

CITY OF ATTLEBORO AND ATTLEBORO POLICE ASSOC., MUP-2446; CITY OF ATTLEBORO AND ATTLEBORO FIREFIGHTERS ASSOC., MUP-2467 (1/26/77).

- (50 Duty To Bargain)
 53.4 open meeting laws
 54.4 meetings and communications
 54.41 general rules
 (60 Prohibited Practices By Employer)
 67.7 refusal to meet or delay in meetings

Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner.

Appearances:

Frederick V. Casselman, Esq.	- For the Commission
John P. Lee, Esq.	- For the City of Attleboro
Keven M. Keating, Esq.	- For the Attleboro Police Association
James M. Cassidy, Esq.	- For the Attleboro Firefighters' Association

DECISION

Statement of the Case

On February 24, 1976 the Attleboro Police Association (the Police) filed a Complaint of Prohibited Practice with the State Labor Relations Commission (the Commission), alleging that a practice prohibited by Section 10(a) of G.L. c. 150E (the Law) had been committed by the City of Attleboro (the Public Employer) by refusing to negotiate with the Police unless all collective bargaining sessions were open to the public. After investigation, the Commission, on June 1, 1976, issues its own Complaint, alleging that the Public Employer had violated sections 10(a) (1) and (5) by its action.

On March 18, 1976, a Complaint of Prohibited Practice was filed with the Commission by the Attleboro Firefighters' Association (the Firefighters), alleging a similar violation by the Public Employer. After investigation, the Commission, on July 16, 1976, issued its own Complaint alleging that the Public Employer had violated sections 10(a) (1) and (5) of the Law.

The Public Employer filed answers to both complaints in a timely fashion, denying that its conduct constituted a prohibited practice. The Public Employer and the two employee organizations waived their rights to a formal hearing and stipulations of fact were submitted to the Commission with respect to the facts of each case. The Public Employer filed briefs in both cases and the Firefighters filed a brief in MUP-2467, which briefs have been carefully considered. The Police did not file a brief in MUP-2446. The cases have been consolidated for the purposes of decision.

Findings of Fact

1. The City of Attleboro is a municipal corporation situated in the County of Bristol, within the Commonwealth of Massachusetts, and is a Public Employer within the meaning of Section 1 of the Law.



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2. The Mayor of the City of Attleboro is the chief executive officer of the Public Employer within the meaning of Section 1 of the Law.
3. The Attleboro Police Association is an Employee Organization within the meaning of Section 1 of the Law and is the exclusive representative for purposes of collective bargaining with respect to wages, hours and working conditions for all permanent, provisional and reserve uniformed employees of the Police Department of the City of Attleboro.
4. The Attleboro Firefighters' Association is an Employee Organization within the meaning of Section 1 of the Law and is the exclusive representative for purposes of collective bargaining with respect to wages, hours and working conditions for the uniformed firefighters, excluding the Chief of the Department, employed by the City of Attleboro.

The Police Association Case

The last collective bargaining agreement between the Public Employer and the Police was effective July 1, 1974 to June 30, 1976. On December 1, 1975, the parties commenced negotiations in open session for the purpose of entering into a successor agreement. At that meeting, the Police insisted upon the establishment of ground rules for negotiations which would require, *inter alia*, that all negotiation sessions be held in closed session. On January 23, 1976, the Public Employer informed the Police that it would not agree to collective bargaining sessions which were closed to the public. It does not appear that the parties have met in negotiations since December 1, 1975.

The Firefighters Case

A collective bargaining agreement between the Public Employer and the Firefighters was effective to June 30, 1976. On August 27, 1975, the Firefighters, through its president, gave notice to the Public Employer of its desire to modify the contract. On November 11, 1975, the parties commenced negotiations in open session. The Firefighters presented its initial bargaining proposals at this meeting. At the close of the meeting it was agreed that the Public Employer would schedule the next session.

On January 19, 1976, the Firefighters sent the Public Employer a letter requesting that future negotiations be closed to members of the public. The second bargaining session was scheduled for February 5, 1976, but after the Firefighters confirmed that it still wanted negotiations in closed session, the Public Employer cancelled the meeting. The Firefighters' president met with the Mayor of Attleboro the following day to explain the Firefighters' position concerning open sessions. The Firefighters received no response from the Mayor.

On March 28, 1976, the Firefighters petitioned the Board of Conciliation and Arbitration to conduct mediation and fact finding. The parties met with a state mediator on April 30, 1976. No further negotiations between the parties have been held.



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Opinion

A Public Employer and an employee organization may agree to meet for the purpose of collective bargaining in sessions that are open to members of the public. Town of Marion, 2 MLC 1256, 1259 (1975); Town of Norton, 3 MLC 1140, 1142 (1976). This Commission has repeatedly held, however, that a Public Employer commits a prohibited practice by insisting upon open collective bargaining sessions once the employee organization has objected to the presence of the public. Taunton Municipal Light Plant Commission, MUP-192 (1971); City of Salem, MUP-309 (1972); Town of Marion, *supra*; Town of Norton, *supra*; Town of Winchendon, MUP-2527, MLC (1976). See also, Town of Acushnet, 3 MLC 1225 (1976) (Hearing Officer's Opinion). This rule is not disturbed by the amendments¹ to General Laws, Chapter 39, Section 23B (the open meeting law), Town of Norton, *supra*, at 1143. Nor do we think our rule results in an unconstitutional delegation of legislative authority, Town of Winchendon, *supra*.

In the Police Association case (MUP-2446), the employee organization's proposed ground rule was sufficient to constitute an objection to collective bargaining in open session. We conclude, that, the Public Employer's continued refusal to negotiate unless the meetings are open to the public is a *per se* violation of Section 10 (a) (5) of the Law. Town of Marion, *supra*, at 1258.

The record in the Firefighters' Association case (MUP-2467) indicates that the employee organization met with the Public Employer and presented its initial bargaining proposals in open session.

Only after the initial meeting did the Firefighters request that future sessions be closed to the public. We cannot conclude, however, that by negotiating in open session once, the Firefighters waived its right to later object to open bargaining sessions.

Nothing in the record suggests that the Firefighters agreed to any ground rule governing the conduct of negotiations relating to the presence of the public during bargaining meetings. Although it was not required to do so, the employee organization decided, in the spirit of the open meeting law, to allow the public to become informed concerning its initial proposals. But, in the absence of a binding ground rule providing for open sessions, this decision did not prevent the employee organization from later insisting that negotiations be closed.

The employee organization may decide that public disclosure of its initial collective bargaining proposals does not impair its bargaining position. But, as negotiations progress into the compromise stage, the employee organization's concern over the inhibiting affects of open sessions becomes more acute. As we noted in Marion and Norton:

Successful negotiations are based on compromise. They require that each side be free to test out a variety of proposals on each other; withdrawing

¹ Chapter 303 of the Acts of 1975, An Act Further Regulating Meetings of Governmental Bodies.



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some, giving up others in order to gain a better advantage in a different area. The presence of third parties necessarily inhibits such compromises and reduces the flexibility management and unions must have to reach agreement. Positions taken in public tend to harden and battle lines are drawn in spite of the mutual desire of the parties to reach a middle ground. Town of Marion, supra, at 1258 n. 3; Town of Norton, supra, at 1142 n. 3.²

To ensure effective collective bargaining, a party must be given the flexibility to choose closed sessions when it determines the presence of the public impairs its ability to make compromises, unless it has expressly waived that right.³ Therefore, we conclude that the Public Employers' continued insistence on negotiations in open session over the objections of the Firefighters violates 10(a) (5) of the Law.

We further conclude that in both the police Association case and the Firefighters case, the Public Employer, by its action, has interfered with and restrained employees in their exercise of rights guaranteed under G.L. c. 150E in violation of Section 10(a)(1) thereof.

²The Public Employer argues in its briefs that the Commission's conclusions concerning the inhibiting affects of public presence on negotiations is unrealistic and unsupported by fact. It points out that such conclusions are totally inconsistent with the results of open session bargaining conducted in the past between the Public Employer and fourteen employee organization.

We do not agree. Our conclusions appear to be the view of a substantial majority of the commentators. L. B. Werle, The Law and Practice of Public Employment Labor Relations, Section 15.3, at 266-7. Judicial decisions in other jurisdictions have also adopted this view in construing similar open meeting law statutes. See, Basset v. Braddock, 262 So. 2d. 425, 526 (Fla. 1972); Talbot v. Concord Union School District, 114 N.H. 532, 323 A. 2d. 912, 913-14. Finally, the New York Public Employment Relations Board conducted an extensive study of this issue and recommended that legislation regarding public disclosure of negotiations would be undesirable. "Survey on Disclosure During Public Sector Negotiations", GERR No. 463, D-2 to D-6 (1972) (cited in Smith, Edwards and Clark, Labor Relations Law in the Public Sector, Bobbs-Merrill Co., Inc. (1974). Town of Marion, supra, at 1259.

By allowing the parties to agree to open bargaining, if they choose to, we recognize that, in some situations, open bargaining can be effective. But the inhibiting affects of open bargaining are potentially so serious that we are compelled to uphold our rule as announced in Marion and Norton.

³The Public Employer's briefs indicate that negotiations between the parties in both cases have been conducted in open session in the past. Since this fact was not part of the record and, therefore, no findings were made concerning the past bargaining history, we do not decide now what affect evidence of past open bargaining would have on our rule. By expressly allowing agreements between the parties to bargain in open session, our rule allows the parties to try, if they wish, open bargaining and decide if such bargaining suits their particular needs.



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Order

On the basis of the foregoing finding of fact and conclusions of law, it is hereby ORDERED:

1. That the City of Attleboro and its Mayor shall cease and desist from refusing to bargain collectively in good faith with both the Attleboro Police Association and the Attleboro Firefighters' Association by ceasing to insist upon, or imposing as a precondition to collective bargaining that the bargaining sessions be open to the public and the press.
2. That the City of Attleboro and its Mayor shall immediately post, in plain sight, and leave posted for a period of thirty (30) days from the date of posting, in a conspicuous place in its police station and fire stations where its police and firefighters usually congregate or where notices to them are usually posted, a copy of the Notice appended hereto.
3. That the City of Attleboro and its Mayor shall notify the Massachusetts Labor Relations Commission in writing, within ten (10) days of the service of this decision, of the steps taken to comply therewith.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

MASSACHUSETTS LABOR RELATIONS COMMISSION

We will not insist that all collective bargaining sessions with either the police officers or the firefighters of the City, represented by either the Attleboro Police Association or the Attleboro Firefighters Association, be conducted in open sessions.

We will not insist that any collective bargaining sessions with either the police officers or the firefighters of the City, represented by either the Attleboro Police Association or the Attleboro Firefighters Association, be conducted in open session.

Mayor
City of Attleboro

