
Town of Natick and Local 311, IBPO, 19 MLC 1753

For the reasons discussed below we agree with the hearing officer's conclusion that the Town failed and refused to bargain in good faith when it implemented the change in injured officer shift assignments.

Opinion

A public employer violates Section 10(a)(5) and (1) of the Law when it unilaterally alters a condition of employment involving a mandatory subject of bargaining without first bargaining with the Union to resolution or impasse. Springfield School Committee, 18 MLC 1357, 1361 (1992); City of Holyoke, 18 MLC 1336 (1986); School Committee of Newton v. Labor Relations Commission, 377 Mass. 557 (1983). The Employer's obligation to bargain before changing conditions of employment extends to working conditions established through past practice, as well as those specified in a collective bargaining agreement. Springfield School Committee, supra; Town of Wilmington, 9 MLC 1694, 1699 (1983); eligibility for additional compensation constitutes a mandatory subject of bargaining. Springfield School Committee, supra; City of Chelsea, 1 MLC 1299 (1975).

The hearing officer found, and we affirm, that the parties were not at impasse when the Town implemented the change in injured officers' shift assignments. The Town claims that no further bargaining was required prior to implementation because the Union had waived its right to bargain by failing to make counter proposals to the Town's shift re-assignment plan at the parties' meetings of May 9 and May 15.

Although the Town correctly notes that the Union had an opportunity to bargain about the Town's proposal prior to implementation, the Town minimizes the fact that the Union seized that opportunity by its letter of March 9, which demanded bargaining and requested that the Town delay implementation until the completion of bargaining. To its credit, the Town temporarily delayed implementation of its proposal pending negotiations with the Union. The hearing officer concluded that the Town and Union each thought that the other was responsible for making a proposal about the subject. The Town, on appeal, claims that it was waiting for the Union to propose an alternative to the Town's proposal; and argues that the Union waived its bargaining rights by failing to make a proposal. The Union, in turn, claims that the Town was insisting upon bargaining this subject separately from the parties' successor contract negotiations; and that the Union was waiting for the Town to make a proposal about this subject as part of the contract negotiations. Accepting that each side was playing a "cat and mouse" game, waiting for the other to make the next move, we note that the collective bargaining law has a solution to such a stalemate. No party can change the status quo ante of a mandatory subject of bargaining without (i) agreement of the other party, (ii) impasse in negotiations, or (iii) waiver by the other party of its right to negotiate.

In the instant case, it is apparent that the parties have neither reached agreement nor impasse in their negotiations. The hearing officer found that the

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Union had not waived its right to bargain about this subject by waiting, silently, for the Town to make a proposal as part of the parties' successor contract negotiations. We agree.

The purpose of our waiver policy is to recognize that there may be times when one party chooses not to negotiate a particular change in the status quo. This may occur because the change is insignificant, or because the party tacitly recognizes the need for the change, but cannot endorse the change publicly, or for other reasons. But when a responding party demands that a proposal not be implemented prior to a negotiated agreement, no waiver occurs merely because that party then waits to hear from the party proposing the change. The Union's protest of the proposed change put the Town on notice that the Union did not agree to the change. The Town then became responsible for notifying the Union that the Town would delay implementation only for a limited period of time. Thus when the Town subsequently implemented the policy on May 16, the Union had never received notice that the postponement was temporary; and cannot be said to have waived its right to bargain about the change.²

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the Town of Natick:

1. Cease and desist from:
 - a. Administratively changing the shifts of police officers who are on injured-on-duty leave prior to the occurrence of the earliest of the following conditions:
 - 1) an agreement with the Union on the administrative change of shifts for police officers who are on injured-on-duty leave;
 - 2) a bona fide impasse in bargaining;
 - 3) the failure of the Union to request bargaining within five (5) days of notice of the Town's willingness to bargain and

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When an employer sets a deadline for bargaining it has the burden of establishing that such a deadline was reasonable under all circumstances, and that the time provided was adequate for the Union to formulate a response. City of Everett, 2 MLC 1471, 1476 (1976). An employer may not artificially shorten the time available for bargaining by delaying announcement or notice of proposed changes until the last minute. See, e.g., City of Boston, 3 MLC 1421, 1429 (H.O. 1977; City of Everett, *supra*. Here, the Town never suggested any deadline for the completion of bargaining, and the record does not establish any municipal crisis requiring emergency action.

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unconditional offer to rescind the Town's order of May 16, 1989;

- 4) the subsequent failure of the Union to bargain in good faith.
 - b. In any like or similar manner, interfere with, restrain, or coerce any employees in the exercise of their rights guaranteed under Massachusetts General Laws, Chapter 150E.
2. Take the following affirmative action which will effectuate the purposes of the Law:
- a. Rescind the Town's order of May 16, 1989.
 - b. Upon request of the Union, bargain collectively in good faith over the administrative change in shifts for police officers on injured-on-duty leave.
 - c. Make all police officers who were administratively reassigned from the night shift whole for any economic loss they may have suffered as a result of the Town's May 16, 1989 order, together with interest on any sums owing at the rate specified in M.G.L. c.231, Section 6B, compounded quarterly from the effective date of their reassignment from the night shift.
 - d. Post in conspicuous places where employees 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.
 - e. Notify the Commission in writing within thirty (30) days of this decision and order of the steps taken to comply.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

WILLIAM J. DALTON, COMMISSIONER

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

After a hearing at which all parties had the opportunity to present evidence and arguments the Labor Relations Commission has concluded that the Town of Natick has unilaterally changed the shifts of police officers on injured-on-duty leave in violation of Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E.

WE WILL NOT fail and refuse to bargain with Local 311, International Brotherhood of Police Officers over administrative changes in shifts for police officers on injured-on-duty leave.

WE WILL NOT change the shifts of police officers on injured-on-duty leave without first bargaining to impasse or resolution with the Union.

WE WILL NOT in any like or similar manner, interfere with, restrain, or coerce any employees in the exercise of their rights guaranteed under Massachusetts General Laws, Chapter 150E.

WE WILL rescind the Town's order of May 16, 1989 regarding the administrative changes in shifts for police officers on injured-on-duty leave.

WE WILL, upon request of the Union, bargain collectively in good faith over the administrative change in shifts for police officers on injured-on-duty leave.

BOARD OF SELECTMEN