CITY OF SPRINGFIELD AND LOCAL 648, IAFF, AFL-CIO, MUP-5448 (6/20/85). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

Commissioners participating:

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

54.31 impact of management rights decision
54.613 pension and retirement
54.64 sick leave pay
67. Refusal to Bargain
67.162 preemption by other legislation
92.51 appeals to full commission

Appearances:

Marshall T. Moriarty, Esq. - Representing Local 648, International Association of Fire Fighters, AFL-CIO

Robert J. O'Donnell - Representing the City of Springfield

DECISION ON APPEAL
OF HEARING OFFICER'S DECISION

Statement of the Case

On September 6, 1984, Hearing Officer Amy Davidson issued her decision holding that the City of Springfield (City) had violated G.L. c.150E, Sections 10(a)(5) and (1) by refusing to bargain over the impacts of its decision to cease including payments for accumulated sick leave in the computation of bargaining unit members' retirement benefits.[1] The City filed a notice of appeal on September 14. On November 13, it filed a supplementary statement challenging the legal basis of the hearing officer's decision and objecting to one of her findings of fact.[2] The Union filed its supplementary statement on November 19, 1984. We affirm the hearing officer's decision.

Findings of Fact

We fully adopt and briefly summarize the hearing officer's findings of fact.

In early 1982, the City and the Union began negotiating their July 1, 1982 - June 30, 1984 collective bargaining agreement. During negotiations, the parties discussed adding to Article 24, the sick leave article, a new Section 13 providing that the City would pay retiring employees for their unused accumulated sick leave ("sick leave buyback" payments). No previous contract had contained this benefit.

Article 24, Section 14 of the existing contract provided as follows:

[1]The full text of the hearing officer's decision appears at 11 MLC 1116.

[2]We resolve both of the Union's objections to the City's supplementary statement in the City's favor. First, the statement was timely. The Union apparently failed to take into account the City's request for a tape, filed September 17, 1984 with its notice of appeal. The City received the tape on or about October 31, 1984. The Commission received the City's supplementary statement on November 13, within the ten-day limit because of an intervening weekend and holiday. 402 CMR 13.13(4). Second, the City's statement gives the Union sufficient notice of the issues on appeal to meet the requirements of 402 MCR 13.13(5).

> Compensation payable under any provisions of this ARTICLE 24 shall be included in an Employee's compensation only for the purposes of computing pension and other retirement benefits due an Employee but shall not be considered in the computation of any other monetary benefits provided for herein, including, without limitation, holiday compensation, overtime compensation and vacation compensation.

Both parties assumed that the proposed sick leave buyback would be "compensation payable under any provisions of this ARTICLE 24," and hence would be included in the calculation of retirement benefits.[3]

On June 25, 1982, the City submitted alternative economic proposals to the Union. One called for six percent raises in each year of the contract, plus sick leave buyback. The other called for seven percent raises in each year of the contract, with no sick leave buyback.

In late June, the Union membership voted to accept the first option, based upon its inclusion of both the buyback payment itself and the increase that it would effect in their pensions. On June 28, 1982, Andrew Miffin, president of the Union, told Robert J. O'Donnell, the City's Director of Labor Relations, that he had been able to "sell" the first option to the membership because sick leave buyback would be included in retirement benefit calculations by virtue of the new Section 13. On July 15, 1982, the parties executed a collective bargaining agreement incorporating the six percent raises and the sick leave buyback provision, the latter memorialized as Article 24, Section 13, which reads as follows:

> An Employee upon retirement, or his spouse, beneficiary or personal representative upon his death, shall be compensated for accumulated but unused sick leave hours with the final payroll under the following formula:
>
> a. A maximum of Two Thousand (2000) hours shall be used for purposes of compensation.
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> b. The Two Thousand (2000) or fewer hours shall be divided into days at the rate of twelve (12) hours per day.
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> c. Each day for which compensation is paid shall be paid at the rate of Fifteen Dollars ($15.00) per day.

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[3]Generally speaking, and insofar as it is material to this case, the amount of an employee's pension is based upon his average annual rate of regular compensation for the last three years he worked. G.L. c.32, section 5(2)(a). Including the buyback in the annual rate would raise the employee's average rate and hence increase his pension.

From July 1, 1982 through August 15, 1983, the City made buyback payments to retiring employees and included those payments in its calculations of their retirement benefits. The record does not reveal how many employees retired during this time, but one received a pension that was $116.47 per month greater than it would have been had his sick leave buyback been left out of the calculations.

In July 1983, the City discovered the Massachusetts Appeals Court's decision in McKenna v. Retirement Board of Northampton, 15 Mass. App. Ct. 987 (1983) (rescript). McKenna brought to the City's attention that sick leave buyback payments were not to be included in computing retirement benefits under G.L. c.32, section 5(2)(a).[4] This prohibition had actually been in force since at least 1980 by reason of G.L. c.681 of the Acts of 1979, but neither party knew anything about it when they negotiated the new clause.

As a result of this discovery, the City ceased including sick leave buyback in its calculation of retirement benefits in August 1983. During that month, the City unilaterally reduced the pensions of those who had initially benefitted from the new contractual provision. Moreover, it decided to recoup the overpayments made since July 1, 1982 by reducing retirees' monthly pension -- in one case, by $100 -- beginning August 15, 1983.

On September 9, 1983 and October 28, 1983, the Union, through its counsel, wrote letters to the City demanding bargaining over the impact of the City's decision to cease including buyback payments in retirement benefit calculations. The City refused, claiming that because its decision had been dictated by law it had no bargaining obligation.

The City appears to disagree with the hearing officer's finding that at the time the parties negotiated and executed their contract, they intended buyback payments to figure into retirement benefit calculations. The City claims that the parties reviewed the costs of the wage and benefit proposals during negotiations, and that each knew that the cost of sick leave buyback alone, independent of its effect on retirement, was equivalent to the foregone one percent wages increases. Hence, the City reasons, the Union could never have believed itself entitled to the benefit that the City eventually withdrew.

The record does not support the City's contention. First, there is no evidence whatsoever that the parties discussed the relative costs of the City's proposals. We will not entertain alternatives to a hearing officer's findings of fact unless their proponent identifies specific record evidence to support them. Hadley School Committee, 7 MLC 1632 (1980); 402 CMR 13.13(5).

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[4] McKenna did not apply directly to these bargaining unit members. It concerned a retiring veteran and construed G.L. c.32, section 58, applicable to veterans. But the decision cites Boston Association of School Administrators and Supervisors v. Boston Retirement Board, 383 Mass. 336 (1981) and Massachusetts Teachers Association v. Teachers Retirement Board, 383 Mass. 345 (1981), which held that sick leave buyback payments are not to be considered part of the "average annual rate of regular compensation" under G.L. c.32, Section 5(2)(a).

Second, the intent of the parties is manifest in the plain language of the contract. If the parties had wished to exempt sick leave buyback from the sweep of Article 14, they could have so provided, but they did not. The City lived by this language for a full year, during which it continued to include buyback payments in retirement benefit calculations.

Finally, the uncontradicted record shows that the City understood the relationship between Articles 13 and 14 at the time of the Union's ratification vote because Miffin informed the City that the membership had accepted the contract for that very reason.

We therefore affirm the hearing officer's finding that the parties fully intended sick leave buyback payments to figure into retirement benefit calculations, at least as of the execution date of the contract.

Opinion

On appeal the City revives its argument that because G.L. c.32 dictated its decision to cease including buyback payments in retirement benefit calculations, the City had no obligation to bargain over any aspect of that action.

The parties agree that the City had no obligation to bargain over the initial decision to cease including sick leave buyback in its calculation of retirement benefits. The substantive employment term required by G.L. c.32 is not among those that a collective bargaining agreement can override. G.L. c.150E, Section 7(d). Where "the public employer and union are incapable of amending the statute's requirements through bargaining...neither party has a duty to bargain as to the subject matter of the statute." National Association of Government Employees v. Labor Relations Commission, 17 Mass. App. Ct. 542, 544 (1984) and cases cited therein. Thus the City was not required to bargain about the decision to conform its method of calculating retirement benefits to the requirements of G.L. c.32.

The City, however, contends the hearing officer erred when she concluded that the City was obliged to bargain about the impacts of the new calculations upon the bargaining unit. We have long recognized a public employer's obligation to bargain over the impact of its decisions upon employees' wages, hours and working conditions, even though the initial decision or action may be outside the sphere of collective bargaining. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); Commonwealth of Massachusetts, 4 MLC 1869 (1978), aff'd sub nom. Group Insurance Commission v. Labor Relations Commission, 381 Mass. 199 (1980); Town of North Attleboro, 4 MLC 1053 (H.O. 1977), aff'd in relevant part, 4 MLC 1585 (1977). Here, G.L. c.32 compelled the City to use the statutorily prescribed method of determining bargaining unit members' "average annual rate of compensation," but it dictated no more. It was well within the City's power to mitigate the effects of the statute upon bargaining unit members. There were, for example, many options for recovering the overpayments beside the one that the City chose. There were also many ways of compensating for the withdrawal of the bargained-for retirement benefit. As the hearing officer suggested, the parties could have agreed to substitute increased longevity or accumulated sick leave payments.

There is no disagreement that, although the City's initial decision may have been compelled by the statute, the impacts of that decision were well within the control of the parties. The hearing officer correctly ruled they were subject to a bargaining obligation.

Therefore, by its refusal to bargain concerning the impact of its decision to alter the method of calculating retirement benefits, the City failed to comply with its obligation to bargain in good faith in violation of G.L. c.150E, Sections 10(a)(5) and (1). The decision of the hearing officer is affirmed.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the City of Springfield shall:

1. Cease and desist from:

   a. Failing and refusing to bargain in good faith with Local 648, International Association of Firefighters over the impacts of the City's decision to cease including accumulated sick leave in the computation of retirement benefits;

   b. In any like or similar manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed under General Laws, Chapter 150E.

2. Take the following affirmative action which will effectuate the policies of the Law:

   a. Upon request, bargain in good faith with Local 648 over the impacts of the decision to cease including accumulated sick leave in retirement computation upon wages and conditions of employment of members of Local 648's bargaining unit, including but not limited to, negotiations over alternative lawful benefits which may be substituted for the deleted retirement benefit;

   b. Post signed copies of the attached Notice to Employees in conspicuous places where notices to employees represented by Local 648 are usually posted and leave posted for a period of thirty (30) days thereafter;

   c. Notify the Commission, in writing, within thirty (30) days of the 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

City of Springfield and Local 648, IAFF, AFL-CIO, 12 MLC 1021

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

The Massachusetts Labor Relations Commission has determined that the City of Springfield violated Sections 10(a)(5) and (1) of General Laws, Chapter 150E (the State Public Employee Collective Bargaining Law) by failing and refusing to bargain with Local 648, International Association of Firefighters over the impact of its decision to cease including accumulated sick leave in the computation of retirement benefits for members of the bargaining unit.

WE WILL NOT refuse to bargain in good faith with Local 648, International Association of Firefighters.

WE WILL NOT in any like or similar manner, interfere with, restrain, or coerce employees in the exercise of their rights under the Law.

WE WILL, upon request, bargain with Local 648 over the impacts of our decision to cease including accumulated sick leave in the computation of retirement benefits.

MAYOR
City of Springfield