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COUNTY OF NORFOLK (AGRICULTURAL SCHOOL BOARD OF TRUSTEES) AND NORFOLK COUNTY AGRICULTURAL FEDERATION OF TEACHERS, LOCAL 2335, MUP-5602 (6/11/85). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

- 51.11 authority of employer representative
- 51.16 obligations of successor employer
- 54.41 ground rules
- 54.6 wages
- 67.4 good faith test (totality of employer's conduct)
- 67.42 renegeing on prior agreements
- 82.3 status quo ante
- 92.51 appeals to full commission
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Commissioners participating:

Paul T. Edgar, Chairman  
 Maria C. Walsh, Commissioner

Appearances:

- Joseph P. McParland, Esq. - Representing County of Norfolk
- Sharon E. Feigenbaum, Esq. - Representing Norfolk County Agricultural Federation of Teachers, Local 2335
- Deborah L. McCutcheon, Esq.

DECISION ON APPEAL  
 OF HEARING OFFICER'S DECISION

On January 23, 1985, Hearing Officer Charles J. Maguire, Jr. issued his decision in the above-captioned matter.<sup>1</sup> He found that the Norfolk County Agricultural School Board of Trustees (Trustees) violated Sections 10(a)(5) and (1) of G.L. c.150E (the Law) by engaging in regressive bargaining with the Norfolk County Agricultural Federation of Teachers, Local 2335, AFT, AFL-CIO (Federation) during negotiations for a successor collective bargaining agreement. To remedy the violation, he ordered the Trustees, upon demand by the Federation, to return to the bargaining table and reinstate their offer of a six hundred and fifty dollar (\$650) across-the-board wage increase coupled with the withdrawal of all language proposals by both parties.

The Trustees filed a timely notice of appeal pursuant to 402 CMR 13.13 and filed a supplementary statement challenging the hearing officer's findings of fact and conclusions of law. The Federation filed a supplementary statement urging the Commission to affirm the hearing officer's decision. We have reviewed the record and affirm the hearing officer's decision as modified below.

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<sup>1</sup>The full text of the hearing officer's decision is found at 11 MLC 1346 (H.O. 1985).



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Facts<sup>2</sup>

We have reviewed the record below and adopt the hearing officer's findings of fact, except where noted. We summarize the relevant facts as follows.

The Trustees and the Federation were parties to a collective bargaining agreement. On November 17, 1983,<sup>3</sup> the parties began negotiations for a successor collective bargaining agreement. The parties agreed to the ground rule that negotiators for both sides had full authority to reach an agreement subject to final ratification by both parties.<sup>4</sup>

The parties held four more negotiating sessions between November 1983 and February 1984. They made some progress toward an agreement, but remained in disagreement over several major topics.

On March 26, 1984, the parties met for a fifth bargaining session. The Trustees opened the session with a review of the issues that remained unresolved between the parties and then announced that they believed that the parties had reached impasse. The Federation disagreed, stating that a declaration of impasse was premature since the Trustees had not yet made a wage proposal. The Trustees then offered an across-the-board wage increase of six hundred and fifty dollars (\$650) with the condition that both parties withdraw all of their language proposals. The Federation took the Trustees' proposal under advisement until the next session.<sup>5</sup>

At the parties' sixth bargaining session, held on April 30, 1984, the Federation counterproposed a one thousand dollar (\$1,000) across-the-board wage increase, coupled with the withdrawal of all language proposals and the inclusion of a successorship clause.<sup>6</sup> The Trustees rejected the Federation's counterproposal

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<sup>2</sup>Neither party disputes the Commission's jurisdiction in this case.

<sup>3</sup>The hearing officer incorrectly found that the date was November 11, 1983. The record supports the Trustees' contention that the date was November 17, 1983. Therefore, we correct the date. However, the hearing officer's inadvertent error does not affect the decision in this case.

<sup>4</sup>The Trustees claim that the parties agreed that the negotiator's authority was subject to ratification. The Trustees' contention is not supported by the record.

<sup>5</sup>The Trustees maintain that the Federation rejected their proposal. The Trustees' version of the facts is not supported by the record. See footnote 7, infra.

<sup>6</sup>We note that c.234, section 2, Item 7100-0103 of the Acts of 1984, provided for a transfer of employees from the Norfolk County Cooperative Extension Services to the employ of the Commonwealth of Massachusetts as follows:

For a program in county cooperative extension work as authorized by sections  
(continued)



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and repeated the six hundred and fifty dollar (\$650) offer of March 26. The Federation took the Trustees' offer under advisement until the next session.

Prior to the next bargaining session, the Federation received a letter from the Trustees' chief negotiator dated May 3, 1984. The letter announced that the Trustees withdrew their \$650 offer and instead proposed no wage increase.<sup>7</sup>

On May 14, 1984, the parties met for their seventh bargaining session. The Trustees repeated the proposal contained in their May 3 letter and further proposed a reduction in their contribution to health insurance premiums. The Federation rejected the proposed reduction and hand-delivered to the Trustees a copy of the Federation's charge of prohibited practice in the instant matter.

#### Opinion

The issue in this case is whether the Trustees engaged in regressive bargaining during negotiations for a successor collective bargaining agreement. The Trustees maintain that they bargained in good faith by informing the Federation by letter and in person of their inability to seek ratification of the six hundred and fifty dollar (\$650) across-the-board wage proposal. The Trustees contend that the negotiating ground rules permitted either party to withdraw any offer at any time because all negotiators' authority was subject to ratification. There is no record evidence that the parties mutually agreed that their respective negotiators would have no authority to make specific proposals; rather, the record establishes that the parties agreed that the final contract package, as a whole, would be subject to ratification by each party.<sup>8</sup>

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6 (continued)

forty through forty-five, inclusive, of chapter one hundred and twenty-eight of the General Laws, to be conducted by the University of Massachusetts at Amherst for the Essex and Norfolk County Cooperative Extension Services: provides, that on the first day of April, nineteen hundred and eighty-five, all persons employed and positions budgeted for by the Essex and Norfolk County Cooperative Extension Service immediately prior to December thirty-first, nineteen hundred and eighty-three shall be transferred to the employ of the commonwealth and nothing herein shall be construed to alter, impair or modify the term or tenure of any such person in such employment and the retirement rights of any such person currently in service or retired shall not be affected hereby; including not more than twenty temporary positions.

The record does not disclose the status of the employees after April 1, 1985.

<sup>7</sup>The Trustees claim that the Federation had rejected the March 26 offer at the April 30 meeting and that the Trustees, therefore, were entitled to withdraw the rejected offer. The record does not support the Trustees' claim.

<sup>8</sup>We note that the failure of a party to imbue its negotiator with sufficient authority to make proposals is a violation of the duty to bargain in good faith. See, Watertown School Committee, 9 MLC 1301, 1304 (1982); Middlesex County Commissioners, 3 MLC 1594 (1977).



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We affirm the hearing officer's decision that the Trustees bargained regressively in violation of their duty to bargain in good faith and thus violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the Norfolk County Agricultural School Board of Trustees<sup>9</sup> shall:

1. Cease and desist from:
  - a. Refusing to bargain in good faith by engaging in regressive bargaining;
  - b. In like and similar manner, interfering with, restraining and coercing the employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action which will effectuate the policies of the Law:
  - a. Upon demand of the Federation, immediately resume bargaining and reinstate the offer of a six hundred and fifty dollar (\$650) across-the-board wage increase in combination with the withdrawal of all language proposals by both parties;
  - b. Bargain in good faith with the Federation to resolution or impasse;

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<sup>9</sup>We have previously noted c.234, section 2, Item 710-0103 of the Acts of 1984 reproduced in footnote six, above. Although that statutory provision purports to transfer to the employ of the Commonwealth on April 1, 1985 all persons employed by the Norfolk County Cooperative Extension Service, we do not consider either whether there exists a successor to the Trustees or whether the order in the instant case runs to a successor to the Trustees for two reasons. First, the case comes to the Commission as an appeal of a hearing officer's decision. The hearing officer's decision was issued on January 23, 1985, prior to the date that the employees apparently would have been transferred from the Trustees' employ, and the issue of successorship was neither pleaded nor litigated at the hearing in this case. Second, the issue of successorship was neither raised nor argued before the Commission on appeal. The Commission has yet to consider whether a public employer can be a successor employer and be liable for the unfair labor practices committed by its predecessor. No party has urged our consideration of this question in this case. We will not decide the issues of successorship in the absence of a developed record and argument by the parties.



MASSACHUSETTS LABOR CASES

CITE AS 12 MLC 1009

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- c. Immediately post and leave posted for a period of thirty (30) consecutive days thereafter, the attached Notice to Employees in conspicuous places where notices to these employees are usually posted or where these employees usually congregate;
- d. Notify the Commission in writing within thirty (30) days of service of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman  
MARIA C. WALSH, Commissioner

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

The Labor Relations Commission has determined that the Norfolk County Agricultural School Board of Trustees committed a prohibited practice, in violation of Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E, by engaging in regressive bargaining with the Norfolk County Agricultural Federation of Teachers.

Section 6 of Chapter 150E requires that public employers negotiate in good faith with the Federation with regard to wages, hours, standards of productivity and performance and any other terms and conditions of employment.

WE WILL, upon demand, immediately resume bargaining and reinstate our prior proposal.

WE WILL bargain in good faith with the Federation.

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EMPLOYER'S REPRESENTATIVE

