MEDFORD SCHOOL COMMITTEE AND MEDFORD PUBLIC SCHOOLS CUSTODIANS ASSN., MUP-690 (1/20/75)

(50 Duty to Bargain)
54.25 work shifts
54.3 management rights
54.517 seniority
54.581 minimum manning
54.8 mandatory subjects

Commissioners participating: Alexander Macmillan, Chairman; Madeline H. Miceli; Henry C. Alarie.

Appearances:

Robert B. McCormack, Esq. - Counsel for the Commission
Mark Kaplan, Esq. - Counsel for the Association
Brian T. Callahan, Esq. - Counsel for the Public Employer
George K. Kurker, Esq. - Counsel for the Public Employer

DECISION AND ORDER

Statement of the Case

On March 24, 1974, a Complaint of Prohibited Practice was filed with the State Labor Relations Commission, herein called the Commission, by the Medford Public Schools Custodians Association, herein called the Association, alleging that a practice prohibited by General Laws Chapter 149, Section 178L had been committed by the Medford School Committee, herein called the Public Employer.

The Commission, pursuant to the power vested in it by Section 178L of Chapter 149 of the General Laws, investigated the aforesaid Complaint and on June 7, 1974 issued its own Complaint of Prohibited Practice. In substance, the Commission's Complaint alleged that the Medford School Committee has refused to negotiate over mandatory subjects of bargaining. The allegation was denied by the Public Employer. Pursuant to notice, the formal hearing was held at the offices of the Labor Relations Commission in Boston on August 13, 1974 before Commissioner Henry C. Alarie. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties.

After having heard and/or read all of the evidence adduced at the hearing, we hereby make the following findings, rulings, and render the following decision.

The Issues

There is little dispute as to the substantive facts of the case. In substance, the Association submitted a list of proposals and the Public Employer has declined to bargain with respect to six of them. The Public Employer contends that the six proposals are not mandatory subjects of collective bargaining. It also contends that the content of the proposals, their implication and far-reaching effect, would infringe upon the School Committee's inherent management rights. (See opening statement of Town Counsel, Trans., pgs. 5 thru 7).

Findings of Fact

A collective bargaining agreement was in effect between the Association and the Public Employer from January 1, 1973 to June 30, 1974. (Union Exhibit A). Pursuant to certain reopener provisions, negotiations for a new contract commenced during early 1974. (Trans., pg. 8). At the outset of negotiations,

the Association presented a set of written proposals to the Public Employer. (Union Exhibit B; Trans., pg. 9). The proposals now in dispute are as follows:

Proposal 5A

All workweeks shall consist of five consecutive days beginning on Sunday, Monday or Tuesday.

Proposal 5B

Each employee shall work the same hours each workday -- ie, 7 a.m. to 4 p.m.; 4 p.m. to 12 a.m.; or 12 a.m. to 8 a.m.

Proposal 5D

All regular assignments shall be filled at all times.

Proposal 5F

No member of the bargaining unit will be assigned to more than one job at a time.

Proposal 6

Amend Article VI so as to specifically provide that seniority be the sole basis for filling promotional vacancies.

Proposal 8G

All school buildings shall be re-evaluated and properly rated.

The objective of Proposal 5A was to secure two consecutive days of rest rather than having two non-consecutive days off, such as Sundays and Wednesdays, as had theretofore been the practice. The Public Employer responded that the proposal was nonnegotiable. (Trans., pg. 10).

The objective of Proposal 5B was to regulate the hours of work, so that each employee would work the same hours each day rather than different hours throughout the week, which had previously been the practice. The Public Employer responded that said proposal was not negotiable. (Transcript, pgs. 10 and 11).

Proposals 5B and 5F were in substance minimum manning proposals, which were designed to insure that when a custodian was out sick, another custodian would take his place, so that a co-worker would not have the burden of performing double duty. The Public Employer deemed the proposals nonnegotiable. (Trans. pgs. 11 and 12).

Proposals 6A and 8G must be considered in relation to each other. School buildings are evaluated on a continuing basis by the Director of Building Services. (Trans. pgs. 34 and 35). After evaluation, the buildings are rated according to seven classifications running from Class A through Class G. Custodians in the same Civil Service Grade receive higher wages if they work in a Class A Building than they would if they worked in a Class B Building or a building with still lower classification. The Association was of the opinion that the School Buildings were not classified equitably, and they introduced Proposal 8G in the hope that they might be given a voice in the classification of the respective school buildings. Proposal 6A was introduced by the Association

for the purpose of insuring that if a vacancy occurred in the custodian staff of a school building of higher classification,that said opening would be filled by the custodian who possessed the greatest seniority. The "promotional vacancies" referred to in Proposal 6A did not involve promotions to a higher Civil Service Grade, but merely transfers to a building of a higher classification, thereby giving the custodian so transferred higher pay.

Were the Public Employer to accede to Association's Proposals 5D, 5F and 8G, it would, in all likelihood, require the employment of additional personnel. (Trans. pg. 21 and 22 and 38).

We note finally that the Public Employer did negotiate with respect to hours of janitors in the elementary and junior high schools. (Trans. pg. 10 and 20; Employer's Exhibit 1).

Conclusions and Opinion

Even a cursory review of the Association's disputed proposals discloses that they are clearly mandatorily bargainable and that, accordingly, the Public Employer's refusal to negotiate with respect thereto constituted a violation of the then-effective Chapter 149, Section 178L (4) of the General Laws.[1] Thus, the Association's proposals 5A and 5B deal directly with hours of employment and are therefore mandatory subjects of bargaining as expressly provided for in General Laws, Chapter 149 Section 1781 and Chapter 150E, Section 6. See, for example, Town of Natick, MUP-326 and 351 (10/4/73) ("We conclude that rules and regulations promulgated by a Chief of Police with respect to tours and shifts of duty, work schedules and other patterns relating to the assignment of personnel, are 'conditions of employment ...'"). Compare Amalgamated Meatcutters v. Jewel Tea Co., 381 U.S. 676, 691 (1965). ("The particular hours of the day and the particular days of the week during which employees may be required to work are subjects well within the realm of wages, hours and other terms and conditions of employment about which employers and unions must bargain"); Matter of City of White Plains (Case No. U-0445) 1972 PERB Section 5 - 3008 at p. 3015 (Tours of duty of firemen are subject of mandatory bargaining). Proposals 5D and 5F concern extra workloads imposed upon an employee when a co-worker is absent -

[1] A threshhold question is whether, as the Public Employer argues, the applicable standard is the statutory law in effect when the complaint of the Association was filed on March 24, 1974 and whether, accordingly, the legality of the conduct complained of in the instant case must be determined with reference to the superseded Chapter 149. Assuming, without deciding, the validity of the Public Employer's position we conclude that the disputed proposals are mandatory subjects of bargaining even under the more restrictive definition of Chapter 149 Section 1781, which provided, in part, that:

> "[f] or the purposes of collective bargaining, the representative of the municipal employer and the representative of the employees shall ...confer in good faith, with respect to wages, hours and other conditions of employment..."

Compare Chapter 150E Section 6, which requires the employer to "negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment..." [Emphasis supplied]

again a subject which is indisputably mandatorily bargainable. Beacon Piece Dyeing & Finishing Co., 121 NLRB 953 (1958); Little Rock Downtowner, Inc., 145 NLRB 1286 (1964). Accordingly, the Public Employer may not adamantly insist upon the right to assign workloads to its employees without prior consultation and negotiation with the union. See Bonham Cotton Mills, Inc., 42 LRRM 1542. The Association's proposal 6A, relating to the degree to which seniority shall be considered in filling vacancies, is a compulsory subject of bargaining under long-established authority. See, for example, United States Gypsum Company, 94 NLRB 112 (1951); Morris, The Developing Labor Law (1971) at p. 406 ("Since seniority is so obviously a condition of employment - and is a condition commonly existing under union contracts - litigation questioning its mandatory status has been minimal"). Indeed, the parties in this case have negotiated upon the subject of seniority in the past. Thus, Article VI of the collective bargaining agreement (Union's Exhibit A) provides that seniority will be taken into consideration with respect to the filling of a vacancy.[2] Finally, the Association's proposal 8G, relating to the reevaluation and rating of school buildings, has a direct and clearly demonstrable impact upon wages and conditions of employment and is therefore mandatorily bargainable. In so deciding, the Commission notes that so far as the record discloses, the only purpose classification of the buildings serves is to establish salary schedules for employees assigned thereto. In short, we conclude that the disputed issues must be "submitted to the mediatory influence of collective negotiations" (Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203, 57 LRRM 2609, 2613 (1964)) in furtherance of the legislative policy which recognizes at least the likelihood that affording employees and their bargaining agents the opportunity to negotiate and propose feasible solutions to problems of mutual concern may contribute not only to the stability of labor relations but also to the increased efficiency of public employer operations.[3]

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[2]Of course, while the Public Employer is required to bargain with respect to proposal 6A, it is not required to acquiesce in the Association's demand that seniority be the sole basis for filling vacancies.

[3]Contrary to the Public Employer's suggestion, General Laws Chapter 71, Section 37, which grants to school committees broad discretionary powers in exercising their policy-making functions, and empowers the committee to "determine, subject to this chapter, the number of weeks and the hours during which such school shall be in session...", does not conflict with the provisions of the public employee collective bargaining law. Thus, Chapter 71 Section 37 merely reserves to school committees the right to determine matters affecting basic educational policy which lie at the core of a school district's governmental control - matters which are not, in any event, subject to mandatory bargaining. Groton School Committee, MUP-702 (12/17/74) at p. 5 ("Sound public policy requires that curriculum determination be a function primarily of the community and its representatives...These public policy considerations have formed the basis for the enactment of several federal and state statutes which reserve to management decisions concerning the functions and programs of the employer [footnote omitted]") Obviously, when the Legislature enacted Chapter 149, it contemplated that certain subjects - those relating to "wages, hours and conditions of employment" - would be removed from the sphere of the municipal employer's exclusive unilateral control - without thereby intending in any manner to undermine the legislative policies reflected in Chapter 71, Section 37.

Medford School Committee, MUP-690

Order

Based upon the foregoing findings of fact and our conclusions drawn therefrom, we hereby Order:

1. The Medford School Committee shall cease and desist from refusing to bargain in good faith with the Medford Public Schools Custodians Association in matters concerning their wages, hours, and conditions of employment;

2. The Medford School Committee shall forthwith meet at reasonable times with the Medford Public Schools Custodians Association and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance and any other terms and conditions of employment, including the subject matter embodied in Association's Proposals 5A, 5B, 5D, 5F, 6A, and 8G.

3. The Medford School Committee shall within fourteen (14) days from the receipt of this Decision and Order notify the Labor Relations Commission at its address at Room 1604, 100 Cambridge Street, Boston, Massachusetts, 02202, what steps it has taken to comply herewith.