TOWN OF WARE AND WARE FIREFIGHTERS, LOCAL 1851, IAFF, MUP-7486 (3/8/91).
RULING ON MOTION TO DEFER TO ARBITRATION.

91.61 pre-arbitration deferral
92.49 other motions

Commissioners participating:

Maria C. Walsh, Chairperson
Haidee A. Morris, Commissioner
William G. Hayward, Jr., Commissioner

Appearances:

Karla J. deSteuben, Esq. - Representing the Town of Ware

Done' Rosencrance, Esq.
Marshall T. Moriarty, Esq. - Representing the Ware Firefighters, Local 1851, IAFF

RULING ON MOTION TO DEFER TO ARBITRATION

On August 28, 1990, Commission Hearing Officer Robert McCormack issued a decision and order in this case finding that the Town of Ware (Town) had violated G.L. c.150E, Sections 10(a)(5) and (1) (the Law) by failing to bargain with the Ware Firefighters, Local 1851, I.A.F.F. (Union) over the impacts of a decision to reduce the minimum number of firefighters per shift from three to two. The hearing officer ruled, however, that the Town had not violated the Law by its decision to reduce the number of firefighters per shift and he therefore declined to order restoration of the status quo ante. The Union filed a notice of appeal of the hearing officer's decision to the full Commission and also filed a motion to defer the case to arbitration.[1]

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[1] We note that on or about July 25, 1989, the Superior Court, Cross, J., denied a union request for preliminary injunction to enjoin the Town from instituting a two firefighter per shift policy. In denying the injunction the Superior Court noted that the Union had filed the instant prohibited practice charge and that Article XI of the collective bargaining agreement precluded the Union from pursuing both a charge at the Labor Relations Commission and a grievance to arbitration. The Court suggested that the Commission might intervene to request arbitration. Thereafter, the Superior Court, Welch, J., on September 19, 1989, denied the Union's motion to compel arbitration and allowed the Town's motion to stay arbitration. The Superior Court indicated a willingness to review its decision "if the Labor Relations Commission intervene[d] to request arbitration." Local 1851, I.A.F.F. v. Town of Ware, Hampshire Sup. Ct. C.A. No. 89-238 and No. 89-257 (Welch, J.) (Sept. 19, 1989) sl.op. at 5. Notwithstanding the courtesy of (continued)

We have considered the Union's arguments in support of its motion and the opposition to the motion filed by the Town and conclude that the motion should be denied. Although the Commission has consistently favored arbitration as the method for resolving contract disputes, here the Union has requested that the Commission defer to an enjoined arbitration process after a hearing officer's decision has been issued. The Commission's policy to defer is discretionary. See Cohasset School Committee, MUP-419 (June 19, 1973) (Commission will defer to arbitration process if the following three conditions are met: 1) the dispute must be resolved with reasonable promptness by the arbitration process; 2) the grievance and arbitration procedures must be fair and regular; 3) the result of the grievance arbitration procedure must not be repugnant to c.150E). Generally, the Commission will defer when the issue posed by the prohibited practice is essentially a question of contract interpretation, the statutory issues raised by the case are well established, and the resources of the Commission and the parties can be conserved through deferral. See Whittier Regional School Committee, 13 MLC 1325, 1331-1332 (1986). In the instant case the parties' contract provisions may be central to a resolution of the underlying prohibited practice,[2] but the Town opposes arbitration and the parties already have litigated the case before a Commission hearing officer who has issued a decision.

In deciding whether to defer the Commission also considers whether deferral will discourage inconsistent awards. Generally the Commission will defer to the arbitration process prior to conducting a Commission hearing. At a prohibited practice hearing, however, the Commission generally limits its deferral to an arbitration award, thereby minimizing the risk that two forums will issue inconsistent rulings. As the Commission noted in City of Boston, 5 MLC 1155, 1157 (1978), "It is not in the interest of the parties or of labor stability to encourage the possibility of inconsistent awards. Nor does it further those interests to encourage re-litigation of cases by losing parties."

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1 (continued)
the Superior Court the Commission would have no cause to intervene in the parties' civil suits to compel or stay arbitration of their contractual grievance unless the Commission previously had decided to defer to the arbitral process. In the instant case, the Commission has no record of a prior request that we defer this case to arbitration. See note 3, below.

2 Indeed, had the Union requested deferral to arbitration prior to the issuance of the hearing officer's decision, Commission policy would have been favorable to deferral. Particularly here, where the contract provisions are central to the dispute, an arbitrator would have the opportunity to hear and rule upon the parties' interpretations of their collective bargaining agreement. Although the Town contends that the contract provision is unenforceable under Saugus v. Newbury, 15 Mass. App. Ct. 611, 615 (1983), it does not follow that the dispute is therefore not arbitrable. The arbitrator either might resolve the grievance in a manner consistent with the Town's interpretation of the law or in some other manner not inconsistent with Saugus.

In the present posture of the case, however, the Commission cannot defer to an arbitration process which has been enjoined. Generally, the Commission has declined to defer to arbitration any case in which the respondent opposes arbitration. As long as the Town refuses to participate in arbitration it is unlikely that the grievance arbitration process can resolve this dispute between the parties.[3] Therefore the Commission has no basis to conclude that the first condition for deferral pursuant to Cohasset (i.e. that the dispute be resolved with reasonable promptness by the grievance arbitration process) has been met in this case. See Town of Cohasset, MUP-419 (June 19, 1983) sl. op. at 16, 18.

CONCLUSION

Therefore the Commission denies the motion to defer to arbitration.[4] The Union's appeal of the hearing officer's decision is pending and will be considered separately by the Commission.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

HAIDEE A. MORRIS, COMMISSIONER

WILLIAM G. HAYWARD, JR., COMMISSIONER

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[3] Nothing in this ruling precludes the parties from voluntarily agreeing to arbitrate their contractual grievance dispute.

[4] The Town has requested reimbursement of its attorney's fees for responding to the Union's request to defer to arbitration. The award of attorney's fees is beyond the statutory authority of the Commission and is hereby denied. City of Boston v. Labor Relations Commission, 15 Mass. App. Ct. 122 (1983) fur. rev. den. 388 Mass. 1103 (1983); County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. 127 (1983) fur. rev. den. 388 Mass. 1104 (1983).