STURBRIDGE SCHOOL COMMITTEE AND STURBRIDGE TEACHERS ASSOCIATION, RBA-89 (7/3/84).

94. Arbitration Under Chapter 150E, Section 8

Commissioners participating:

Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

DECISION

Statement of the Case

On April 30, 1984 the Sturbridge Teachers Association (the Association) filed a request for binding arbitration with the Labor Relations Commission (the Commission) pursuant to Section 8 of General Laws Chapter 150E (the Law).[1] On May 8, 1984 the Commission notified the Sturbridge School Committee (the Committee) of the request and of the Committee's right to submit a statement in opposition to the request. On May 22, 1984 the Committee filed a statement in opposition to the request. We have investigated the request for arbitration and the request is hereby granted.

Facts

The Association and the Committee are parties to a collective bargaining agreement, effective from September 1, 1983 through August 31, 1986. Article II of that agreement establishes a grievance procedure whereby grievances are brought first to the School Principal, then to the Superintendent and then to the School Committee. Article II F provides that the grievance procedure shall culminate in arbitration pursuant to Section 8 of the Law.[2]

In accordance with Article II of the agreement the Union filed a grievance on behalf of Nancy Cook, a teacher employed by the Committee and a member of the bargaining unit represented by the Union. The grievance alleged that Ms. Cook had

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[1] Section 8 provides that:
The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provisions of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections thirty-nine and forty-one of forty-five, inclusive, of chapter thirty-one, section sixteen of chapter thirty-two, or sections forty-two through forty-three A, inclusive, of chapter seventy-one.

2 (see page 11 MLC 1038)

been required to supervise students at lunchtime in the cafeteria, in violation of Article XI C(1)(g) of the agreement.[3] The Committee disputes the grievance, claiming that Article XI C(1)(g) permits the Committee to require Ms. Cook to supervise the cafeteria. The grievance has progressed to the arbitration level of the grievance procedure and has been denied at each previous level.

Opinion

Our decisions hold that a request for binding arbitration will be granted where there is a dispute between the parties to a collective bargaining agreement as to the interpretation or application of that agreement and the agreement does not provide for final binding arbitration. Tantasqua Regional School Committee, 10 MLC 1489 (1984), Town of Grafton, 8 MLC 1796 (1982) aff'd in relevant part, Town of Grafton v. Massachusetts Labor Relations Commission (Worcester C.A. No. 81-20369, April 9, 1982). Applying this standard to the present case we are convinced that this is an appropriate case for an arbitration order. The Association and the Committee disagree as to the interpretation of the agreement and the agreement does not provide for binding arbitration other than pursuant to Section 8 of the Law.

The Committee asserts three reasons why the Commission should deny the Association's request. The Committee contends first that the Association is misinterpreting the agreement. This argument merely demonstrates that the parties disagree about the proper interpretation of their contract and demonstrates the efficacy of an order to arbitrate.

The Committee also argues that Section 8 arbitration effectively forces an employer to accept a contract proposal in violation of Section 6 of the Law.[4]

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2 (from page 11 MLC 1037
Article II F of the agreement provides that:

> It is understood and agreed that the provisions of Section 8 of Chapter 150E of the General Laws of Massachusetts shall govern this agreement with respect to the rights of the Massachusetts Labor Relations Commission to order binding arbitration within the authority of said Section 8, said understanding to prevail for the duration of this Agreement. Where the State Commission orders arbitration, the parties hereto agree that the cost of the proceedings will be borne by the parties equally.

[3]Article XI C(1)(g) of the agreement provides that: "Teachers will not be required to perform the following duties....Supervising cafeteria at lunchtime, provided that teacher's aides are available to perform such services."

[4]Section 6 provides that:

> 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.

Acceptance of the Committee's second argument would require us to ignore the purpose of G.L. c.150E. Parties to a collective bargaining agreement sometimes disagree about the meaning of their contract. Disputes concerning obligations imposed by the contract can foment labor relations strife. Many parties include in their collective bargaining agreements a procedure by which to resolve disputes and avoid labor unrest. Since neither party would want to vest final authority for contract interpretation in the other party, with whom they disagree, both parties frequently designate a neutral arbitrator to assist in resolving their dispute.

In the Commonwealth, the Legislature has established a dispute resolution mechanism for parties whose collective bargaining agreements omit such a procedure. In Section 8 of G.L. c.150E the Legislature accorded to both parties an entitlement to neutral arbitration of their disputes. The School Committee argues that an arbitral award adverse to the School Committee's current interpretation of the contract would necessarily impose upon the School Committee a contract term to which it never has agreed. The School Committee ignores the obvious corollary to its position: to deprive the parties of a neutral forum for grievance resolution is to impose upon the union terms of employment unilaterally determined by the Employer. Such an arrangement would make a sham of collective bargaining and would lead to extreme instability of labor relations. We cannot conclude that the Legislature meant to render Section 8 of the Law meaningless by elevating Section 6 to the preeminence urged by the School Committee. Nor are we willing to subject the parties to the labor management relationship which would necessarily flow from the Employer's proposed arrangement: terms of employment would be dictated unilaterally by whichever party had the power to implement them, without recourse to collective bargaining or neutral dispute resolution. We will continue to read G.L. c.150E Section 8 as intended by the Legislature: to promote stable labor-management relations through the use of binding arbitration to resolve grievance disputes. See, e.g., Tantasqua Regional School Committee, at 1490, Town of Athol, 4 MLC 1132 (1977).

The School Committee also contends that Section 8 of G.L. c.150E is unconstitutional. Specifically, the Committee argues that Section 8 "contravenes the doctrine of non-delegation of legislative power set forth in Article 30 of the Massachusetts Declaration of Rights, and Part 2, Chapter 1, Section 1, Article 4 of the Commonwealth's Constitution...[and that Section 8] would deprive the Town and its citizens of the right which the Commonwealth's Constitution guarantees every citizen to a trial by 'judges as free, impartial and independent as the lot of humanity will admit' (Pt. 1, Art. 29) and would contravene the mandate that 'every subject' is 'to obtain right and justice freely, and without any denial; promptly and without delay; conformably to the law.' (Pt. 1, Art. 11)." Employer's Opposition to Request for Binding Arbitration.

The determination of the constitutionality of Section 8 of the Law lies within the jurisdiction of another forum. See Town of Grafton, 8 MLC 1796 (1982). Nonetheless, where, as here, the Commission has the benefit of judicial determinations in an analogous case, it is not inappropriate to consider the arguments

raised by the parties to our proceedings, no matter how unsupportable they may appear.[5]

The Supreme Judicial Court has held that binding interest arbitration pursuant to St.1973, c.1078 Section 4[6] did not violate either Article 30 of the Declaration of Rights or Part 2, Chapter 1, Section 1 of the Massachusetts Constitution. Town of Arlington v. Board of Conciliation and Arbitration, 370 Mass. 769, 352 N.E. 2d 914 (1976). The School Committee has suggested no reason for considering the logic of Town of Arlington inapplicable to Section 8 grievance arbitration, and we perceive none.[7]

Finally, we note that the Supreme Judicial Court has recognized that a tension may exist "between (1) the terms of the lawfully authorized collective bargaining agreement...providing for final and binding arbitration (see G.L. c.150E, Section 8), and (2) the traditional authority of school committees in the matter of contract renewal resulting in tenure for teachers." School Committee of Danvers v. Tyman, 372 Mass. 106 at 109, 360 N.E. 2d 877 at 878-79 (1977). The Court has also recognized that a school committee may not delegate to an arbitrator the authority to make certain, limited decisions. Id. and cases cited therein. Nonetheless, the Court opined that an order to arbitrate should not be denied "[u]nless there is positive assurance that an arbitration clause is not susceptible to an interpretation that covers the asserted dispute, or unless no lawful relief conceivably can be awarded by the arbitrator..." Id., 372 Mass. at 113, 360 N.E. 2d at 881 (citations omitted). No such positive assurance is presented by this case. The contract between the School Committee and the Association broadly defines a grievance as "a dispute concerning the interpretation of the terms of [the contract] between an employee covered by [the contract] and the School Committee." Thus the parties have agreed to submit all disputes concerning the interpretation of the contract to the grievance procedure.

We conclude that this case presents a question of interpretation of provisions of a collective bargaining agreement and that the agreement does not provide for final and binding arbitration other than pursuant to Section 8 of the Law.

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[5]We are, however, unable to accord lengthy consideration to the claims concerning Pt. 1, Articles 11 and 29 of the Declaration of Rights since the School Committee has offered no argument in support of its assertion of unconstitutionality, and we can find no judicial cases that appear apposite. Rather, it appears that prompt arbitration of the grievance by an impartial arbitrator will fulfill, not contravene, the constitutional concerns reflected in the Declaration of Rights, Pt. 1, Articles 11 and 29.

[6]St. 1973, c.1078 Section 4, provided, in part, that police and fire employee collective bargaining negotiations would be subject to final and binding interest arbitration. The statute was repealed in 1980 by a citizen referendum popularly known as "Proposition 2-1/2."

[7]The Court found that the Legislature's grant of authority to private arbitrators was not an unconstitutional delegation of legislative power. The decision also notes that procedures for judicial review of an arbitration award protect the parties from arbitrary or unconstitutional action. See G.L. c.150C.

WHEREFORE, the Commission, by virtue of the power vested in it by Section 8 of the Law, HEREBY ORDERS:

1. That the dispute raised by the Association's request for binding arbitration be promptly submitted to binding arbitration.

2. That within thirty (30) days of the date of service of this decision the parties shall inform the Commission of the arbitrator selected. If the parties do not agree on an arbitrator, they shall submit the grievance for arbitration before the Board of Conciliation and Arbitration.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, Commissioner

MARIA C. WALSH, Commissioner