ERSITY OF MASSACHUSETTS, MEDICAL CENTER AND LOCAL 372, IBPO, SUP-2399 (5/1/81). sion on Appeal of Hearing Officer's Decision.

(20 Jurisdiction)
28. Relationship Between C.150E and Other Statutes Not Enforced by Commission
(50 Duty to Bargain)
54.572 dues check off
(60 Prohibited Practices by Employer)
64.61 refusal to check off
(90 Commission Practice & Procedure)
92.51 appeals to full commission

issioners participating:

Phillips Axten, Chairman
Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

arances:

Ralph F. Abbott, Jr., Esq. - Representing the University of Massachusetts, Medical Center

Peter F. Keenan, Jr., Esq. - Representing Local 372, International Brotherhood of Police Officers

DECISION ON APPEAL
OF HEARING OFFICER'S DECISION

On November 7, 1980 Hearing Officer James M. Litton issued his decision in the e-captioned matter.[1] He concluded that, by refusing to deduct union dues pur- t to G.L. c.180, Section 17A,[2] the University of Massachusetts Medical Center

[1]The full text of the hearing officer's decision is reported at 7 MLC 1503 . 1980).

[2]G.L. c.180, Section 17A provides:
§17A. Payroll deductions for union dues of employees of state, county or cipality.
Deductions on payroll schedules may be made from the salary of any state, ty or municipal employee of any amount which such employee may specify in writing ny state, county or municipal officer, or the head of the state, county or cipal department, board or commission, by whom or which he is employed, for the ent of union dues to an association of state, county or municipal employees, to the Massachusetts State Employees Association, dues to the Massachusetts es Association, or dues payable to any relief association of any municipal rtment. Any such authorization may be withdrawn by the employee by giving at t sixty days' notice in writing of such withdrawal to the state, county or cipal officer, or the head of the state, county or municipal department, board ommission, by whom or which he is then employed and by filing a copy thereof the treasurer of the association.
(footnote continued on following page)

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) had violated Sections 10(a)(2) and (1) of G.L. c.150E (the Law).[3] The filed a timely notice of appeal of the hearing officer's decision and a tary statement pursuant to Commission Rules and Regulations 402 CMR 13.13. , International Brotherhood of Police Officers (Union) filed a Motion for udgment.

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case was tried on stipulations which we summarize as follows. During ons for their first contract, the Union gave the Employer dues authorization ned by 100% of the bargaining unit. In response, the Employer stated that honor the forms, but only after a dues deduction provision was negotiated contract. The parties later tentatively agreed to such a provision, but the will not honor the authorizations until the agreement is executed. As ve, the hearing officer held that employees had the individual right under 0, Section 17A to insist that their dues be paid to the Union by means of and that the Employer's refusal to so deduct the dues interfered with the ation of the Union by impeding its flow of dues money. Such action, in ng officer's view, constituted a violation of Sections 10(a)(2) and (1) of 0E.

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otnote continued from previous page)
state treasurer, the common paymaster as defined in section one hundred y-three of chapter one hundred and seventy-five, or the treasurer of y or municipality by which such employee is employed, shall deduct from the such employee such amount of union dues, dues to the Massachusetts State Association, dues to the Massachusetts Nurses Association, or dues payable lief association of any municipal department as may be certified to him on ll, and transmit the sum so deducted to the treasurer of said association; that the state treasurer of the county or municipal treasurer, as the be, is satisfied by such evidence as he may require that the treasurer of ciation has given to said association a bond, in a form approved by the ner of revenue, for the faithful performance of his duties, in a sum and surety or sureties as are satisfactory to the state treasurer or county ipal treasurer; and provided, further, that whenever an association or union county or municipal employees is certified or obtains consent recognition provisions of chapter one hundred and fifty E, such deductions shall be dues only to the certified or recognized association or union. section shall be effective in any county, city or town which has accepted manner provided by section two of chapter seven hundred and forty of the ineteen hundred and fifty, or which accepts it in the following manner:--In by vote of the county commissioners; in a city having a Plan D or Plan E by majority vote of its city council; in any other city by vote of its ncil, approved by the mayor; and in a town by vote of the board of selectmen.

hearing officer dismissed allegations of violations of Sections 10(a)(5) relating to a change with regard to the carrying of weapons by bargaining ers. We do not address this issue since it is not before us on appeal.

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On appeal, the Employer argues that the hearing officer failed to make the sary threshold determination that deduction of union dues (hereafter called koff") is a mandatory subject of bargaining. Additionally, it contends that c.150E does not give either employees or unions a right to checkoff without iation. The Employer argues that by grounding his decision in rights under c.180, Section 17A, the hearing officer exceeded his (and the Commission's) diction. Since no c.150E rights were violated on the facts of this case, the ent proceeds, the hearing officer's finding of a violation was reversible . With certain qualifications mentioned below, we agree with the Employer's ion. The hearing officer's decision is reversed.

On the threshold issue, the Employer argues that checkoff is a mandatory sub- of bargaining. In support of such a proposition, it cites well-established relations practices and also the language of both G.L. c.150E, Section 6 and the ral Labor Relations Act as interpreted by the National Labor Relations Board). We hold that checkoff is a mandatory subject of bargaining, a conclusion ed by the NLRB in 1951. U.S. Gypsum Co., 94 NLRB 112, 27LRRM 1048. To hold vise would require the anomolous result that, in a municipality which had adopted G.L. c.180, Section 17A, an employer could legally refuse to bargain a union over a contractual checkoff provision. Cf. Medford School Committee, 1450, 1455 (1977), aff'd. 392 N.E.2d 541 (1979).

There is no contention in this case that the Employer has refused to bargain checkoff. In fact, such a provision exists in the parties' tentative agree- Therefore, the Employer has committed a prohibited practice only if it can d that, by violating rights under G.L. c.180, Section 17A, the Employer ted a per se violation of its duty not to interfere with a union's right to ster its own affairs.[4]

n essence, the hearing officer read into c.150E a union right to receive dues in the most efficient of any nu-ber of methods. We simply do not find right in the Law's guarantee under Section 10(a)(2) that unions may administer affairs free of employer interference. In response to our dissenting colleague e that the two cases he cites arose in jurisdictions where there is a checkoff ion in the governing labor relations statute.

n the Employer's view it is beyond the Commission's jurisdiction to look to ute outside c.150E, find a right under the outside statute, and then read ight into c.150E. Indeed, the potential ramifications of so defining rights are considerable, inasmuch as a wide variety of state and federal es exist, the violation of which may affect employee organizational efforts. gh we have traditionally discouraged multiplicitous litigation (as illustrated policy of deferring to arbitration), we do not necessarily subscribe to the er's very narrow view of the Commission's authority. However, we need not in this case whether we may in some situations look to statutes other than in order to define c.150E rights. We need only find, as we do, that a guaran-

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We discuss this question assuming for the sake of argument that the hearing r was correct in finding that G.L. c.180, Section 17A requires, rather than permits, employers to honor checkoff authorizations.

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of dues collection is not subsumed by a Union's freedom from employer
e under Section 10(a)(2) of the Law. Contrary to our colleague, we
hat such a right is not contained in employees' freedom under Section 2
to join and assist a union. Whatever rights the employees and/or Union
st upon checkoff arose under c.180, Section 17A, and not under c.150E.
remedy must flow from c.180, Section 17A and not from c.150E. Accor-
hold that there was no per se violation of c.150E in the Employer's
honor checkoff authorization cards prior to the conclusion of negotiations
ution of a contract.

cision of the hearing officer is reversed, and the Complaint against the
hereby dismissed.

ERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman
JOAN G. DOLAN, Commissioner

sioner Altman, dissenting. Contrary to my colleagues, I believe that
officer's decision should be affirmed insofar as he found a violation
10(a)(1) of the Law. I would reverse his holding that there was also
of Section 10(a)(2).

/iew the statutory rights involved in the present case should be protected
E. Specifically, Section 2 of the Law guarantees an employee the right
in, or assist an employee organization. A check-off device is clearly
in which an employee can exercise her or his Section 2 rights. Indeed,
› check off is statutorily recognized. G.L. c.180, Section 17A (see
above) states that, once an employee has authorized check-off, the State
shall deduct from the salary of such employees such amount of union dues...
: the sum so deducted to the treasurer of said association...."
dded). In other words, the legislature has provided a mechanism (ad-
:side Chapter 150E) by which an employee can effectively assist the
id existence of an employee organization. I believe that we must recognize
ovisions that exist outside of c.150E that directly impact upon
ghts that are also protected under c.150E. In my view, c.180, §17A is one
atutory provisions.

· 150E, Section 12 provides that the collection of an agency service fee
: upon the existence of a collective bargaining contract that contains
ie. The presence of this requirement in Section 12 and its absence in
ion 17A means, in my view, that an employee's right to formally designate
; not dependent on the existence of a collective bargaining contract.
:ure's silence in c.180 means that negotiation of a collective bargaining
; not required as a precondition to a union's receiving dues through

I hold that the Employer violated the employees' right under c.150E
ised to honor their c.180 checkoff authorizations. That does not mean

: there are no mandatorily bargainable issues related to checkoff. I would find latorily bargainable such issues as administrative details connected with the ıer and method of paying over checkoff funds to the union, the allocation of the :s of checkoff, and whatever other matters are raised in connection with ementation of checkoff. Indeed, such an approach has been adopted by the public oyee relations boards of Florida and the District of Columbia. Edison Community ege, Florida PERC, CCH Public Employee Bargaining Administrative Rulings, paragraph 154 (1978); AFSCME and Board of Education, District of Columbia Board of Labor ıtions, CCH Public Employee Bargaining, Administrative Rulings, paragraph 40,234 '7).

GARY D. ALTMAN, Commissioner