LAWRENCE SCHOOL COMMITTEE AND LAWRENCE FEDERATION OF PARAPROFESSIONALS, MFT, AFT, AFL-CIO, MUP-7363 (8/12/92).
DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

28. Relationship Between c.150E And Other Statutes Not Enforced By The Commission
52.524 approval of school committee contracts
67.64 refusal to sign contract
92.51 appeals to full commission

Commissioners participating:

Haidee A. Morris, Commissioner
William G. Hayward, Jr., Commissioner

Appearances:

Michael Bearse, Esq. - Appearing on behalf of the Lawrence School Committee

Joseph Lettiere, Esq. - Appearing on behalf of Lawrence Federation of Paraprofessionals, MFT, AFT, AFL-CIO

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

Statement of the Case

Hearing Officer Diane M. Drapeau, Esq., issued a decision in the captioned matter on March 2, 1990, holding that the Lawrence School Committee (Employer) had violated Sections 10(a)(5) and (1) of G.L. c.150E (the Law) by failing to execute, seek funding for, and implement the 1988-1991 collective bargaining agreement between the Employer and the Lawrence Federation of Paraprofessionals, MFT, AFT, AFL-CIO (Union).[1] Both parties filed timely notices of appeal on or before March 15, 1990, although the Union withdrew its appeal on April 11, 1990. Neither party has filed a supplementary statement.

This case raises for the first time the significance of the last sentence of Section 7(b) of the Law, exempting school committee collective bargaining agreements from the funding procedures set forth in that section. Because we conclude, for the reasons set forth below, that school committee contracts are binding once reached (and, if applicable, ratified) and that, unlike other municipal collective bargaining agreements, they are not conditioned upon initial funding of cost items,

[1] The hearing officer's decision is published at 16 MLC 1610 (1990).

we affirm the hearing officer's conclusion that the Employer violated the Law when it refused to execute and implement the 1988-1991 collective bargaining agreement.

Facts

The record before the hearing officer comprised a number of stipulated facts and ancillary exhibits. For this reason, and because neither party has filed a supplementary statement controverting any of the hearing officer's findings, 456 CMR 13.13(7), we adopt those findings of fact and summarize them as follows.

The Union represents a bargaining unit of approximately 189 school aides, crisis intervention persons, and parent liaisons employed by the Employer. The parties' predecessor agreement expired on June 30, 1988. In January, 1989, after lengthy negotiations, they reached agreement on the terms of a successor contract, effective July 1, 1988 through June 30, 1991, subject to ratification, which was accomplished on or before January 26, 1989. The successor agreement provided for 5% annual wage increases in each of its three years. The provisions of Section 34 of Chapter 71 are operative in the City of Lawrence.[2] The Mayor, however, who was the chairperson of the School Committee, refused to execute the successor agreement or submit a request for an appropriation to the municipal funding body (the Lawrence City Council) to fund the agreement's initial cost items. Except for retroactive wage increases paid to 33 bargaining unit lunch aides, the Employer at all relevant times has not implemented the agreed-upon wage increases.

The Employer had experienced revenue losses during fiscal year 1989 and anticipated further reductions that would result in a substantial school committee budget deficit for fiscal year 1990. Nonetheless, there were sufficient

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[2] G.L. c.71, §34 provides as follows:

> Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city of town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The city of town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations. The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

unencumbered funds available on January 26, 1989 to fund the initial cost items called for by the agreement. In addition, in April, 1989, the Employer received a supplemental $3.1 million from the City Council as well as an additional $7.1 million in Chapter 188 funds. The evidence does not reflect that complying with the instant collective bargaining obligations, at the time they arose, would have caused the School Committee to have exceeded its aggregate appropriation in any relevant fiscal year.

Opinion

We affirm the hearing officer's conclusion that the Employer's refusal to execute and seek funding for the 1988-1991 agreement violated its duty to bargain in good faith under the Law. The Employer has advanced no defense to its failure to execute this agreement. Case law is clear that fiscal exigencies and contingencies are properly handled during the course of negotiations and do not justify withholding execution. City of Lawrence, 16 MLC 1760, 1762-63 (1990); City of Lawrence, 16 MLC 1600 (1990); City of Lawrence, 16 MLC 1363 (1989). See also City of Holyoke, 7 MLC 2128, 2131 (1981) (Commission rejected employer's defense that its refusal to execute an amendment to the salary provisions of a contract was justified by the subsequent passage of "Proposition 2-1/2" and consequent funding concerns). Section 7(b) of the Law envisions that contracts must be signed before their cost items are submitted for funding, since the 30 day time period for such submission runs from the date of execution. Therefore, regardless of the adequacy of the Employer's then-existing appropriation and regardless of the applicability of the Section 7(b) funding contingency, the Employer's refusal to execute violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Similarly, the Employer's duty to take whatever steps may be necessary to secure funding to fulfill its contractual commitments is a fundamental correlative of its duty to bargain in good faith. Town of Rockland, 12 MLC 1740, 1744 (1986); Worcester School Committee, 5 MLC 1080, 1083 (1978). The duty to seek funding, like the duty to execute, exists apart from the procedures for consummating collective bargaining agreements under Section 7(b) and, indeed, applies throughout the term of the agreement. Mendes v. Taunton, 366 Mass. 109, 118-19 (1974); City of Medford, 9 MLC 1792, 1796-97 (1983); City of Chelsea, 13 MLC 1144 (1986).[3] This

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[3] The scope of the executive's duty to seek finding may be broader during the term of an agreement than at the outset. Section 7(b) requires the executive to calculate the costs of an agreement and request sufficient funding, but it also implies that the contractual cost items need not be implemented until the legislative body approves the funding request. County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. 127, 131-32 (1983). After the contract has been funded initially, however, the Commission requires an employer to exhaust funding avenues to implement the agreement beyond simply seeking a supplemental (continued)

duty obliged the School Committee to articulate its perceived funding needs and the Mayor to "ministerially" convey that request to the City Council. Boston Teachers Union, Local 66 v. City of Boston, 382 Mass. 553, 560 (1981); Boston Teachers Union v. School Committee of Boston, 370 Mass. 455, 474 (1976).[4] Moreover, since the Mayor chaired the School Committee at the time it ratified the agreement, he was bound to support a School Committee appropriations request designed to comply with collectively-bargained commitments. Town of Rockland, 12 MLC 1740, 1744 (1986); cf. Board of Selectmen v. Dracut, 374 Mass. 619,625-26 (1978) (a successor executive may have no duty to support a request to fund an agreement it did not negotiate).

The more difficult question is whether the Employer had a duty to implement the agreement without submitting its cost items to the legislative body for funding, as provided in the first two sentences of Section 7(b) of the Law. Section 7(b) provides that, for non-school collective bargaining agreements, a municipal employer, after reaching and executing a contract, must calculate and submit to the municipal legislative body a request for an appropriation "necessary" to fund the contract's initial cost items. If the legislative body acquiesces in the request, it signifies its approval of the agreement for its full term and commits itself to continue to provide the necessary funds; if the cost items are rejected, the parties must renegotiate them. See Boston Teachers Union, Local 66, 386 Mass. at 203-211(1982); Gloucester Firefighters v. City of Gloucester, 8 Mass. App. Ct. 106, 112 (1979); City of Chelsea, 13 MLC at 1152. Section 7(b) thus interposes a funding contingency upon the validity of otherwise-final municipal collective bargaining agreements. If this contingency has not been fulfilled, the Commission would lack authority to order the Employer to comply with the economic terms of the agreement. County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. at 131-32.

We also concur with the hearing officer that the third sentence of Section 7(b) expressly exempts school committee contracts outside of Boston[5] from the

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3 (continued)
appropriation, such as transferring funds among accounts or resorting to other funding sources. See Worcester School Committee, 5 MLC at 1084-85; City of Medford, 9 MLC at 1796-97; City of Chelsea, 13 MLC at 1154.

4 Chapter 150E bestows upon a municipality's executive "the central role in negotiating and implementing agreements." Chelsea, 13 MLC at 1152. Although Section 1 of the Law mandates that the executive be represented by the school committee for purposes of negotiating with the school employees, a city's mayor and its school committee are really a single employing entity under the Law and share responsibility for making and fulfilling contractual commitments. Boston Teachers Union, Local 66 v. School Committee of Boston, 370 Mass. 455, 463 (1976); Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508, 512 n.7 (1990).

5 (see page 1171)

requirement of submission to the legislative body set forth in the preceding sentences, and, by the same token, renders school collective bargaining agreements enforceable upon execution.[6] Our conclusion is compelled by the literal language of the statute and also comports with the apparent purpose of Section 34 of G.L. c.71.

Prior to the passage of "Proposition 2-1/2" (St. 1980 c.580, §7); Section 34 mandated municipalities to provide a sufficient amount of money to support the local public schools and, by authorizing 10-taxpayer lawsuits, effectively compelled cities and towns to meet the school committee's budget request. See Callahan v. Woburn, 306 Mass. 265, 277-78 (1940); cf. Pirrone v. City of Boston, 364 Mass. 403 (1973). In its present form, Section 34 brings school committee budgets under municipal fiscal controls, like other municipal departments, Superintendent of Schools of Loeminster v. Mayor of Leominster, 386 Mass. 114, 117-18 (1982), but with an important distinction. Whereas the municipal executive and legislative body generally may control line-item expenditures for other municipal departments, once municipal officials have established the school committee's aggregate appropriation, the school committee retains autonomy over expenditures within that appropriation.

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5 (from page 1170)
The reference in the third sentence of Section 7(b) to "cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative" presently includes all municipalities except the City of Boston. The Boston School Committee operates under a unique financing system whose effect on collective bargaining obligations has generated considerable case law, including the decisions cited in the text, above. As the hearing officer noted, to the extent the Employer in the present case relied upon case law construing Section 7(b) arising out of the Boston School Committee's collective bargaining situation, it relied upon inapposite precedent.

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It is not clear that the 7(b) contingency requires an employer to request an appropriation as a condition precedent to implementing the financial provision of an agreement where, as here, the parties have stipulated that, at the time the contract should have been executed, sufficient unencumbered funds were available to comply with it. Where a legislative body has appropriated certain funds, and the executive thereafter reaches an agreement whose initial costs are within the appropriation, one could theorize that the Section 7(b) mechanism has been met constructively. If Section 7(b) were interpreted to require an executive to obtain post-execution legislative "ratification" of a collective bargaining agreement where a sufficient appropriation already exists, practical questions would arise about how that could be accomplished, how a public employee union would compel compliance, who would decide that an appropriation is "necessary," by what standards, and with reference to what point in time. In light of our conclusion that school committee contracts are not subject to Section 7(b)'s funding provision, we defer resolving such issues until they are presented in an appropriate case.

This distinction is consistent with the continuing exemption of school committees from the Section 7(b) funding request requirement. To permit a municipal legislative body to "veto" a school committee's collectively-bargained cost items would effectively defeat the school committee's determination to expend a specific portion of its total appropriation on negotiated wages and benefits, thus transgressing the boundary Section 34 has established between the municipality's fiscal controls and a school committee's expenditure autonomy.

Thus, while a school committee may seek additional funding to cover negotiated costs and the executive must ministerially convey any such request, the validity of school committee collective bargaining agreements outside of Boston is not contingent upon funding of their initial costs. Accordingly, the instant contract assumed validity at the time it would have been executed but for the Employer's unlawful conduct, City of Boston, 17 MLC 1711, and the Employer's failure to implement the salary provisions of the agreement violated Sections 10(a)(5) and (1) of the Law.

Remedy

Since the Employer's duty to execute and implement the instant collective bargaining agreement arose at the time the contract had been ratified and reduced to writing, the following order requires the Employer to make bargaining unit employees whole for their lost pay, including interest on the back pay measured from the date the agreement was ratified and reduced to writing.

The parties have stipulated that, at the time the agreement was ratified, sufficient unencumbered funds were available to the Employer to meet the financial commitments it contained. Accordingly, we need not confront the remedial issues that might be presented where a school committee refuses to implement contractual commitments that, at their origin, exceeded available funds. Cf. County of Suffolk, 15 Mass. App. Ct. at 131-33 (1983) (the court overturned a Commission order for specific performance of a collective bargaining agreement where the existing appropriation was not sufficient to fund the agreement and the mayor had not been ordered to seek a supplemental appropriation as required under Section 7(b)).

For the same reason, the Employer's concerns, expressed in its memorandum to the hearing officer, that complying with these contractual commitments would violate Sections 31 and/or 64 of G.L. c.44, are misplaced.[7] The Employer appears to

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[7] G.L. c.44, §31 provides in pertinent part:

No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, ... (continued)

argue that financial commitments stemming from this contract, consummated in fiscal year 1989, are unenforceable because the Employer experienced a budget deficit in fiscal year 1990. It is not clear that Section 31 applies to school committee expenditures or affects the enforceability of salary provisions in multi-year agreements.[8] More importantly, however, there is no evidence that the Employer would have been unable to meet these contractual commitments as they arose. Therefore we have no basis for concluding that the contract was "legally unenforceable" within the parameters of either Section 31 or Section 64 of Chapter 44. Having elected not to comply with this agreement and perhaps having diverted the resultant savings to other uses, the Employer may not now claim penury in order to evade retroactive liability for its noncompliance.

Conclusion

For the foregoing reasons, we affirm the hearing officer's conclusion that the Employer refused to bargain in good faith with the Union when it refused to execute, seek any necessary funding, and implement the provisions of the 1988-1991 collective bargaining agreement, in violation of Section 10(a)95) and, derivatively, Section 10(a)(1) of the Law. To remedy this violation, we issue the following order.

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7 (continued)

G.L. c.44, §64 provides a method by which a municipality may appropriate money to pay for "unpaid bills of previous fiscal years that are legally unenforceable due to the insufficiency of an appropriation in the year in which such bills were incurred. ..."

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See Callahan v. Woburn, 306 Mass. at 273, where the court stated that the school committee's statutory duty to contract with its teachers "is not affected, insofar as the making of contracts with teachers and superintendents is concerned, by the provisions of [G.L. c.44] §31." See also Boston Teachers Union, Local 66, 386 Mass. at 208-10 (court held that the salary provisions in multi-year collective bargaining agreements were not subject to a fiscal control provision analogous to G.L. c.44, §31); School Committee of Boston v. Boston Teachers Union, Local 66, 395 Mass. 232, 236 N.5 (1985), and cases cited therein, analogizing multiple-year collective bargaining agreements to other municipal contracts involving "constantly recurring duties" that have been held enforceable in subsequent years even in the absence of an appropriation. Cf. Whalen v. Holyoke, 13 Mass. App. Ct. 446, 453 (1982), where the court distinguished the enforceability of an ordinance requiring a particular complement of firefighters from the enforceability of collective bargaining agreements, noting that the latter obligations may not be subject to "the usual proscriptions under the municipal finance act... ."

Lawrence School Committee and Lawrence Federation of Paraprofessionals, MFT, AFT, AFL-CIO, 19 MLC 1167

Order

WHEREFORE, IT IS HEREBY ORDERED that the Employer shall:

1. Cease and desist from:

   a. Refusing to execute the 1988-1991 collective bargaining agreement with the Union;

   b. Refusing to take all necessary and appropriate steps to comply with the financial commitments set forth in the 1988-1991 collective bargaining agreement, including, if necessary, seeking additional funding;

   c. Refusing to implement the terms of the 1988-1991 collective bargaining agreement;

   d. In any like or similar manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative steps which will effectuate the purposes of the Law:

   a. Execute the 1988-1991 collective bargaining agreement with the Union.

   b. Take all necessary and appropriate steps to comply with the financial terms set forth in the 1988-1991 collective bargaining agreement, including, if necessary, seeking additional funding;

   c. Implement the terms of the 1988-1991 collective bargaining agreement;

   d. Make whole any employees in the bargaining unit represented by the Union for any economic loss they have suffered as a result of the Employer's failure to execute and implement the 1988-1991 collective bargaining agreement, including interest on any back pay measured from the date the agreement was ratified and reduced to writing, at the rate specified in G.L. c.231, §6B, compounded quarterly.

   e. 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) days thereafter, signed copies of the attached Notice to Employees.

f. Notify the Commission in writing within ten (10) days of the service of this decision and order of the steps taken in compliance therewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

WILLIAM G. HAYWARD, JR., COMMISSIONER
HAIDEE A. MORRIS, COMMISSIONER

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 held that the Lawrence School Committee (Employer) has violated Sections 10(a)(5) and (1) of G.L. c.150E, the Public Employee Collective Bargaining Law, by refusing to execute, seek funding for, and implement the 1988-1991 collective bargaining agreement with the Lawrence Federation of Paraprofessionals, MFT, AFT, AFL-CIO (the Union).

WE WILL NOT fail or refuse to execute the 1988-1991 collective bargaining agreement that has been reached with the Union and ratified.

WE WILL NOT fail or refuse to seek any necessary funding to meet the financial commitments included in the 1988-1991 collective bargaining agreement.

WE WILL NOT fail or refuse to implement the terms of the 1988-1991 collective bargaining agreement.

WE WILL execute, seek any necessary funding for, and implement the terms of the 1988-1991 collective bargaining agreement with the Union.

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

WE WILL make whole any bargaining unit employees for any economic loss they have suffered as a result of our failure to execute and implement the 1988-1991 collective bargaining agreement, including interest on any back pay measured from the date the agreement was ratified and reduced to writing.

Mayor, City of Lawrence
Chairperson of Lawrence School Committee

ATHOL-ROYALSTON REGIONAL SCHOOL COMMITTEE AND ATHOL TEACHERS ASSOCIATION, RBA-128 (8/12/92). RULING ON REQUEST FOR BINDING ARBITRATION

94. Arbitration Under Chapter 150E, §8

Commissioners participating:

Haidee A. Morris, Commissioner
William G. Hayward, Jr., Commissioner

Appearances:

James Spencer Tobin, Esq.	- Representing the Athol-Roylaston Regional School Committee
Francis X. Moynihan	- Representing the Athol Teachers Association

RULING ON REQUEST FOR BINDING ARBITRATION

On March 14, 1991, the Athol Teachers Association (Association) filed with the Labor Relations Commission (Commission) a request pursuant to Section 8 of Massachusetts General Laws, Chapter 150E (the Law) to compel the Athol-Royalston Regional School Committee (School Committee) to participate in binding grievance arbitration. By notice of March 20, 1991, the Commission notified the School Committee of the Association's request and of the School Committee's right to submit a statement in opposition to the request. The School Committee did not file a statement opposing the Union's request.

Facts

The School Committee and the Association are parties to a collective bargaining agreement effective from September 1, 1989 through August 31, 1990. Article IV of the agreement establishes a five-step grievance procedure. The fifth and final step of the procedure provides:

> LEVEL FIVE: If at the end of the twenty (20) school days or regular business days next following presentation of the grievance in writing to the School Committee the grievance shall not have been disposed to the satisfaction of the Professional Rights and Responsibilities Committee of the Association, and if the grievance shall involve the interpretation or application of any provision of this contract, the Association may, by giving written notice to the School Committee within ten (10) school days or regular business days next following the conclusion of such period of twenty (20) school days or regular business days, present the grievance for fact-finding and conciliation, in which event the School Committee and the Association shall forthwith

> submit the grievance to the State Board of Conciliation and Arbitration for disposition in accordance with the applicable rules of the said State Board of Conciliation and Arbitration. The expenses of such fact-finding and conciliation shall be shared equally by the School Committee and the Athol Teachers Association, and the recommendation shall be presented to the School Committee, the Association, and the aggrieved employee. Any particular grievance may be submitted for arbitration if both the School Committee and the Association agree to do so.

In accordance with Article IV, the Association filed a grievance on behalf of Donald Ferrari, a teacher employed by the School Committee and a member of the Association's bargaining unit. The grievance alleged that the School Committee had denied Ferrari's request for a 20 percent payback of the 216 sick days he had accumulated prior to his notice of retirement in violation of Article XXV of the collective bargaining agreement. The grievance was processed through the first four steps of the contractual grievance procedure and was denied by the School Committee at Level Four. The Association filed a petition for fact-finding and conciliation of the grievance with the Board of Conciliation and Arbitration. The mediator assigned to resolve the grievances conducted a fact-finding and mediation session with the parties. On March 6, 1991, she advised the parties of her determination that they were at an impasse. Subsequently, the Association filed the instant request for binding arbitration.

Opinion

When the parties to a valid collective bargaining agreement disagree about the interpretation of that agreement and the agreement does not provide for final and binding arbitration, Section 8 of the Law gives the Commission the authority to order the parties to submit the grievance to final and binding arbitration. See, e.g., Athol-Royalston Regional School Committee, RBA-116 (May 15, 1990);[1] Town of Sturbridge, 6 MLC 1630 (1990). Moreover, the School Committee has not submitted any reasons why we should not issue an order for binding arbitration.

WHEREFORE, since an arguably arbitrable dispute exists between the Association and the School Committee and the agreement does not provide for compulsory final and binding arbitration, the Commission, by virtue of the power bested in it by Section 8 of the Law, HEREBY ORDERS:

1. That the dispute raised by the Association's request for binding arbitration be submitted promptly for arbitration to the Board of Conciliation and Arbitration or another arbitrator mutually selected by the parties.

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[1] This decision is unreported.

2. That within thirty (30) days of the date of service of this decision the parties inform the Commission of the status of the arbitration.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

HAIDEE A. MORRIS, COMMISSIONER
WILLIAM G. MAYWARD, JR., COMMISSIONER