MASSACHUSETTS BOARD OF REGENTS OF HIGHER EDUCATION AND MASSACHUSETTS COMMUNITY COLLEGE COUNCIL/MTA/NEA, SUP-2995 (3/20/87).

108.61 mid-contract mediation and factfinding

Commissioners participating:

Paul T. Edgar, Chairman
Elizabeth K. Boyer, Commissioner

Appearances:

Sandra C. Quinn, Esq. - Representing the Massachusetts Community College Council/MTA/NEA

Judith A. Wong, Esq. - Representing the Massachusetts Board of Regents of Higher Education

DECISION

Statement of the Case

This case presents the sole issue of whether the dispute resolution procedures contained in Section 9 of General Laws Chapter 150E (the Law) are applicable to mid-contract impact bargaining.

The Massachusetts Community College Council/MTA/NEA (Association) filed a charge with the Labor Relations Commission (Commission) on December 17, 1985 alleging that the Massachusetts Board of Regents of Higher Education (Regents) had engaged in prohibited practices within the meaning of Sections 10(a)(5), (6) and (1) of the Law. The Commission investigated the Association's charge and issued a Complaint and Notice of Hearing on May 2, 1986, alleging that the Regents had violated Sections 10(a)(5), (6) and (1) of the Law by refusing to participate in the mediation and fact-finding procedures set forth in Section 9 of the Law. On May 13, 1986, the Regents filed an Answer to the Commission's Complaint. Since no material facts were in dispute, both parties agreed to waive a hearing and to submit the case for determination based upon the Complaint and Answer and several exhibits. The Association and the Regents filed written briefs with the Commission, which have been carefully considered. We conclude that the dispute resolution procedures contained in Section 9 of the Law are inapplicable to impact bargaining deadlocks which arise during the term of a collective bargaining agreement. Accordingly, we dismiss the Complaint.

Findings of Fact

As noted above, the parties stipulated that the case would be submitted based upon the Commission's Complaint, the Regents' Answer and certain joint exhibits. The underlying facts as stipulated to by the parties are as follows:

1. The Association is the exclusive representative of all regular full-time faculty and certain professional staff at the Community Colleges, including Northern Essex Community College.

2. The Association and the Regents were parties to a collective bargaining agreement effective July 1, 1983 through June 30, 1986.

3. The collective bargaining agreement between the parties contained the following provision at Article XXIV:

> ...[T]he Board and the Association for the life of this Agreement each voluntarily and unqualifiedly waives the right and agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not in this Agreement even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time they signed this Agreement; provided, however, that nothing in this Article shall prohibit the parties from conducting negotiations during the term of this Agreement regarding the impact on terms and conditions of the Board or its successor to close any College or to merge any College with another educational institution to consolidate, discontinue, or transfer existing functions, educational activities and programs.

4. In 1982, a licensed practical nurse (LPN) program was transferred from Greater Lawrence Regional Vocational Technical School to Northern Essex Community College on an "03" basis. In November 1983, the program became state-funded and all teaching positions became "01".

5. In accordance with Article XXIV of the collective bargaining agreement, set forth above, the Association and the Regents met four times from January through July 1986 to bargain over the impact of the absorption of the nursing program by Northern Essex Community College.

6. At these bargaining sessions, the Association and the Regents resolved all issues except the additional compensation of the faculty members of the nursing program.

7. On August 28, 1985, the Association filed a petition for mediation and fact-finding under Section 9 of the Law with the Board of Conciliation and Arbitration (Board), to resolve the issue of the salary of faculty members of the nursing program.

8. On October 3, 1985, the Association and the Regents met with a mediator appointed by the Board. The mediator determined that an impasse existed regarding the salary issue referred to above, and soon afterward the Board initiated fact-finding procedures pursuant to Section 9 of the Law.

9. On or about October 23, 1985, the Regents informed the Association that they refused to participate in fact-finding procedures, contending that Section 9 did not apply in such circumstances.

Massachusetts Board of Regents of Higher Education and Massachusetts Community College Council/MTA/NEA, 13 MLC 1540

## Opinion

The question to be decided in this case is whether Section 9 is applicable to mid-contract impasse reached between the parties regarding the impact of the transfer of the nursing program from one college to another. The Regents take the position that Section 9 does not apply to circumstances such as these. The Regents contend that the mediation and factfinding procedures encompassed in Section 9 apply only to negotiations over the provisions of an initial or successor collective bargaining agreement. The Association, on the other hand, asserts that the dispute resolution procedures contained in Section 9 apply to impact bargaining impasses occurring during the life of a collective bargaining agreement. Accordingly, the Association asserts that Section 9 may be invoked under these circumstances.

Both parties have advanced various policy arguments to support their respective positions. However meritorious we may feel the policy arguments to be, we are constrained by our interpretation of the language of Section 9 which provides in pertinent part:

> After a reasonable period of negotiation over the terms of a collective bargaining agreement, either party or the parties acting jointly may petition the board for a determination of the existence of an impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine if the parties have negotiated for a reasonable period of time and if an impasse exists, within ten days of the receipt of such petition, the board shall notify the parties of the results of its investigation...
>
> If the impasse continues after the conclusion of mediation, either party or the parties acting jointly may petition the board to initiate fact-finding proceedings. Upon receipt of such petition, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board.

The key phrase in the Law is the initial phrase to the effect that either party may petition the Board for determination of impasse "after a reasonable period of negotiation over the terms of a collective bargaining agreement." Absent some other indicia of legislative intent to the contrary, the wording of the above provision on its face, limits the application of mediation and fact-finding to situations where the parties are negotiating an initial or successor collective bargaining agreement.[1]

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[1] The Union advances numerous arguments concerning the legislative history of Section 9 and the significance of the various drafts which preceded its enactment. It is well established that where the langauge of a statute is plain and unambiguous, legislative history is not ordinarily a proper source of construction. New England Medical Center Hospital, Inc. v. Commissioner of Revenue, 381 Mass. 748, 750 (1980); Hoffman v. Howmedica, Inc., 373 Mass. 32, 37 (1977). Moreover, having examined the Senate and House bills preceding the enactment of Section 9, we discern no clear

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Indeed, the Commission has noted that "Section 9 refers to negotiations 'over the terms of a collective bargaining agreement' rather than to mid-contarct negotiations." New Bedford School Committee, 8 MLC 1472, 1478 n.5 (1981).[2] (emphasis in original)

This interpretation of the scope of Section 9 is reinforced by the recent amendment to Section 9,[3] which provides that:

> Upon the filing of a petition pursuant to this section for a determination of an impasse following negotiations for a successor agreement, an employer shall not implement unilateral changes until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed and the terms and conditions of employment shall continue in effect until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed; provided, however, that nothing contained herein shall prohibit the parties from extending the terms and conditions of such a collective bargaining agreement by mutual agreement for a period of time in excess of the aforementioned time. For purposes of this paragraph, the board shall certify to the parties that the collective bargaining process, including mediation, fact finding or arbitration, if applicable, has been completed. (emphasis added)

We believe that this amendment, which clearly contemplates the application of Section 9 dispute resolution procedures in the context of "negotiations for a successor collective bargaining agreement," is consistent with our reading of Section 9 that limits the scope of the contractual dispute resolution procedures. There is nothing in either the original or amended version of Section 9, or in any of the various drafts which preceded its enactment, which indicates that the legislature either anticipated or designed Section 9 to encompass deadlocks other than those which occur in negotiations for an initial or successor collective bargaining agreement.

We therefor conclude that the dispute resolution procedures provided for under Section 9 of the Law do not encompass impasses which occur during the term of a collective bargaining agreement. Accordingly, the Regents did not violate Sections 10(a)(5) and (6) of the Law by refusing to participate in mid-contract factfinding

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legislative intent that Section 9 was designed to apply to deadlocks other than those which occur in the negotiation of a collective bargaining agreement.

[2] In an analogous case, the Wisconsin Public Employee Relations Board held similar mediation provisions in the Wisconsin statute inapplicable to impact negotiations which arose during the term of a collective bargaining agreement. Dane County, Dec. No. 17400 (November 6, 1979).

[3] Chapter 198 of the Acts of 1986, enacted July 8, 1986.

regarding the impact of the Regents' decision to transfer the nursing program from one college to another, and the complaint of prohibited practice is hereby dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

ELIZABETH K. BOYER, COMMISSIONER