

WALES SCHOOL COMMITTEE AND MASSACHUSETTS TEACHERS ASSOCIATION, LOCAL 61, RBA-90
(1/7/85).

54.522 evaluation - teachers
94. Arbitration Under Chapter 150E, Section 8

Commissioners participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner

ORDER

On July 10, 1984, the Massachusetts Teachers Association, Local 61 (Association) filed a request for binding arbitration with the Labor Relations Commission (Commission) pursuant to Section 8 of General Laws Chapter 150E (the Law).¹ On July 24, 1984, the Commission notified the Wales School Committee (Committee) of the request and of the Committee's right to submit a statement in opposition to the request. On August 1, 1984 the Committee filed a statement in opposition to the request.²

FACTS

The investigation revealed that the Association and the Committee are parties to a collective bargaining Agreement, effective from September 1, 1983 through August 31, 1984. Article IX of the Agreement establishes a grievance procedure whereby grievances are brought to the immediate supervisor at Level One. At Level Two the grievances are brought to the Superintendent, and at Level Three the grievances are presented to the School Committee. Section 3 of Article IX provides that the grievance procedure shall culminate in arbitration pursuant to Section 8 of the Law.³

¹Section 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 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.

²Because certain portions of the union's request for arbitration were illegible, the Commission instructed the union to submit a readable copy of the grievance report. The Association complied with this request on September 27, 1984.

³(see page 1331)



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The Association filed a grievance on behalf of Jacqueline Pashko, a special education teacher employed by the Committee and a member of the bargaining unit represented by the Association. The grievance alleged that the Committee and its agent, Bruce Garrow, Principal, violated paragraphs 1, 2 and 3 of Article I of the Agreement when, on January 27, 1984, they reduced Pashko's evaluation to writing and it allegedly contained erroneous statements, misinformation and fabrications.⁴ The grievance has not been resolved by the School Committee at level 3 of the grievance procedure.

3 (from page 1330)

Article IX, Section 3 reads:

If after twenty-five (25) days next following presentation of the grievance in writing to the School Committee the grievance shall not have been disposed of to the satisfaction of the Association or Committee they shall individually or jointly petition the State Board of Conciliation and Arbitration in accordance with Section 8 of Chapter 1078 of the Massachusetts Laws.

Statute 1973, Chapter 1078, referred to the expiration of interest arbitration for police and fire collective bargaining agreements. Statute 1973, Chapter 1078, Section 2 incorporated G.L. c.150E, Sections 1-15. We believe that a common sense reading of Chapter 1078 indicates that the parties intended their Article IX reference to "Section 8 of Chapter 1078" to refer to Section 8 of G.L. c.150E.

⁴Article I of the Agreement provides that:

PREAMBLE

1. Recognizing that our prime purpose is to provide education of the highest possible quality for the children of Wales, and the good morale within the teaching staff of Wales is essential to achievement of that purpose, we, the undersigned parties to this Contract, declare that:

- a. Under the law of Massachusetts, the Committee, elected by the citizens of Wales, has final responsibility for establishing the educational policies of the public school of Wales;
- b. The Superintendent of Schools of Union #61 (hereinafter referred to as Superintendent) has responsibility for carrying out the policies so established;
- c. The teaching staff of the public schools of Wales has responsibility for providing in the classrooms of the schools education of the highest possible quality;
- d. Fulfillment of these respective responsibilities can be facilitated and supported by consultations and free exchanges of views and information between the Committee, the Superintendent, and the teaching staff in the formulation and application of policies relating to wages, hours, and other conditions of employment for the teaching staff; and so,
- e. To give effect to these declarations, the following principles and procedures are hereby adopted.

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DISCUSSION

The Committee advances three arguments against a Section 8 order. First, it asserts that there is no controversy concerning the interpretation of a provision of the Agreement. In essence, it asserts that since there is no provision in the contract on teacher evaluations, there is no present contractual controversy. It also contends that the Commission does not have the power to order forced arbitration. Finally, it argues that a Section 8 Order would violate the State Constitution.

The School Committee's first argument is one of substantive arbitrability. The Commission has long stated that the issue of arbitrability is a threshold issue for the arbitrator to determine. Town of Danvers, 1 MLC 1231, 1232 (1974); Tantasqua Regional School Committee, 10 MLC 1489, 1490 (1984). After reviewing the three paragraphs of Article I, we cannot say with positive assurance that no lawful relief could be awarded by an arbitrator. Accordingly, we find that there is a dispute between the parties to a collective bargaining agreement as to the interpretation or application of that agreement that may ultimately be resolved by an arbitrator.

The School Committee contends that the Commission does not have the statutory power to compel arbitration. The same objection has previously been brought before us and rejected. Sturbridge School Committee, 11 MLC 1037, 1038-39 (1984). We stated that the legislature directed that binding grievance arbitration could be compelled to resolve contractual disputes. Id. Moreover, the parties specifically provided in their Agreement that if grievances were not resolved through the third level of the contractual grievance procedure, then arbitration would result pursuant to Section 8 of G.L. Chapter 150E. It is hardly compulsion when the union has followed the agreed-upon contractual provisions by now seeking a Section 8 arbitration order as set forth in the contract.

Finally, the School Committee contends that Section 8 is unconstitutional. The Commission has repeatedly rejected this argument. Sturbridge School Committee, 11 MLC 1037 (1984), Tantasqua Regional School Committee, 10 MLC 1489 (1984). We see no reason why the holding in these decisions should not control.

4 (continued)

SCOPE

2. For the purpose of collective bargaining with respect to wages, hours, other terms and conditions of employment, the negotiation of collective bargaining agreements, and any questions arising thereunder, the Committee recognizes the Association as the exclusive bargaining agent and representative of all professional employees (as such employees are defined in Chapter 150E of the General Laws of Massachusetts) of the Committee, excepting, however, every such employee who on the effective date of this Contract is, or thereafter shall be, designated by the Committee as a representative of it for the purpose of such bargaining.

COMPENSATION AND OTHER CONDITIONS OF EMPLOYMENT

3. Subject to the provisions of this Contract (and except as otherwise provided by Appendix A attached hereto and made a part hereof) the wages, hours, and
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In sum, we conclude that an arguably arbitrable dispute exists between the Association and the School Committee and that that agreement does not provide for arbitration other than pursuant to Section 8 of the Law.

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 the Board of Conciliation and Arbitration.
2. That within thirty (30) days of the date of service of this decision the parties shall inform the Commission of the status of the arbitration.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner

4 (continued)

other conditions of employment applicable on the effective date of this Contract to the employees covered by this Contract shall continue to be so applicable.

