MONWEALTH OF MASSACHUSETTS/COMMISSIONER OF ADMINISTRATION AND FINANCE AND NAGE, -3006 (6/2/87). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

54.52 evaluation of employee performance
67.8 unilateral change
92.51 appeals to full commission

missioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

earances:

Joanne M. Sollecito, Esq. - Representing the National Association of Government Employees

Joseph Daley, Esq. - Representing the Commonwealth of Massachusetts

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

The issue in this case is whether the Commonwealth of Massachusetts/Commis-ier of Administration and Finance (Commonwealth) violated Sections 10(a)(5) and of G.L. c.150E (the Law) by unilaterally promulgating work sheets to be filled by a bargaining unit member, to review her work, without bargaining over imple-ation with the National Association of Government Employees (Union).

On August 20, 1986, Hearing Officer Robert B. McCormack, Esq. issued a deci-holding that the promulgation of work sheets in the context of the facts of case was not mandatorily bargainable.[1] Moreover, he held that the written uation procedures did not change working conditions because it measured the performance criteria which had been measured in the past. Consequently, he issed the charge.

The Union filed a timely notice of appeal pursuant to Commission Rules, 456 (formerly 402 CMR) 13.13(2) and filed a supplementary statement on December 1, , seeking reversal of the hearing officer's decision. The Commonwealth did not it a supplementary statement. For the reasons set forth below, we dismiss the laint.

Findings of Fact

We have reviewed the record below and adopt the hearing officer's findings of

[1] The full text of the decision is reported at 13 MLC 1125 (H.O. 1986).

Copyright © 1987 by New England Legal Publishers

except where noted. We summarize those facts as follows. In the summer of , the Department of Fisheries and Wildlife hired Billie H.[2] as Head Clerk.[3] position of Head Clerk is included in the bargaining unit represented by the onal Association of Government Employees. The Head Clerk's job duties include ing as a receptionist and typing letters and memoranda for six or seven em- ees. On the second day of her employment, Billie typed a two page memorandum the Commissioner. The Commissioner complained to Assistant Commissioner Chris- er Kennedy, Billie's immediate superior, about the number of typing errors in nemorandum.

All of the employees for whom Billie typed complained about her late work nistakes. Kennedy warned her weekly that she would have to improve her perfor- e. Kennedy told Billie that the Employer would scrutinize her work during a period from December 3 until December 30, as part of the progressive disci- ary process. That test period was later extended until January 30 because of lack of typing required throughout December. During this time, Billie complained Kennedy did not review the majority of her work which was error-free, but only idered that part of her work that contained errors. In response, Kennedy de- d a method to review all of Billie's work product. On January 9, 1986, he pro- ated a work sheet for Billie without having notified the Union.

The worksheet consisted of five vertical columns on white lined paper. The mns were entitled: Date Submitted, Document, Date Started, Date Finished, and ons for Subsequent Drafts. The employee who originated the document to be typed d fill out the first two columns indicating the month and day that their long- notes were put into Billie's "in basket," and write a three word description he correspondence, with their initials. In the third and fourth columns, ie indicated the day and month that she started and completed the typing pro- s. The originators of the correspondence filled out the final column, "Reasons Subsequent Drafts." Typical comments were "typos" or "my changes."

Billie was the only employee directed to fill out a worksheet. On January or 17th, she told Kennedy that she did not want to continue to do so, and he lied with her request. Billie is no longer employed by the Department of eries and Wildlife.[4]

---

[2]The parties chose to use the appellation "Billie H." to indicate the em- ee involved in this case. Like the hearing officer we shall use the same refer-

[3]The hearing officer inferred that Billie H. was a probationary employee at times material to this case. The Union disputes that finding and filed a Motion eopen the record in order to submit additional evidence concerning the proba- ary status issue. In view of our conclusions, discussed at n.5 infra, we find nnecessary to resolve whether Billie H. was or was not a probationary employee. rdingly, we deny this portion of the Union's Motion to reopen the record.

[4]There is no evidence in the record to substantiate the hearing officer's (continued)

Copyright © 1987 by New England Legal Publishers

Discussion

The issue in the case is whether the Commonwealth violated Sections 10(a)(5) (1) of the Law by unilaterally requiring an employee to record information on tain forms as a mechanism for monitoring work performance. Section 6 of the Law vides that employers and bargaining representatives "...shall negotiate in good th with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment..." (emphasis added) G.L. c.150E, tion 6.

A public employer must bargain with its employees' bargaining representative impasse or resolution before establishing new conditions of employment affecting datory subjects of bargaining. Newton School Committee, 5 MLC 1016 (1978), • 'd sub nom School Committee of Newton v. Labor Relations Commission, 388 Mass. , 572 (1983).

The charging party must establish a unilateral change in a pre-existing con- ion of employment affecting a mandatory subject of bargaining to prove a viola- n of the Law. City of Boston, 8 MLC 1077, 1081 (1981). The Commission has pre- usly held that a performance evaluation system, which measures standards of pro- tivity and performance, is a mandatory subject of bargaining within the meaning Section 6 of the Law. Town of Wayland, 5 MLC 1738, 1741 (1979) (and cases cited rein). In the present case, the promulgated worksheets were intended to accur- ly record in writing certain information which the employer had been using to luate Billie H.'s performance. The standards by which an employee's productiv- and performance are measured are mandatory subjects of bargaining.[5] Thus, if standards of measuring Billie H.'s performance had been changed by use of this tten worksheet the Commonwealth clearly would have had an obligation to first otiate with the Union.[6]

---

4 (continued)
dings concerning the voluntary nature of her termination, and thus we do not pt that finding. The Union also sought to reopen the record to introduce evi- ce that Billie H. did not voluntarily terminate her employment. Whether Billie s termination was voluntary or involuntary is irrelevant to our decision in this e. Accordingly, we deny the Motion to reopen the record for the purpose of nitting evidence concerning the nature of Billie H.'s termination.

[5]We note that the standards of productivity and performance are mandatory jects of bargaining regardless of whether the affected employee is probationary past the probationary period. See City of Boston, 8 MLC 1077, 1080-81 (1981). is possible, of course, that an employer might not have an obligation to bargain ut the terms and conditions of employment applicable to probationary employees ner because the union had waived the right to bargain some term or because the ties' recognition agreement excluded probationary employees. Evidence of neither cumstance is present in this case. Therefore, we conclude that whether the em- yee was probationary is irrelevant to our consideration of the case.

[6]We note that the Commonwealth admits that the forms were instituted unilat- erally.

Copyright © 1987 by New England Legal Publishers

The hearing officer found that there was no material change in working con-ns because the worksheets merely measured the same performance criteria that dy had previously employed. The Union disputes this finding, arguing that the heets are a newly established condition of employment. We disagree.

An employer need not bargain before implementing a new system which mea- the same criteria as before, because such changes do not materially or substan-ly change conditions of employment. Town of Wayland, 5 MLC at 1741. Thus, re-ing an informal unwritten evaluation program based on general performance cri- with a written evaluation form measuring the same standards is permissible out bargaining. Town of Arlington, 4 MLC 1614, 1618 (H.O. 1977), aff'd. 4 MLC (1977). An employer does not violate the Law by instituting a more dependable od of measurement. City of Worcester, 4 MLC 1697, 1698 (1978). In contrast, menting a written evaluation form measuring sixty-two specific performance cri- to replace a system based on six criteria constituted a material change in ing conditions. Town of Burlington, 7 MLC 1273, 1274 (1980).

The worksheets promulgated in this case are merely a written evaluation form uring previously established standards. The implementation of these worksheets not change the existing standards of performance. From July through December , Kennedy regularly informed Billie that she would have to improve the quality, tity and timeliness of her work. The worksheets continued to measure these criteria; and merely formalized the mechanism by which the Employer collected same data as had been previously measured. This formalization of an accurate anism for measuring the quantity, quality and timeliness of an employee's work uct does not materially or substantially change conditions of employment; and , does not give rise to a bargaining obligation. Town of Wayland, 5 MLC at . Because we find no unilateral change we need not reach the issue of whether promulgation of the worksheets for one member of the unit constitutes a change erms and conditions of employment for the entire bargaining unit. The complaint his matter is hereby dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

Copyright © 1987 by New England Legal Publishers