

CITY OF SPRINGFIELD AND LOCAL 648, IAFF, MUP-2553 (7/18/77)

- (50 Duty To Bargain)
53.2 conflicting ordinances and by-laws
54.520 residency requirements
(60 Prohibited Practice By Employer)
67.2 failure to support contract
67.8 unilateral change by employer

Hearing Officer: Stuart A. Kaufman, Esq.

Appearances:

- John J. Brogan, Jr., Esq. - Representing the City of Springfield
James B. Krumsiek, Esq. - Representing Local 648, International Association of Firefighters

HEARING OFFICER'S DECISION

Statement of the Case

On July 28, 1976, Local 648, International Association of Firefighters (the Association) filed a Complaint of Prohibited Practice with the Labor Relations Commission (the Commission) alleging that the City of Springfield (the City) had engaged in prohibited practices within the meaning of Sections 10(a)(1), (3) and (5) of General Laws Chapter 150E (the Law). Pursuant to its authority under Section 11 of the Law, the Commission conducted an investigation in the above-entitled matter and issued its own Complaint of Prohibited Practice on March 16, 1977¹ alleging violations by the City of Sections 10(a)(5) and (1) of the Law.²

An Expedited Hearing was held at the offices of the Commission in Boston on May 4, 1977 before Stuart A. Kaufman, Esq., a duly designated Commission Hearing Officer. All parties were afforded full and fair opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to submit statements of position. On the basis of the record, including the stipulation of the parties, I hereby make the following findings:

Jurisdictional Findings

The City is a municipal corporation situated in the Commonwealth of Massachusetts and is a public employer within the meaning of Section 1 of the Law.

¹The Commission had postponed the issuance of a Complaint during its consideration of similar residency cases involving the Boston School Committee. See Case Nos. MUP-2503, MUP-2528 and MUP-2541, filed in May and June, 1976.

²The City, by way of a late-filed Answer, admits each of the factual allegations contained in the Complaint but denies the conclusions of law.

City of Springfield and Local 648, IAFF, 4 MLC 1134

The Mayor of the City is the chief executive officer of the City within the meaning of Section 1 of the Law.

The Springfield City Council is a Legislative Body within the meaning of Section 1 of the Law.

The Association is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative for the purposes of collective bargaining of certain employees of the City, including all uniformed members of the Fire Department of the City below the rank of district chief.

Findings of Fact

In February, 1974, the City and Association executed a collective bargaining agreement which was due to expire on June 30, 1976. Because of the automatic renewal conditions in the agreement, the agreement was renewed for one year to the June 30, 1976 termination date. Article 10 of the agreement provides as follows:

Residency Requirements

Any Employee having more than five (5) years of service with the Department may reside within the Commonwealth of Massachusetts but outside of the City of Springfield; provided, however, that no such Employee may reside more than ten (10) miles from the City limits of said Springfield. To the extent permitted by law, the Union shall encourage its members to reside in Springfield.

On June 16, 1976 the Mayor filed an ordinance with the Clerk of the City Council significantly amending the residency ordinances for all City employees including employees represented by the Association. During the preceding weeks the media had carried reports of a proposed residency ordinance, although the June 16 filing by the Mayor was his first official act in this regard.

The ordinance was inserted as part of the agenda for the June 21, 1976 meeting of the City Council. Notice of the filing of the ordinance was published in legal notices and was distributed to the public on Thursday, June 17, 1976.

Upon receipt of the agenda, the Association President notified the Association Counsel. Thereafter, the Counsel prepared a letter addressed to the President of the City Council. The letter was delivered to the Council President's office during the afternoon of June 21 and copies were simultaneously delivered to the offices of the Mayor and Associate City Solicitor. The thrust of the letter was that the proposed ordinance would conflict with the existing agreement between the Association and City. The letter also indicated that the Association was prepared to negotiate with the City over residency and requested the City Council to defer action on the ordinance until the Association and the City had an opportunity to negotiate over residency.

The ordinance was officially introduced before the City Council at a well-attended public session on Monday, June 21, 1976. The Council immediately voted

City of Springfield and Local 648, IAFF, 4 MLC 1134

to suspend internal hearing rules and went into recess to allow the Mayor to address the Council. The Mayor spoke in favor of his recently-filed ordinance. The Associate City Solicitor also appeared and answered certain legal questions posed by the Council.³

The Council returned from its recess shortly thereafter and commenced its deliberations on the ordinance. After consideration of several comparatively minor amendments, the Council gave initial approval to an amended ordinance and referred the matter to the Council's Committee on Internal Affairs for proper drafting.

The Clerk inserted a copy of the proposed ordinance in the legal notices for the news media on June 28 and scheduled final Council Consideration of the matter for the next scheduled Council meeting on July 19, 1976.

The ordinance was passed to be ordained by the Council on July 19, 1976 and was approved by the Mayor on the following day. The ordinance purportedly took effect 20 days later on August 10, 1977.⁴

The text of the ordinance is as follows:

Section 2-17. Subsequent to May 28, 1976, all personnel employed initially, reappointed by the City of Springfield, and/or accepting promotion to a position exceeding that compensation provided for at Step 4 of Range 6 Schedule D of the municipal pay plan, and any amendments thereto, and each person appointed by the Mayor, except those persons appointed by the Mayor under the provisions of Section 2-20, Paragraph 2, as a term and condition of said employment shall be or within the two years next following the date of his or her acceptance of employment, promotion or reappointment become a resident of the City of Springfield, and each such employee shall continue to maintain residency in the City of Springfield during his or her term of employment; provided further that if any such employee shall during his or her term of employment remove from the City of Springfield, such employee shall be deemed to have become disqualified from holding employment with the City of Springfield as of the date of cessation of residency, said employee's name shall be stricken from the payroll, and no further payments of salary or other compensation shall be made thereto. Those employees who are non-tenured employees in their particular grade shall be treated the same as those employees who are tenured prior to May 28, 1976.

Section 2-18. Each employee affected by Section 2-17 shall upon acceptance of employment, promotion and/or reappointment, or within two years next following thereupon, in writing and under the penalties of perjury,

³There may have been one or two other speakers who addressed the Council during the recess, although the record is not clear on this point.

⁴The Complaint was filed by the Association subsequent to the Mayor's approval but prior to the effective date of the ordinance.

City of Springfield and Local 648, IAFF, 4 MLC 1134

certify to the Personnel Director that he or she is a resident of the City of Springfield. If upon the expiration of the two years next following acceptance of employment, promotion and/or re-appointment and such employee shall not have so certified to the Personnel Director that he or she is a resident of the City of Springfield; said employee shall be deemed disqualified from holding employment with said City, and the Personnel Director shall forthwith so notify the Mayor, the Auditor shall strike from the payroll the name of any such employee and shall cause no further payments of salary or other compensation to be made thereto. No person deemed disqualified hereunder shall be re-employed or reappointed for a period of one year next after the date he or she becomes disqualified unless he or she shall before the date of employment, promotion and/or reappointment become a resident of the City of Springfield.

Section 2-19. Applicants at the time of filing an application for employment by the City of Springfield, shall not as a condition of filing said application be required to be a resident of the City of Springfield, provided further however, that, if said applicant is subsequently employed, said applicant-employee shall as a term and condition of employment within the two years next following the date of acceptance of employment become a resident of the City of Springfield, and each such employee shall continue to maintain residency in the City of Springfield during his or her term of employment.

Section 2-20. All persons appointed to membership on boards and commissions of the City of Springfield shall be residents of the City of Springfield during the terms for which they are appointed.

This section shall not apply to persons appointed to advisory committees or to committees established under Federal or State Grant-in-Aid programs except where otherwise specified.

Section 2-21. All personnel currently employed and maintaining residency within the City of Springfield on the date of the adoption of this ordinance shall continue to maintain residency in said City; provided further that if any such employee shall during his or her term of employment remove from the City of Springfield such employee shall be deemed to have become disqualified from holding employment with the City of Springfield as of the date of cessation of residency, and said employee's name shall be stricken from the payroll, and no further payments of salary or other compensation shall be made thereto.

Section 2-22. All employees residing without the City of Springfield on the date of adoption of this ordinance shall within sixty (60) days thereafter adoption certify to the Personnel Director under the penalties of perjury the employee's residency on the date of passage of said ordinance, and shall thereafter certify annually as to their residency.

Subsequent to May 28, 1976, an employee residing without the City, regardless of incidence of title, shall as a term and condition of employment upon voluntarily relocating his or her residency as certified above, remove

City of Springfield and Local 648, IAFF, 4 MLC 1134

to the City of Springfield, and thereupon certify to the Personnel Director under penalties of perjury that he or she has become a resident of the City.

Section 2-23. This Ordinance shall not apply to such municipal employees of the Water Department as are engaged and rendering official services at the following installations and/or locations: Broden Brook Reservoir, Massachusetts; West Parish Filers, Westfield, Massachusetts; Provin Mountain Reservoir, Agawam, Massachusetts and Ludlow Reservoir, Ludlow, Massachusetts.

Section 2-24. The provisions of this ordinance are severable, and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 2-25. In the event that any collective bargaining contract is executed subsequent to the date of adoption of this ordinance, and such collective bargaining contract permits any of its members to reside outside of the City, then this entire ordinance shall be null and void.

In accordance with the terms of the ordinance, each non-resident member of the unit represented by the Association was required to sign a statement by October 10, 1976 indicating, under penalties of perjury, his or her residence and indicating that he or she had read and understood the conditions of the new residency ordinance. The signed statements were accompanied by individual letters of protest. To date, no member of the unit represented by the Association has been discharged for failure to comply with the terms of the residency ordinance.

Opinion

With the enactment of Section 7 of the Law in 1973, the General Court eliminated a major barrier to the implementation of collective bargaining agreements. Prior law provided that conflicts between municipal personnel ordinances and negotiated agreements would be resolved in favor of the ordinance; Section 7 of the Law prescribes a contrary result:

If a collective bargaining agreement reached by an employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to Section 6 of this chapter and any municipal personnel ordinance, by-law, rule or regulation... the terms of the collective bargaining agreement shall prevail.

While conceptually delegating a legislative function to non-legislative body members, the language reflects the General Court's clear intent to prevent the frustration of negotiated agreements by the presence of conflicting and often antiquated personnel ordinances.

Applying the principles and language of Section 7 to the text of the residency ordinance passed by the City in 1976, I find that Chapter 2, Sections -19, 2-21 and 2-22 of the Revised Ordinances of the City of Springfield, 1963,

City of Springfield and Local 648, IAFF, 4 MLC 1134

ended, are in conflict with Article 10 of the collective bargaining agreement between the City and Association and are therefore of no force or effect applied to employees represented by the Association.

Article 10 residency provision clearly permits employees with more than years of service in the Fire Department three options:

- (1) to reside within the City;
- (2) to reside outside of the City but within ten miles thereof, or
- (3) to reside within a ten-mile limit of the City and to relocate freely in any location within ten miles of the City limits.

An examination of each of the aforementioned ordinance sections reveals a conflict with the options embodied in Article 10 of the collective bargaining agreement between the City and Association:

(a) Section 2-19 requires the maintenance of residency within the City during the entire term of employment irrespective of whether an employee has resided for five years and conflicts with options (2) and (3).

(b) Section 2-21 prohibits any employee presently residing within the City from moving outside of the City and requires continued residence in the City as a condition of continued employment. This section conflicts with options (2) and (3).

(c) Section 2-22 provides that any employee residing outside of the City (as of the effective date) who chooses to change his or her residence must move to the City as a condition of continued employment. This Section also conflicts with Options (2) and (3).

Application of the language of Section 7 of the Law requires that the conflict between the ordinance and contract arise out of a matter within the scope of negotiations pursuant to Section 6 of the Law. In this regard, I find that the aforementioned ordinances establish conditions of continued employment and therefore within the Section 6 scope of negotiations.⁵ This finding is consistent, moreover, with the Commission's recent determinations in Boston School Committee, Case Nos. MUP-2503, MUP-2528, and MUP-2541, 3 MLC 1603 (1977).

Since the provisions of Chapter 2, Sections 2-19, 2-21 and 2-22 of the Residency Ordinances of the City of Springfield, 1963, as amended were in conflict with the collective bargaining agreement between the City and Association and superseded by said agreement, they never took effect.

There are, however, provisions in the aforementioned residency ordinances which do not conflict with the existing collective bargaining agreement but which instead supplement the agreement. These provisions are contained in Sections 2-17 of the residency ordinances and require residency within the City as

⁵ (see page 1140)

City of Springfield and Local 648, IAFF, 4 MLC 1134

condition of promotion or reappointment. Inasmuch as the Commission has already concluded in Boston School Committee, supra, that residency as a condition of promotion from one job to another within the same unit or in a different unit pursuant to an established career ladder is a mandatory subject of bargaining, I am constrained to conclude that the implementation by the City of Section 2-17 constitutes a unilateral change in a term and condition of employment. See also Town of Wayland, MUP-2294, 3 MLC ___, (1977), Lynn School Committee, MUP-2585, 3 MLC ___ (7/5/77).

I am not persuaded by the School Committee's contention that the Association waived its right to negotiate over the issue of residency. The record indicates a timely protest by the Association when it received notice of the proposed ordinance changes prior to the June 21, 1976 City Council Meeting. See Bonded Draying Service, 220 NLRB No. 136, 90 LRRM 1556 (1975).

Alternatively, even if I were to discredit the Association's position that it delivered a copy of the protest to the Mayor and Associate City Solicitor, subsequent events negate any inference leading to waiver. I find that the filing of charges with the Commission on July 28, 1976 -- one week after the Mayor had signed the residency ordinance into Law -- constituted sufficient protest.

Indeed, it would have been futile for the Association to have demanded negotiation over the terms of residency changes which the Mayor had previously supported and signed. City of Everett, MUP-2126, 2 MLC 1471, 1476 (1976). It is clear from the record that at no time prior to the approval of the residency ordinance changes did the City offer to negotiate over such changes with the Association.

Additionally I find that the conduct of the City constitutes separate violations of Sections 10(a)(1) and (5) of the Law. A chronological review of the conduct of the Mayor reveals the following:

- (1) The signing of a collective bargaining agreement specifying the limits of residency requirements for members of the Fire Department;

⁵Section 6 of the Law establishes the following scope of negotiations:

The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to a proposal or make a concession.

City of Springfield and Local 648, IAFF, 4 MLC 1134

- (2) The filing of significant changes to the residency ordinances in conflict with or in addition to the existing residency limitations for members of the Fire Department represented by the Association without negotiating with the Association;
- (3) the support of such changes before the City Council;
- (4) the signing of such changes into law, and
- (5) implementing such changes and requiring compliance.

These actions, taken by the signatory to an agreement, are destructive to the purposes of collective bargaining. To legitimize these actions would leave parties to any collective bargaining agreement in uncertainty as to the duration of any of the terms of the agreement and would undermine the trust necessary to administer an agreement. Such conduct would be no different if an employee organization, rather than an employer, sought to return through the legislative process conditions it had previously agreed to with the employer.

Finally, the actions by the Mayor in proposing, supporting, signing and implementing unilateral changes in terms and conditions of employment are violative of Section 10(a)(5) of the Law. The conclusion that most of the ordinance amendments could not have taken effect because of the operation of Section 7 of the Law in no way diminishes the fact that each of the residency ordinance amendments constitutes a matter within the mandatory scope of negotiations which must be bargained for in advance of any change. See Boston Labor Committee, supra.⁶

Conclusion

On the basis of the foregoing, I conclude that the City has engaged in prohibited practices within the meaning of Section 10(a)(5) and (1) of the Law. Furthermore, I conclude that Chapter 2, Sections 2-19, 2-21, and 2-22 of the Revised Ordinances of the City of Springfield, 1963, as amended, are in conflict with Article 10 of the collective bargaining agreement between the City and Association and are therefore of no force or effect as applied to employees represented by the Association.

ORDER

Wherefore, on the basis of the foregoing, it is ORDERED that the City of Springfield shall:

1. Cease and desist from:

⁶The Employer ably refutes an early Association contention that the Employer had violated Section 10(a)(3) of the Law. However, since the Commission chose not to issue a Complaint regarding Section 10(a)(3), the issue never properly before me.

City of Springfield and Local 648, IAFF, 4 MLC 1134

- (a) Interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Law.
 - (b) Failing to and refusing to bargain in good faith with Local 648, International Association of Firefighters.
 - (c) Imposing, implementing or otherwise giving effect to any provision of Chapter 2, Sections 2-17 to 2-25, inclusive of the Revised Ordinances of the City of Springfield, 1963, as amended, upon any member of the unit represented by Local 648, International Association of Firefighters.
2. Take the following affirmative steps which will effectuate the purposes and policies of the Law;
- (a) Introduce and support before the Springfield City Council the passage of the following amendment to Chapter 2:

Section 2-26.
Nothing in this ordinance shall be construed to apply in any way to any member of the fire department.
 - (b) Upon request, immediately negotiate with the Association over the subject of amendments to residency ordinances affecting members of the Association.
 - (c) Post in a conspicuous place where employees of the Springfield Fire Department regularly congregate or where notices are usually posted, a copy of the accompanying notice and allow the same to remain posted for a period of thirty (30) days.
 - (d) Notify the Commission in writing within ten (10) days of service of this Decision of steps taken to comply with this Order.

Stuart A. Kaufman, Esq.
Hearing Officer