EASTON SCHOOL COMMITTEE AND AFSCME, AFL-CIO, MCR-2115 (9/4/75).

(40 Selection of Employee Representative)
45.1 contract bar

HEARING OFFICER'S DECISION

Statement of the Case

On January 17, 1975 the American Federation of State, County and Municipal Employees and its Appropriate Affiliates, AFL-CIO ("AFSCME") filed with the Labor Relations Commission a petition for certification as the exclusive representative for purposes of collective bargaining of all custodians employed by the Easton School Committee. Subsequently, following an informal conference before a Commission examiner on February 11, 1975, an Expedited Hearing was conducted pursuant to Chapter 150E, Section 4 of the General Laws and Article II, Section 11 of the Commission's Rules and Regulations, before Joellen D'E. Bogdasarian, Hearing Officer.

A.F.S.C.M.E. urges the Commission to direct an election in a unit of custodians[1] claiming that no valid collective bargaining agreement exists which would act as a bar to the direction of an election. The School Committee, in turn, asserts a contract bar.

Findings of Fact

Upon the entire record herein, the undersigned finds:

1. The Easton School Committee is a "municipal employer" within the meaning of Section 1 of Chapter 150E of the General Laws;

2. The American Federation of State, County and Municipal Employees and its Appropriate Affiliates, AFL-CIO is an "employee organization" within the meaning of Section 1 of Chapter 150E of the General Laws;

3. The Easton Custodial and Maintenance Association ("Association") is an "employee organization" within the meaning of Section 1 of Chapter 150E of the General Laws.

At the Hearing the School Committee introduced into evidence a six-page document entitled "Contract Between Easton School Committee and Easton Custodial and Maintenance Association." The document contained provisions governing such terms and conditions of employment as salaries, differentials, longevity, increments, vacations, holidays, sick leave, uniforms, working hours, substitutes, job descriptions and position notification, but did not

[1]At the hearing the undersigned granted - without objection - the motion of A.F.S.C.M.E. to amend the unit description to include all custodians and maintenance personnel employed by the Easton School Committee.

contain any provision establishing a grievance procedure, and was not signed by either the School Committee or the Association. Testimony of Association officers that they had never negotiated or even discussed with the School Committee the terms of Article Nine relating to working hours was unrebutted by that body. Additionally, testimony concerning the fact that the terms of Articles Eleven and Twelve of the alleged contract had never been implemented by the School Department Administration was uncontroverted. Although testimony was conflicting on the question of whether proper notice was given to terminate the purported contract, both parties agreed that some discussions took place concerning salaries and vacation benefits prior to September 15, 1974, and that specific proposals stemming from these discussions were never reduced to a writing signed by the School Committee and the Association and made an addendum to the purported contract as required by Article Two of that document. The parties are in dispute as to whether they were negotiating an entirely new contract or merely reopening the prior agreement on limited issues. The School Committee contends that this document is a bar and that only salaries and vacation benefits could properly be discussed pursuant to the reopener provisions of Article Two, while the Association maintains that it was entitled to negotiate a new contract. There is unrefuted testimony that the members of the Association refused to ratify these subsequent proposals relating to salaries and vacation benefits, although the School Committee proceeded to implement unilaterally the increases that were the subject of these discussions.

Two officers of the Association testified that during the course of one of these discussions the representative of the School Committee told them to "get a union" if they wanted to present grievances. This testimony was unrebutted. The Association was duly notified of the instant proceedings, but did not intervene.

Opinion

General Laws, Chapter 150E, Section 4, provides, in relevant part:

> "Except for good cause no election shall be directed by the Commission in an appropriate bargaining unit within which ... a valid collective bargaining agreement is in effect." (Emphasis added)

The purpose of this statutory "contract bar" rule is to preserve the integrity of the bargaining relationships and to promote industrial peace and stability. City of Worcester, 1 MLC 1069 and cases cited therein. The rule is a mere procedural one which the Commission may in its discretion apply or waive as the facts of a given case may demand in the interest of stability and fairness in collective bargaining agreements. NLRB v. Grace Co., 184 F.2d 126, 129, 26 LRRM 2536; NLRB v. Libbey-Owens-Ford Glass Co., 241 F.2d 831 (C.A. 4, 1957), 39 LRRM 2557. In like manner, the definition of the term "good cause" is also a function within the sound discretion of the Commission which has, in a series of recent cases, attempted to clarify and refine the rationale underlying its current contract bar exceptions. See City of Quincy, MCR-1311 (4/22/74); Department of Public Welfare, SCR-112 (5/23/74); City of Worcester, supra.

Easton School Committee and AFSCME, MCR-2115

It is clear that in the matter sub judice the undersigned was not presented with the type of factual situation that was present in the cases previously cited. The threshold question herein is whether a valid collective bargaining agreement ever existed between the School Committee and the Association. The six-page printed document placed in evidence by the School Committee was not signed, not dated, and did not bear any evidence of ratification by Association members. Moreover, testimony at the Expedited Hearing indicated that, at best, certain provisions of the agreement were carried out only in part, and that the document included items not bargained about by the parties. In similar circumstances the N.L.R.B. has held that a contract which is not signed, not dated, not ratified, and carried out only in part cannot bar an election. Pittsburgh Plate Glass Co. and Local #453, Teamsters, Chauffeurs, Warehousemen & Helpers, AFL-CIO, 40 LRRM 1296 (1957); Appalachian Shale Products Co. and United Brick and Clay Workers of America, AFL-CIO, 42 LRRM 1506 (1958).

Accordingly, the undersigned adopts the position of the Board as one of the grounds for her decision that there is no contract bar in the instant case.

Another factor considered by the undersigned was the failure of the Association to intervene and interpose the purported contract as a bar to the petition. While it is true that the School Committee may have an interest in continuing to abide by the terms set forth in the undersigned document for another year and that it has raised the contract bar defense in a timely manner, it is clear that the greater injustice would be suffered by the employees were the undersigned to rule that the unsigned document was a valid collective bargarining agreement which had not been properly terminated by the Association. Moreover, a ruling that the alleged contract was not only valid but properly terminated would simply mean that the petition, while filed prematurely on January 17, 1975, would have been timely filed shortly thereafter. In such a case, the undersigned concludes that it no longer effectuates the purposes of the statute to dismiss the instant petition on this ground and require that it be refiled.

Other compelling factors considered by the undersigned which support her view that the writing was not considered a bona fide collective bargaining agreement by the School Committee and is accordingly not a bar to the petition herein, were the refusal of that body to negotiate with the Association over mandatory subjects of bargaining, most notably a grievance procedure, and unrefuted testimony that Association Officers were told "to quit" or to "get a union" if they wanted to discuss grievances.

In light of the foregoing, I find:

1. That a question has arisen concerning the representation of certain employees of the Easton School Committee within the meaning of Section 4 of Chapter 150E of the General Laws.

2. That the unit appropriate for the purposes of collective bargaining consists of:

Easton School Committee and AFSCME, MCR-2115

All custodians and maintenance personnel employed by the Easton School Committee.

3. That an election shall be held for the purpose of determining whether or not a majority of the employees in said unit have designated or selected the American Federation of State, County and Municipal Employees and its Appropriate Affiliates, AFL-CIO, or the Easton Custodial and Maintenance Association, or no union as their representative for the purpose of collective bargaining.

4. That the list of eligible voters shall consist of all those persons included within the above-described unit whose names appear on the payroll of the Easton School Committee for the week ending September 5, 1975, and who have not since quit or been discharged for cause.

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws as aforesaid,

IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives for the Commission among the employees in the aforesaid bargaining unit at such time and place and under such conditions as shall be contained in Notice of Election issued by the Commission and served on all parties and posted on the premises of the Municipal Employer together with copies of the specimen ballot.

In order to assure that all eligible voters will have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to this election should have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts, 02202, no later than fourteen (14) days prior to the date of the election.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

JOELLEN D'ESTI BOGDASARIAN
Hearing Officer

The parties are informed of their rights to seek review by the full Commission of this decision within ten (10) days after notice thereof. G. L. c. 150E, sec. 4; Article II, Section 11 of the Rules and Regulations.