1] Both parties were represented and given the opportunity to file post-hearing briefs. The School Committee timely filed a brief.[2]

[1]Neither party contests the Commission's jurisdiction over this matter.

[2]At the hearing, the parties stipulated to certain amendments to the Complaint and the Answer filed by the Employer. The School Committee and the Union, respectively, moved at the outset to dismiss and for summary judgment. At the close of the Union's case, the Employer moved for a directed verdict. Rulings on these motions are subsumed by this decision.

Revere School Committee and AFSCME, Council 93, 10 MLC 1245

Statement of the Facts

Revere school system comprises one high school and eleven "satellite"
The School Committee has employed both full-time and part-time cafeteria
of whom the Union represents only the full-time employees. Prior to the
chool year, the School Committee contracted with the Massachusetts Feeding
on to supply pre-cooked meals to the eleven satellite schools where the
previously been prepared on the premises. The School Committee and the
e parties to a collective bargaining agreement effective from July 1, 1980
0, 1982 but which, by its terms, remained in effect pending negotiation of
or agreement.

September 2, 1982, William J. Hill, Superintendent of Schools, sent letters
-four full-time cafeteria workers informing them that the School Committee
to terminate them effective September 22, 1982 as the result of budgetary
ts caused by Proposition 2-1/2.[3] The letters also stated that, pursuant
plicable Civil Service requirements, a hearing was scheduled for September
This letter came to the Union's attention on September 4 or 5.

the September 21 Civil Service hearing, Attorney Lettiere represented the
employees. Lettiere demanded that the School Committee engage in impact
g with the Union before laying off the employees. Mayor Colella, in his
as chairman of the School Committee, initially replied that there was no
argain under Chapter 150E but that he would consult with counsel. Follow-
ess, he announced that he was adjourning the hearing until September 24.
hearing resumed on September 24, Colella told Richard Laurano, President of
local, that the School Committee would proceed with impact bargaining as
had requested. After the School Committee had appointed Mr. Cunningham
rgaining representative, an impact bargaining session was scheduled for
on September 28, 1982, the same day as a School Committee meeting sche-
7:00 p.m.

September 28 bargaining session was attended by twelve people including,
mployer, Cunningham and John Losco, administrative assistant to the Super-
of Schools, and, for the Union, Laurano and Anthony Caso, Union represen-
Cunningham and Caso acted as spokespersons for their respective parties.
ent was Mr. Costello, representative for the Massachusetts Feeding Corpora-

tello spoke for about thirty minutes about the new food program. Cunning-
that Costello was there to answer any questions the Union might have about
rogram. Cunningham stated that he, Cunningham, was there to make recommen-
o that night's School Committee meeting. The Employer also presented the

are unable to determine the extent to which the Employer's decision to lay
time cafeteria workers was based upon the decision to subcontract the sup-
e-cooked meals to the Massachusetts Feeding Corporation. Since the Union
bargaining only over the impact of the layoffs, we have not addressed this
ontracting case.

contemplated staffing levels after the implementation of the Massachusetts Feeding program. There was extensive discussion of employee productivity and how many workers were needed in the cafeterias.

During the meeting, the Union presented two different proposals. First, the Union proposed that instead of laying off all full-time employees in the satellite schools, the Employer utilize the available funds to retain as many full-time employees as possible by splitting their time between the high school and the satellite schools. Cunningham responded that the School Committee intended to employ only part-time workers and that it would hire as many as it needed. He stated that some laid-off employees would be offered part-time jobs at a rate of pay to be set by the Employer and without the contractual benefits. The Union complained that the Employer had to rehire the employees at the contractual rate of pay with the contractual benefits and not at an arbitrary rate set by the School Committee.

The other Union proposal, described as its "fallback" position, was that a time study be conducted by a joint committee of labor and management representatives to determine the number of manhours required at each school. In response, Cunningham accused the Union of using this proposal as a delaying tactic and refused to consider it.

Before the meeting concluded at approximately 6:10 p.m., the Union stated that it wished to continue bargaining. Cunningham responded that his mind was made up and that he would recommend to the School Committee that it proceed with the terminations because the parties had reached impasse and there was no need for further discussion. The Union replied that the time study was needed; Cunningham said that suggestion was out of order and not in the best interests of the School Department. Caso asked how there could be impasse when the parties had been negotiating for barely two hours. As the meeting ended, Cunningham stated that he would remain if the Union wished to continue talking.

Just before 7:00 p.m., Cunningham walked across the street to the School Committee meeting where he recommended that the School Committee proceed with the terminations because the impact bargaining had been concluded. The School Committee then voted to terminate twenty-four full-time Union employees, effective September 30, 1982. On September 29, the Employer sent termination letters to the twenty-four employees along with the following enclosure:

> September 29, 1982
>
> Dear [employee]:
>
> Please indicate in the appropriate box whether or not you will be available for Part-Time Cafeteria work for three (3) hours per day @ $4.00 per hour.
>
> YES ☐ NO ☐ Signature: _____
>
> Very truly yours, John Losco, Admin. Asst. to the Superintendent

ing the fall of 1982, the School Committee rehired approximately ten of the employees as part-time workers and compensated them at the $4.00 per hour n the September 29 letter. That hourly rate differed from the rate payable collective bargaining agreement between the Union and the Employer.

Opinion

hough an employer's decision to reduce the level of services lies within erial discretion, "...a School Committee's decision to achieve a reduction by layoffs is a mandatory subject of bargaining... ." School Committee of Labor Relations Commission, 388 Mass. 557, 566 (1983). "[I]t follows timing of any decision to lay off employees, the number of employees to and which employees to lay off are also mandatory subjects of bargaining." 6-67. See also, Middlesex County Commissioners, 9 MLC 1589, 1594 (1983). aining does occur, it is incumbent upon the union to articulate the speci- s over which it seeks to negotiate. Middlesex County Commissioners, supra 6.

e, the sum total of the impact bargaining occurred in one negotiation ses- eptember 28, 1982. The Employer contends that in that session either as reached or the Union's bad faith precluded the possibility of reaching .

have defined impasse as the condition reached after the parties have bar- good faith to the point where "it is clear further negotiations would be ." Commonwealth of Massachusetts (Unit 9), 8 MLC 1978, 1982 (1982), 389 Mass. 920 (1983). The factors to be considered in making that deter- include: bargaining history, good faith of the parties, length of negotia- portance of issues over which there is disagreement, and the contemporane- standing of the parties over the state of the negotiations. Commonwealth husetts (Unit 9), supra at 1982.

Union raised three specific issues at the September 28 negotiation session. proposed that as many full-time employees as possible be retained by their time between the high school and the satellite schools. Next, the posed a time study to determine necessary staffing levels in the schools. the Union protested the Employer's plan to rehire its members to perform work under terms and conditions of employment unilaterally set my manage- Union insisted on adherence to the contractual wages and benefits. Cun- esponded negatively to all of these proposals; there appears to have been scussion or actual bargaining over any of the issues.

find that the Union's proposals concerning the retention of full-time em- nd the undertaking of a joint manpower study are mandatory subjects of g over which the Employer had a statutory duty to negotiate in good faith. Committee of Newton v. Labor Relations Commission, supra, the Supreme Court held that, because an employer's decision to achieve a reduction in ough layoffs is a mandatory subject of bargaining, it must also bargain number of employees to lay off. Id. at 566. Here, the Union's proposals as many full-time employees as possible through shift-splitting and

studying manpower needs fall precisely within the area of bargaining involving the number of employees to be laid off. As such, these proposals are mandatory subjects over which the parties are required to bargain in good faith. G.L. c.150E, Section 6.

Did the parties bargain over these mandatory subjects to impasse, as the Employer contends? A careful examination of the negotiations shows that no genuine impasse was reached. Under Commonwealth of Massachusetts (Unit 9), supra, we must determine whether the parties bargained in good faith to the point where further negotiations would have been fruitless. The length of the negotiations, the atomsphere under which they were conducted, and the bargaining posture of the School Committee's negotiator all strongly point to the absence of a good faith impasse. One negotiation session three hours before a School Committee meeting, at which the Employer then voted to carry out its original intention of terminating twenty-four employees, cannot be said to have provided a forum for reasoned discussion of the issues. We have previously explained the meaning of the "good faith" requirement of Section 6 of the Law:

> ...Parties to negotiations must bargain with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. Commonwealth of Massachusetts (Unit 6), 8 MLC 1499 (1981); Town of Braintree, 8 MLC 1193 (1981); King Philip Regional School Committee, 2 MLC 1393 (1976). In essence, each party must acknowledge and treat the other as a full partner in determining the employees' conditions of employment. Sections 10(a)(5) and 10(b)(2) of the Law, respectively, make it a prohibited practice for an employer or a union to bargain with any lesser degree of commitment. Commonwealth of Mass. (Unit 9), supra at 1983.

The Employer's categorical rejection of each Union proposal, with little discussion or comment beyond an insistence on carrying out the School Committee's plans to implement the layoffs on schedule, does not comport with the good faith requirement of the Law. If "'good faith' implies an open and fair mind, as well as a sincere effort to reach a common ground," then what occurred at this one bargaining session was "'not the kind of exchange and discussion of substantive views required by Sections 6 and 10(a)(5).'" School Committee of Newton v. Labor Relations Commission, supra at 572, 573 [quoting Newton School Committee, 5 MLC 1016, 1026 (1978)]. Therefore, we can reach no other conclusion than that no impasse was reached in this single negotiating session.

Because the School Committee was bound under Section 6 of the Law to negotiate with the Union before effecting the layoff of these twenty-four employees and we have found that it failed to carry out this duty, we conclude that it violated Section 10(a)(5) of the Law when it unilaterally laid off these employees without first completing its bargaining obligation. Derivatively, it also violated Section 10(a)(1) of the Law.[4]

[4]Because we have found these terminations unlawful and order the employees reinstated with back pay, we need not reach the other issues in the Complaint concerning (continued)

REMEDY

normal remedy for such unilateral changes is to order bargaining follow-
estoration of the status quo ante. See, Newton School Committee, supra at

ORDER

REFORE, pursuant to the authority vested in the Commission by Section 11 of
IT IS HEREBY ORDERED that the Revere School Committee shall:

Cease and desist from:

a. failing and refusing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees, Council 93, over the impact of the School Committee's reduction in force decision;

b. in any like or similar manner interfering with, restraining, or coercing any employees in the exercise of their rights guaranteed under General Laws, Chapter 150E.

Take the following affirmative action which we find will effectuate the policies of the Law:

a. Post in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;

b. Offer the twenty-four (24) full-time cafeteria workers discharged on September 30, 1982, immediate and full reinstatement to their former full-time positions or, if any of those positions no longer exist, to substantially similar positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered as a result of their unlawful termination by payment to them of such sums equal to those which they normally would have earned absent their unlawful terminations from the date of their terminations on September 30, 1982 to the date of the Employer's offer of reinstatement to full-time positions, less net earnings during such period, with back pay computed on a quarterly basis, plus interest at the rate of ten percent (10%) interest per annum;

c. Preserve, and upon request, make available to the Commission or its agents for examination and copying, all payroll records and

continued)
d bypass of the Union and an alleged repudiation of the parties' collective
g agreement.

reports, and all other records necessary to analyze the amount of back pay due under this Order;

d. Upon request by the Union, bargain collectively in good faith over the impact upon wages, hours, and conditions of employment of any decision to reduce the workforce in the bargaining unit represented by the Union;

e. Notify the Commission in writing, within thirty (30) days of the service of this Decision and Order, of the steps taken in compliance herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner

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

The Massachusetts Labor Relations Commission has found that the Revere School Committee (School Committee) violated Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Public Employee Collective Bargaining Law) by failing to bargain to resolution or impasse with the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (Union) about the School Committee's decision to reduce the number of its cafeteria workers by means of a layoff and the impacts of that decision.

WE WILL NOT refuse to bargain with the Union over the decision to reduce the number of its cafeteria workers by means of a layoff and the impacts of that decision.

WE WILL NOT in any like manner, interfere with, restrain or coerce employees in the exercise of their rights protected under the Law.

WE WILL offer all the full-time cafeteria employees laid off on September 30, 1982 immediate and full reinstatement to their former full-time positions or, if any of these positions no longer exist, to substantially similar positions, without prejudice to their seniority or other rights or privileges, and make them whole for any loss of earnings suffered as a result of their unlawful termination, by payment to them of such sums equal to those which they normally would have earned absent their unlawful terminations, from the date of their terminations on September 30, 1982 to the date of the Employer's offer of reinstatement to full-time positions, less net earnings during such period with back pay computed on a quarterly basis and at the rate of ten percent (10%) interest per annum.

WE WILL, upon request by the Union, bargain collectively in good faith over the impact upon wages, hours, and conditions of employment of any decision to reduce the workforce in the bargaining unit represented by the Union.

REVERE SCHOOL COMMITTEE
By:_____(Chairperson)