

SCHOOL COMMITTEE AND AVON EDUCATION ASSOCIATION, MUP-3864 (5/6/81).

(60 Prohibited Practices by Employer)  
 68.41 refusal to permit union to attend informal  
 pre-grievance meeting

Commissioners participating:

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

Parties:

James A. Toomey, Esq. - Counsel for the Avon School Committee  
 Bruce S. Burgess - Representing the Avon Education Association

DECISION

Statement of the Case

The Avon Education Association (Association) filed a charge with the Labor Relations Commission (Commission) on April 25, 1980, alleging that by refusing to allow the Association to be present at meetings conducted at the informal, pre-Step 1 level of the contractual grievance procedure, the Avon School Committee (School Committee) had engaged in practices prohibited by Sections 10(a)(5) and (1) of c.150E (the Law). Following investigation, the Commission issued its own finding of Prohibited Practice. The parties waived a hearing on the Complaint and instead submitted stipulations of fact on December 15, 1980. The parties submitted their collective bargaining agreement and briefs in support of their respective positions.

Based on the record as a whole, we make the following findings and issue the following opinion holding that by its conduct the School Committee has violated Sections 10(a)(5) and (1) of the Law.

Jurisdictional Findings  
 and Finding of Fact

We adopt the following facts as stipulated by the parties:

1. The Town of Avon is a Municipal Corporation in the County of Norfolk in the Commonwealth of Massachusetts and is a public employer within the meaning of Section 1 of the Law.
2. The School Committee is the representative of the Town of Avon for the purposes of dealing with the School Employees.
3. The Association is an employee organization within the meaning of Section 1 of the Law, and is the exclusive representative for the purpose of collective bargaining of certain employees of the School Committee.



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The Collective Bargaining Agreement in effect between the parties contains a provision, Article VI, entitled "Grievance Procedure."

Article VI provides in part that:

"...prior to entering Step 1 of the formal grievance procedure an informal meeting of the two or more persons directly involved in any potential grievance will have taken place."

The School Committee and/or its agents have refused to allow the Association, a party to the Collective Bargaining Agreement, to be present at meetings conducted at the informal, pre-Step 1 stage of the grievance procedure.

The above-captioned charge was filed as a result of the first instance where there has been an occasion for the Association to insist on the right to be at the informal conference, and where the School Committee has had occasion to question that asserted right.

#### Positions of the Parties

The Association contends that this dispute is governed by Section 5 of the law which provides that the exclusive representative may be present at grievance conferences. "Grievance," the Association contends, as it is used in Section 5, is a generic term applicable to all employee contract complaints, and is not limited to those which are expressly defined. Thus, argues the Association, the School Committee's refusal to allow the Association's attendance at informal meetings between an employee and the School Committee concerning a complaint of that employee is a violation of Section 5 of the law. The Association also asserts that it has not waived its right to attend grievance conferences, either through the collective bargaining agreement or by practice.

On the other hand, the School Committee believes that "grievance" within the meaning of Section 5 encompasses only those disputes which are expressly defined by the collective bargaining agreement. The agreement is clear, the School Committee argues, that the informal meeting is only to discuss "potential grievances." Only those grievances which are not yet grievances, the argument proceeds, and thus are not entitled to the protection of Section 5.

The School Committee also contends that the Association has contractually waived its right to be present at the informal meetings. In support of this contention, the School Committee points out that the agreement expressly provides for the Association's presence at the first step of the grievance procedure, but that no language expressly authorizes the Association's presence prior to the first step. Such a waiver is both lawful and binding, argues the School Committee.

#### Opinion

Section 5 of the Law provides in relevant part:

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive rep-



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resentation of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement and the exclusive representative.

Section 5 gives the exclusive representative the right to be present when bargaining unit employee is discussing a dispute over contractual terms and conditions of employment with the employer. We reject the School Committee's contention that the word "grievance" within the meaning of Section 5 is defined by the parties' collective bargaining agreement. Nothing in the statute persuades us that such a conclusion is compelled. We hold instead that the right contained in Section 5 to attend grievance discussions extends to informal meetings between employee and a supervisor held to discuss a possible resolution of a complaint before it is submitted to a formal contractual grievance procedure. Bethlehem Steel Company, 89 NLRB, 341 25 LRRM 1564 (1950).

The exclusive representative may, however, waive through provisions of the collective bargaining agreement its statutory right to attend such meetings. Bethlehem Steel Company, supra; Hughes Tool Co. v. NLRB, 147 F.2d 59, 15 LRRM 852 (1st Cir. 1945). The School Committee contends that the Association has so waived its right to attend. It points to language in Article VI stating that the informal meeting shall be "of the two or more persons directly involved in any potential grievance," and argues that this excludes everyone but the employee and the supervisor directly involved. The School Committee further notes that attendance by the exclusive representative is expressly mentioned for the first time at Step 1 of Article VI grievance procedure. The School Committee argues that these two provisions of Article VI demonstrate that the Association has waived its right to attend the informal meetings.

Neither of the two clauses cited by the School Committee is sufficiently unambiguous to be dispositive in favor of the School Committee's waiver argument. Additionally, there is other contract language which must be examined.

Article II of the parties' agreement provides:

While the Association is the bargaining agent for the school personnel as herein defined, nothing in this contract shall be construed to remove the right to the individual person to contact the Superintendent or the Committee to consider the problem of any individual or group, except that as to matters which are covered by this contract. (emphasis supplied).

The meaning we draw from this language is that an individual may contact the Superintendent or Committee on matters which are not covered by the contract. Where, however, an individual employee is meeting with the employer regarding disputes on matters covered by the agreement, the exclusive representative can insist on his presence. Furthermore, Article VI states:

The Association agrees to make a careful investigation of a complaint before submitting it under the Grievance Procedure in



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order to ascertain whether, in its opinion, the grievance complaint is reasonably justified under the terms of this Agreement and whether there is reasonable cause to believe that the claim is true in fact.

The language clearly indicates that the Association has an obligation to be involved in the handling of grievances before they are formally submitted to Step 1. In the form of that involvement is unspecified, it is difficult to imagine how the Association can fulfill its obligation to investigate without the opportunity to maintain the merits of both sides of an employee complaint.

Thus, the language cited by the School Committee, when viewed in the context of the language in the agreement, does not constitute a waiver by the Association of its rights under Section 6 of the Law.

We conclude that the School Committee's refusal to allow the Association to attend at informal, pre-Step 1 grievance meetings is a failure to bargain in good faith, a violation of Section 10(a)(5) of the Law. Derivatively, therefore, the School Committee has violated Section 10(a)(1) of the Law by interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by the Law.

#### Order

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Avon School Committee shall:

Cease and desist from refusing to bargain in good faith with the Association by refusing to allow the Association to attend informal, pre-Step 1 grievance resolution meetings.

Cease and desist from restraining, coercing and interfering with employees in their exercise of right under the Law.

The Avon School Committee shall accordingly take the following affirmative steps which will effectuate the policies of the Law:

Upon request from the Association, allow the Association's representative to be present at informal, pre-Step 1 grievance resolution meetings held pursuant to Article VI of the collective bargaining agreement;

Post immediately in conspicuous places and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees;

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



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SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman  
JOAN G. DOLAN, Commissioner  
GARY D. ALTHAN, Commissioner

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

WE WILL NOT refuse to bargain in good faith with the Avon Education Association refusing to allow Association representatives to attend informal, pre-Step 1 grievance resolution meetings held pursuant to Article VI of the collective bargaining agreement.

WE WILL NOT in any like or similar manner restrain, coerce, or interfere with employees in the exercise of their rights under General Laws Chapter 150E.

WE WILL, upon request from the Association, allow the Association's representative to be present at informal, pre-Step 1 grievance resolution meetings held pursuant to Article VI of the collective bargaining agreement.

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Chairperson, Avon School Committee

