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**BROCKTON SCHOOL COMMITTEE AND BROCKTON EDUCATION ASSOCIATION, MUP-7457  
(7/28/92). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.**

53.1 budget submission date  
53.52 outside sources of funding  
53.53 transfers of funds  
54.6 wages  
65.9 other interference with union  
92.51 appeals to full commission

Commissioners participating:

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

Appearances:

Regina Tate Williams, Esq. - Representing the Brockton School  
Committee

Mark G. Kaplan, Esq. - Representing the Brockton Education  
Association

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On August 7, 1990, Hearing Officer Robert B. McCormack issued his decision in this case, holding that the Brockton School Committee (School Committee) had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of General Laws, Chapter 150E (the Law) by conditioning bargaining for economic items upon prior action by a third party.<sup>1</sup> The School Committee filed a timely appeal of his decision and both parties have filed supplementary statements. Having reviewed the record evidence and considered the arguments of the parties, for the reasons set forth in the following Opinion, we conclude that the School Committee did violate the Law by refusing to negotiate wages until after the City Council had passed a budget.

Facts

The Brockton Education Association (Union) represents teachers and administrators employed in the Brockton public schools. The School Committee is the agent of the employer City of Brockton for purposes of bargaining with the employees represented by the Union.<sup>2</sup> A three year collective bargaining agreement between

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<sup>1</sup> The full text of the hearing officer's decision is published at 17 MLC 1207.

<sup>2</sup> The Commission's jurisdiction is not contested.

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chief spokesperson for the School Committee was attorney Edward Lenox. During the the Union and the School Committee expired on August 31, 1989. Negotiations for a successor agreement commenced on February 16, 1989. During the course of the negotiations, the chief spokesperson for the Union was attorney Mark Kaplan and the first two sessions in February 1989, the Union presented its proposals, including a proposal for a 15% salary increase for each of two years, and the School Committee made an initial response. The School Committee responded to each of the Union's economic proposals by a statement to the effect of "that has an economic impact, so we can't talk about that because we don't know what our economic situation is going to be."

At the third bargaining session, the School Committee indicated that it was not yet prepared to present its proposals because it had been too busy preparing its fiscal year 1990 budget proposal for the Mayor. It was agreed that the School Committee would present its proposals at the next scheduled bargaining session.

At the fourth bargaining session on March 28, 1989, the School Committee presented its proposals to the Union, but failed to make any proposal regarding salaries. Lenox explained that the fiscal condition of the City was "uncertain" and that "so long as the situation existed as it did then, that there could be no wage offer." The School Committee suggested that the next bargaining session April 5, 1989, be cancelled in order to allow the Committee to put its energies into the ongoing budget process. At the time, the Committee was in the process of holding public meetings on a proposed budget, which would be submitted to the Mayor, who could make changes before submission to the City Council. Lenox represented that, given the budget activity that would be taking place in the next few weeks, the School Committee would have a better awareness of its economic situation for the upcoming fiscal year by April 25, 1989, when the parties were scheduled to meet. The Union agreed to cancel the April 5 session.

At the April 25, 1989, session the School Committee indicated that it still was unable to negotiate salary increases or other economic items because it still was uncertain what funding would be received from the City, which in turn was uncertain what funding would be received from the state through local aid. The Committee requested that the next bargaining session, scheduled for May 9, 1989, be canceled so that the budget situation, including the possibility of state aid, might be closer to resolution by the following scheduled session. The Union refused to cancel the May 9, 1989, session declaring that the session could be used at least to discuss non-economic proposals.

Subsequent to the May 9 session, the parties met on May 23, May 30, and June 6, 1989. At each meeting the Union requested that the Committee negotiate wages on an "equity basis," that is, by referring to what wage agreements were being reached in other communities. At the May 30 session, the Union formally proposed bifurcating the negotiations from the funding process and settling upon a wage figure subject to funding. The School Committee rejected this proposal at the June 6 session.

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During the bargaining sessions prior to June 12, 1989, the Committee took the position that it could not "offer," "negotiate," or "agree to" a wage proposal in view of the amount of the proposed budget. It indicated that the budget amount might change if the City received additional state funds and the city council appropriated some of them to the school committee budget. The Union filed the charge of prohibited practice which gave rise to this case on June 12, 1989, and delivered a copy of the charge to the School Committee at a bargaining session on that day. The Union also repeated its request for a wage proposal and the Committee responded "zero percent."

After the June 12 session, the parties met again on June 20, 1989 and failed to reach agreement. On July 7, 1989, the Committee petitioned for mediation over the objection of the Union and mediation began thereafter. The contract was settled in October 1989 with a wage increase of less than 1% in fiscal year 1990, 3% in September 1990, 4% in January 1991, 4% in September 1991, and 4% in January 1992.

Opinion

The Hearing Officer found that the School Committee was refusing to bargain over wages and other economic issues until after the City Council finalized its budget. Our review of the record indicates that the Hearing Officer's factual conclusion is supported by substantial evidence. Although the School Committee's negotiator may have intended to communicate a different message,<sup>3</sup> his admitted statements, in conjunction with his actions, convey the message that the School Committee would not negotiate about economic items until after the City Council had acted on the School Committee's budget. By the statements that it could not "offer" or "negotiate" economic items unless and until the City Council provided additional funds in its budget, and by its requests to delay bargaining sessions until after the budget process was further along, the School Committee effectively stalled any discussion about economic items and frustrated the bargaining process.

There is some evidence of Union acquiescence to the delays in bargaining prior to May 23, 1989.<sup>4</sup> By the May 23 bargaining session, however, the Union consistently requested salary discussions. The School Committee's self-characterized response was that it could not "offer," "discuss" or "negotiate" any salary increases unless it received additional funds in its budget from the City Council, and the City Council probably wouldn't appropriate additional funds unless the City received additional state funds. Thus, the School Committee conditioned bargaining

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Unless the evidence demonstrates that the parties mutually understood an implied message, we can only base our conclusions upon the actual words and actions in evidence.

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The Union agreed to postpone the April 5 bargaining session, and to discuss only non-economic items at the May 9 session.

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for economic items upon the action of the City Council and thereby unlawfully delayed the bargaining process.

Although we can sympathize with the School Committee's desires to know the parameters of its operating budget before committing itself to employee economic expenses,<sup>5</sup> the collective bargaining process mandates a different approach. If the Union wants to negotiate about wages prior to the passage of the City Council budget, perhaps in the hope of convincing the City Council to fund a larger budget, the Union must have the opportunity to explore economic items. The School Committee is free to offer a 0% wage increase as its economic proposal, if it does not reasonably anticipate being able to afford anything higher or if it is philosophically or politically opposed to an increase. In the alternative, the School Committee could propose a 1% wage increase conditional upon receipt of a budget of some specified amount, or the School Committee could propose a wage reopener if the fiscal year budget reaches a certain amount. The School Committee may not refuse to discuss economic issues. Absent the Union's voluntary agreement to postpone wage negotiations until after the City Council passed the budget, the School Committee could not unilaterally refuse to discuss economic items for a period of time. To the extent that it did so, it frustrated the bargaining process and violated the Law.

In Middlesex County Commissioners, 3 MLC 1594, 1599 (1977), the employer refused to bargain over the union's economic proposals because it assumed that the legislature would not fund them. The Commission held, inter alia, that the refusal to bargain was not excused by the assumption that the legislative body would reject a funding request. 3 MLC at 1599. Uncertainty over funding may justify an economic offer of zero dollar value, or a conditional economic offer, but it does not justify an employer's refusal to discuss economic items. A Union may wish to negotiate about changing the mix of existing economic benefits or may wish to explore with the employer strategies for securing additional funding. An employer's avowed unwillingness to discuss economic items may postpone serious negotiations between the parties and frustrate bargaining.

In conclusion, for the reasons expressed herein, we find that the School Committee violated Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law,

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We are cognizant of the special concerns a school committee may have in committing itself to economic items due to the provisions of G.L. c.150E, §7(b). Offers by a school committee are not automatically conditioned upon approval by a funding body as are offers by other municipal departments. A school committee must specifically articulate any funding contingencies if it wishes to make a conditional economic offer during bargaining. As discussed herein, conditioning an offer does not constitute a refusal to bargain in good faith. Conditioning negotiations as in this case, however, interferes with the bargaining process, and violates the duty to bargain in good faith.

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when it refused to negotiate concerning wages and other economic issues until after the City Council had finalized the School Committee's budget.

ORDER

WHEREFORE, pursuant to the foregoing, IT IS HEREBY ORDERED that the Brockton School Committee shall:

1. Cease and desist from:
  - a. Failing to bargain collectively in good faith with the Brockton Education Association by refusing to bargain over wages and other economic issues until after the City Council has finalized the School Committee's budget.
  - b. In any like manner, interfering with, restraining or coercing 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. Negotiate in good faith upon demand with the Brockton Education Association concerning wages and other economic issues.
  - b. Post in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, and display for a period of thirty (30) consecutive days, signed copies of the attached Notice to Employees.
  - c. Notify the Commission in writing within thirty (30) days of the service of this decision and order of the steps taken in compliance.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

HAIDEE A. MORRIS, COMMISSIONER

WILLIAM G. HAYWARD, JR. 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 Massachusetts Labor Relations Commission has determined that the Brockton School Committee violated Sections 10(a)(5) and (1) of G.L. c.150E (the Public Employee Collective Bargaining Law) when it refused to bargain with the Brockton Education Association over wages and other economic issues until after the City Council had finalized the School Committee budget.

WE WILL cease and desist from failing to bargain collectively in good faith with the Brockton Education Association by refusing to bargain over the subject of wages and other economic issues until after the City Council has finalized a School Committee budget.

WE WILL take the following affirmative action which will effectuate the policies of the Law.

WE WILL negotiate in good faith upon demand with the Brockton Education Association about salary and other economic issues.

BROCKTON SCHOOL COMMITTEE

BY: \_\_\_\_\_