

TOWN OF SHREWSBURY AND IBPO, LOCAL 426, MUP-6596 (11/7/89).

53.6 parity provisions
 54.232 police paid details
 82.1 affirmative action
 92.45 motions to reopen

Commissioners Participating:

Maria C. Walsh, Commissioner
 Elizabeth K. Boyer, Commissioner

Appearances:

Richard K. Sullivan, Esq. - Representing the International Brotherhood of Police Officers, Local 426
 T. Philip Leader, Esq. - Representing the Town of Shrewsbury

DECISION

Statement of the Case

On March 23, 1987, the International Brotherhood of Police Officers, Local 426 ("Union") filed a charge of prohibited practice with the Labor Relations Commission ("Commission") alleging that the Town of Shrewsbury ("Town" or "Employer") had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of G.L. c.150E ("the Law") by entering into a collective bargaining agreement with the Shrewsbury Police Superior Officers Association ("SPSOA") that contained an illegal parity provision. On June 25, 1987, following an investigation and pursuant to notice, the Commission issued a Complaint alleging that the Town had violated Sections 10(a)(5) and (1) by entering into an agreement with SPSOA that contained an illegal parity provision.

SPSOA was not a party to the instant action between the Union and the Town. By letter dated April 7, 1988, the Commission informed SPSOA that because a Commission order in this action might affect the rights of SPSOA members, the Commission wished to give SPSOA the opportunity to present evidence or be heard regarding the allegations in this case. On April 13, 1988, SPSOA timely responded to the Commission by letter indicating that on January 27, 1988, the SPSOA and the Employer had signed a new collective bargaining agreement that eliminated the offending provision at issue herein. On June 16, 1988, the SPSOA submitted a copy of pertinent provisions of the 1986-88 SPSOA agreement, as amended January 27, 1988, including Article XI. The amended agreement does not contain a provision similar to Article XI, Section M, which forms the basis of the present action. The Commission has treated SPSOA's letter as a Motion to Reopen the Record for the purpose of receiving the amended agreement into the record. Neither the Town nor the Union objected to this Motion and we hereby grant it for the purpose of receiving the amended agreement as evidence in this case.



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On September 29, 1987, an expedited hearing was held before hearing officer Amy L. Davidson, Esq. Full opportunity to be heard, to present evidence and to examine and cross-examine witnesses was afforded both parties. Both parties submitted post-hearing briefs on November 20, 1987. By notice dated January 13, 1988, the Commission notified the parties that the hearing had been redesignated a formal hearing pursuant to Commission Rule 456 CMR 13.02(1).

For the reasons set forth below, we find that the Town violated Sections 10(a)(5) and (1) of the Law by entering into an agreement with SPSOA which contains an illegal parity provision.

FACTS²

There are two bargaining units in the Town's police force: the patrol officers, represented by the Union; and the superior officers, represented by SPSOA.³ The Town and the Union were parties to a collective bargaining agreement which commenced on July 1, 1984 and expired on June 30, 1986. At the time of the hearing, no new agreement had been reached and the parties had submitted the issued to fact-finding, pursuant to Section 9 of the Law.⁴

Article XII of the expired collective bargaining agreement set forth a schedule for paid detail rates for patrol officers.⁵ On February 24, 1987, the parties entered into an interim agreement which provided, *inter alia*, that the paid detail rates for patrol officers would be increased to \$17.17 per hour.

The Town and SPSOA are parties to a collective bargaining agreement effective from July 1, 1986 to June 30, 1988. Article XI, Section M of this agreement originally provided:⁶

²Neither party contests the Commission's jurisdiction over this action.

³From 1973 to 1985, the patrol and superior officers were in a single department bargaining unit. Pursuant to a decision and direction of election by a Commission hearing officer, the superior officers were placed in a separate bargaining unit and later voted to be represented by the SPSOA. (Case No. MCR-3512 Town of Shrewsbury, 11 MLC 1588 (H.O., 1985).

⁴The Employer, however, moved to stay the instant proceeding pending the outcome of the fact-finding process. Because the purpose of Fact-finding is to resolve outstanding bargaining issues between the Union and the Town, the fact-finding proceeding is not relevant to this proceeding. Therefore, we declined to stay the unfair labor practice proceeding pending the outcome of fact-finding.

⁵Article XII of the expired collective bargaining agreement provided that patrol officers and sergeants would be paid either \$11.00 or \$12.00 per hour, depending on the nature of the paid detail, and that the sergeant in charge of a detail, if any, would be paid \$1.00 more than the rate paid to the patrol officers or sergeants.

⁶The Employer argued in its brief that the agreement between the Town and SPSOA expired on June 30, 1987. The Union submitted into the record a copy of

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In no event will a supervisor receive a lower rate of pay for detail work than a patrolman, and the pay rate for the Sergeant in charge of the detail shall increase by three dollars (\$3.00) per hour over such adjusted rate.

Prior to the execution of the interim agreement between the Union and the Town on February 24, 1987, the superior officers were compensated for paid details at the hourly rates set forth in Article XI of their collective bargaining agreement. Article X, Section F provided that sergeants working without a patrol officer would be paid either \$15.00 or \$16.00 per hour for paid details, depending on the nature of the assignment, and that the sergeants working with a patrol officer would be paid either \$18.00 or \$19.00 per hour, depending on the nature of the detail. However, after the increase in the patrol officers' hourly rate for detail work effected by the February 24, 1987 interim agreement between the Union and the Town, the parity clause in Article XI, Section M of the 1986-1988 SPSOA contract operated to raise the hourly rate paid to the sergeants. The resulting paid detail rate for the sergeants working without a patrol officer was \$17.17 per hour and \$20.17 per hour for sergeants working with a patrol officer.

On or around February 24, 1987, the Employer issued a notice to local merchants and others who employed police personnel on paid details notifying them of this increase in the paid detail rate for sergeants. The Town also charges an administrative fee to purchasers of private detail services. The fee is calculated as a percentage of the detail payment received by the patrol or superior officer.

OPINION

The Commission has consistently struck down as illegal "parity" provisions contained in collective bargaining agreements. Cambridge School Committee, 11 MLC 1604, 1607-08 (1985), citing, Medford School Committee, 3 MLC 1413 (1977). The Commission has repeatedly held that a provision in one union's contract which directly links the wages of one unit to those of another inhibits the second

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certain pages of the collective bargaining agreement between the Town and SPSOA. The fact page of the agreement states that the effective dates of the contract are July 1, 1986 through June 30, 1988. Further, the agreement indicates that in order to terminate the contract as of June 30, 1987, the party seeking termination must serve notice upon the other party. As noted above at footnote 1, we have reopened the record to receive from the SPSOA a new collective bargaining agreement between the SPSOA and the Town effective January 27, 1988. Thus we conclude that at all times prior to January 27, 1988, the SPSOA and Town were signatories to a collective bargaining agreement effective July 1, 1986, containing the above-referenced Article XI, Section M (referred to herein as the 1986-1988 agreement). We further conclude that at all times since January 27, 1988, the collective bargaining agreement between the SPSOA and the Town has omitted the parity language at issue in this case and substituted the following terms: "The pay rate for a supervisor in charge of a detail shall be three dollars (\$3.00) per hour over his normal rate."



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union's ability to bargain with the same employer only on behalf of the employees it represents. City of Gardner, 12 MLC 1681, 1686 (1986).

The clause at issue here ties the sergeants' paid detail rate to the patrol officers' paid detail rate, and thus, like other unlawful parity clauses, essentially forces the patrol officers' union to bargain for paid detail rates in an expanded unit, that is, a unit including not only patrol officers but also sergeants. Such a clause does not allow the Union to bargain only about the rates to be paid to patrol officers for details. By entering into the 1986-1988 contract with SPSOA the Employer effectively forced the Union to negotiate not only the patrol officers' paid detail rates, but also the superior officers' paid detail rates when the Union sought to increase the patrol officers' rates. Therefore, we conclude that Article XI, Section M of the 1986-1988 collective bargaining agreement between the Town and SPSOA constitutes an illegal parity provision.

The Employer, citing Medford School Committee, *supra*, argues that the provision is not an unlawful parity provision but instead a "comparability" provision, aimed at retaining a long standing practice of paying sergeants more than patrol officers for paid details. However, the provision at issue here is not permissible under the doctrine set forth in Medford School Committee. There, the Commission noted:

Our decision in this matter should not be read as indicating that wage "comparability" is not an acceptable consideration in formulating a bargaining position. The law does not require an employer to bargain with blinders on, oblivious to the impact that one wage settlement may have on other negotiations. We simply hold that an employer may not impose such a result on one employee organization through a contract with another. (Emphasis added.) 3 MLC at 1415.

The Town has done more here than contemplate the comparability of paid detail rates for patrol officers and sergeants in formulating its bargaining proposals; it has instead executed a contract containing a provision that unlawfully ties the sergeants' paid detail rate to the paid detail rate negotiated by the patrol officers. Article XI, Section M of the 1986-1988 SPSOA agreement had the precise effect prohibited by the Law. It imposed on the patrol officers' negotiations the burden of the Town's agreement with the superior officers regarding paid detail rates.

The Town further argues that Article XI, Section M of the 1986-1988 agreement did not actually impair the ability of the Union to bargain effectively because the funds to pay for the paid detail rates come not from the Town's resources but instead from the parties requesting the services of the police, and thus the patrol officers are not competing with sergeants for the same pool of Town financial resources. However, even though the two unions may not be competing for Police Department finances in negotiating detail rates, the Town's potential concerns with respect to the sergeants' detail rates still effectively interfere with the Union's right to bargain on behalf of the patrol officers alone.



CONCLUSION

For the reasons set forth above, we conclude that Article XI, Section M of the 1986-1988 collective bargaining agreement between the Town and SPSOA was, while in effect, an unlawful parity provision, and therefore that the Employer violated Sections 10(a)(5) and (1) of the Law by agreeing to and giving effect to that provision.

REMEDY

The typical remedy in an unlawful parity case orders the employer to cease and desist from implementing or otherwise giving effect to the offending clause and to post a notice to employees. Medford School Committee, supra; City of Beverly, 6 MLC 1562 (1979). In this case, we find no need to order the Employer to cease and desist from giving effect to the illegal clause because Article XI, Section M has been deleted from the 1986-1988 SPSOA contract since January 1988. However, because this unlawful parity provision was in effect from October 3, 1986 through January 27, 1988, we order that a Notice be posted informing employees of the issues raised here and the Commission's disposition of this case.

The Union further argues that unit employees are also entitled to a monetary remedy. It contends that both the sergeants and the Town have benefited by virtue of the unlawful parity provision: the sergeants benefited by receiving higher rates for paid details and the Town benefited from receiving a higher administrative fee from those who hire sergeants on a paid detail basis. The Union, therefore, urges the Commission to order the Town to pay to the Union, for equal distribution among the unit membership, a lump sum equal to the amount of the additional paid detail payments made to the sergeants since the filing of the charge in this case on March 2, 1987.

We decline to order the remedy sought by the Union. The remedial power of the Commission under Section 11 of the Law encompasses the authority to fashion "make whole" remedies to compensate employees who suffer losses due to the respondent's unlawful action. Assuming, arguendo, that the Town and the SPSOA "profited" from the parity clause, we would not order that such sums be paid to the patrol officers where there is no evidence that any patrol officer suffered any monetary or other loss as a result of the parity clause. Such an order would, in effect, impose punitive damages. Here, the Union has not demonstrated that any patrol officer has suffered a monetary or other loss as a result of the maintenance of the illegal parity provision in the SPSOA agreement. Therefore, the monetary relief requested is not appropriate. City of Springfield, 11 MLC 1116 (H.O. 1984), aff'd, 12 MLC 1051 (1985).

ORDER

WHEREFORE, on the basis of the foregoing, it is hereby ordered, pursuant to Section 11 of the Law, that the Town of Shrewsbury shall:

1. Cease and desist from:



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- (a) In any manner interfering with, restraining or coercing its employees in the exercise of their protected rights under the Law;
 - (b) In any manner refusing to participate in good faith collective bargaining with the exclusive representative of its employees.
2. Take the following affirmative action which will effectuate the policies of the Law:
- (a) Post immediately in conspicuous places at all of its buildings where its Police Department employees usually congregate and where notices to them are usually posted and maintain for a period of thirty (30) consecutive days thereafter copies of the attached Notice to Employees.
 - (b) 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**

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER



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

The Labor Relations Commission has ruled that the Town of Shrewsbury has committed an unfair labor practice, in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1), of G.L. c.150E. That ruling is based on the Town's entering into and implementing an unlawful parity clause in the collective bargaining agreement with the Shrewsbury Police Superior Officers Association.

G.L. c.150E gives employees the following rights:

to organize and bargain collectively about wages, hours and terms and conditions of employment through a representative of their own choice;

to engage in concerted, protected activities; and

to refrain from any of the above activities.

WE WILL not propose or enter into protective parity clauses in collective bargaining negotiations with any union that represents any unit of our employees.

WE WILL not in any like manner bargain in bad faith with the exclusive representatives of our employees or otherwise interfere with, restrain or coerce employees in rights guaranteed by the Law.

TOWN OF SHREWSBURY

Chairman
Board of Selectmen

