MEDFORD SCHOOL COMMITTEE AND MEDFORD TEACHERS ASSOC., MUP-2349 (1/26/77)

(50 Duty to Bargain)
52.32 reopening clause
53.6 parity provisions
(60 Prohibited Practices By Employer)
67.62 negotiating parity provisions
(90 Commission Practice and Procedure)
92.51 appeals to full commission

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

Appearances:

Everett J. Lahey	- Representing the Medford Teachers Association
George K. Kurker, Esq.	- Counsel for the Medford School Committee
Luke Kramer	- Representing the Intervenor, Local 380, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

On February 12, 1976, Commission Hearing Officer Kathryn M. Noonan issued a Decision and Order pursuant to the expedited hearing procedure of General Laws, Chapter 150E, Section 11 finding that the Medford School Committee's offer to execute wage-parity agreements with employees in other bargaining units based on the outcome of negotiations with the Medford Teachers Association violated the Law. The Medford School Committee (School Committee) filed a timely request for review, and on March 18, 1976, the Commission allowed Local 380, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters), the bargaining representatives of the Medford school administrators unit (Administrators), to intervene for the purpose of the appeal.

The Hearing Officer's statement of the case was duly filed with the Commission and served to the parties pursuant to the provisions of Section 11 of the Law. The Association notified the Commission that it accepted both the statement of the case and the findings of the Hearing Officer. The School Committee noted several exceptions and offered two additional exhibits for consideration by the Commission. The Intervenor also submitted its exceptions to the Hearing Officer's statement. Upon the record in this case,[1] and the supplemental statements of the parties, we render the following Opinion and Order.

[1] Section 11 of the Law, and Artical III, sec. 28 of the Commission's Rules permit the Commission, on review of the decision of a hearing officer to take additional evidence. Where there is no error in the rulings of the hearing officer, and no persuasive reason is advanced why the evidence was not introduced at the original hearing, our review will be limited to the record. We have, therefore, not considered the additional exhibits offered by the School Committee.

Medford School Committee and Medford Teachers Assoc., 3 MLC 1413

Opinion

This case presents the issue of whether an employer commits a prohibited practice when it agrees with one bargaining representative that it will grant to it any more favorable benefits negotiated with other units in the future. The Hearing Officer concluded that such "parity" agreements violate Sections 10 (a) (1) and (5) of the Law. We agree.

The parity issue in this case was raised in four different contexts, three of which we find to be unlawful.

In the first circumstance, the School Committee entered into an agreement with a unit of school nurses guaranteeing them a percent-for-percent adjustment in wages based upon whatever salary increase in excess of 4 1/2% the teachers received as a result of the ongoing negotiations between the School Committee and the Association.

In the second situation, the School Committee agreed with the Teamsters that the administrators would receive a fixed ratio of the salary received by a teacher at the Bachelor's maximum. The Bachelor's maximum remained to be negotiated by the School Committee and the Association.

The third circumstance involved offers made by the School Committee to cafeteria employees guaranteeing them a percent-for-percent wage increase similar to that accepted by the school nurses. This offer was rejected by the cafeteria employees.

The fourth situation involved a subsequent offer by the School Committee to the cafeteria employees to reopen negotiations in the event that any bargaining unit in the City received a wage increase in excess of 4 1/2%.

The Hearing Officer concluded that in each of the first three instances,[2] the School Committee had failed to bargain in good faith because such agreements would require a unit to become the bargaining agent for other employees without its consent. Hearing Officer's Decision at 9. 3 MLC at ____. Such agreements must be considered as unlawful, as they impair the ability of the exclusive representative to fulfill its obligations of bargaining on behalf of the employees it represents. In the instant case, the employer has bound itself by contract to to grant to employees other than teachers, benefits yet to be negotiated by the teachers. These contingent contract clauses force the teachers to bargain in an expanded unit, and increase the impact of every cost element in their bargaining proposal. We do not believe that such a situation allows the teachers the unimpaired exercise of their right to bargain collectively as contemplated by Sections 5, 6, and 7 of the Law.

[2] In finding unlawful the provision of the administrator's contract, which set salaries at a fixed ratio of the yet to be negotiated teacher salary, the Hearing Officer correctly reasoned that this provision does not differ substantially from that offered to the nurses. Application of this clause results in wage increase contingent on the salaries negotiated by the teachers. If one such provision is unlawful, it follows that the other must violate the Law.

Other jurisdictions which have reached the parity issue have come to similar conclusions. The New York Public Employee Relations Board ruled that "...an agreement of this type [parity] between the City and one employee organization would improperly inhibit negotiations between the City and another employee organization representing employees in another unit." City of Albany and Albany Permanent Professional Firefighter Association, Local 2007, AFL-CIO, 7 PERB 3142, 3146 (1974). See also, City of New York and Patrolmen's Benevolent Association of New York, Inc., 9 PERB 4523 (1976); City of New London, Ct. Bd. of Labor Rel. Case No. MPP-2268, 505 GERR F-1 (5/28/73). The argument of the School Committee that the size of the increased burden is small, is of no avail. That a practice found to be unlawful only "hurts a little" cannot be a defense. To accept this defense would place the Commission in a position of determining what unlawful acts it will choose to remedy, rather than its appropriate role of determining what actions are unlawful.

Our decision in this matter should not be read as indicating that wage "comparability" is not an acceptable consideration in formulating a bargaining position. The law does not require an employer to bargain with blinders on, oblivious to the impact that one wage settlement may have on other negotiations. We simply hold that an employer may not impose such a result on one employee organization through a contract with another.

The same objectives of "comparability" and fairness can be accomplished by lawful means. The Hearing Officer concluded that an agreement to repoen the cafeteria contract if any other union negotiated a more favorable settlement was lawful. We believe that this finding is in accord with our Law, and precedents from other jurisdictions. In City of Albany, supra., the New York PERB succinctly expressed what we believe to be the appropriate standard:

> To the extent that it is a demand for a wage reopener and for subsequent negotiations, it is a mandatory subject of bargaining. However, if the demand is not to reopen the agreement for negotiations but to reopen it for the mechanical change of instituting the dollar value of benefits obtained later by the police in their negotiations, it is not negotiable.

City of Albany, supra at 3146.

Unlike the "parity" clauses discussed above, the reopener provision does not create a predetermined result. Such provisions encourage early settlement by providing that if more favorable contracts are reached, negotiations may be reopened. Yet, the parties have not agreed in advance to the results of those negotiations. Although in many instances, the reopened negotiations may be perfunctory, the reopener at least permits each contract to be negotiated on its own merits, and preserves the posibility of breaking with historical wage relationships between municipal employee groups.

Order

Wherefore, on the basis of the foregoing, the Decision of the Hearing Officer in the above-captioned matter is hereby AFFIRMED and it is hereby ORDERED, pursuant to Chapter 150E, Section 11 of the General Laws, that the Medford School Committee shall:

Medford School Committee and Medford Teachers Assoc., 3 MLC 1413

1. Cease and eesist from:

   (a) Offering a protective parity provision to units of employees which would increase benefits to said units contingent upon the collective bargaining agreement negotiated by other unit[s] of employees.

   (b) Complying with or giving effect to the parity provisions contained in the agreements negotiated with the nurses and administrators units.

   (c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their protected rights under the Law.

   (d) In any like or related manner refusing to participate in good faith in collective bargaining with the exclusive representative of its employees.

2. Take the following affirmative action which it is found will effectuate the policies of the Law:

   (a) Post immediately in conspicuous places at all of its school buildings where its employee usually congregate or where notices to them are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice To Employees.

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

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

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

WE WILL not offer protective parity provisions to units of employees during collective bargaining negotiations.

WE WILL not comply with or give effect to the percent-for-percent provisions contained in the agreements negotiated with the nurses and administrators.

WE WILL not in any like manner bargiain in bad faith with the exclusive representatives of our employees or otherwise interfere with, restrain or coerce employees in rights guaranteed by law.

MEDFORD SCHOOL COMMITTEE

BY: _____
Chairman
Medford School Committee