
Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

Commission subsequently redesignated the case for a Commission decision in the first instance, pursuant to Commission Rule 13.02(1), 456 CMR 13.02(1). The hearing officer issued Recommended Findings of Fact on October 29, 1992. On December 4, 1992, the Union filed challenges to the hearing officer's findings which are noted and addressed in our findings below. The Town did not challenge the hearing officer's findings.

Findings of Fact

The Town is a public employer within the meaning of Section 1 of the Law and the Union is an employee organization as defined in that section. Since December 8, 1988, the Union has been the exclusive collective bargaining representative for certain superior officers, including the sergeants, employed by the Town as members of its police department.

Prior to December 8, 1988, the sergeants were part of a bargaining unit that included all police officers through the rank of sergeants represented by the Falmouth Police Federation (Federation). The Federation and the Town are parties to a collective bargaining agreement effective by its terms from July 1, 1988 to June 30, 1990. The 1988-1990 agreement further provides that its terms, conditions and provisions shall remain in effect after its expiration until a successor agreement is executed. Article XXXIX, Sections 4 and 5 of the 1988-1990 agreement provide, in pertinent part:

Section 4. -- Paid Detail List

Paid details shall be assigned impartially and on an equal basis to all employees covered by this Agreement who are available for the paid detail work.

Section 5.

In the event that no employee covered by this Agreement is available for a paid detail, the paid detail may be offered to a person who is not an employee covered by this Agreement.

On September 22, 1988, the Union petitioned the Commission to represent a separate bargaining unit of superior officers. Prior to the filing of the petition, the sergeants and patrolmen had discussed the issue of severance, and the patrolmen supported the sergeants' desire to leave the bargaining unit and form a separate superior officers' unit. The

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

Federation did not intervene in the Union's petition before the Commission, and, pursuant to an Agreement for Consent Election, an election was conducted on November 30, 1988. On December 8, 1988, the Commission certified the Union as the bargaining representative for all full-time and regular part-time police superior officers including sergeants, and excluding patrolmen, captains, the chief, and all managerial and confidential employees. At the time of the hearing, the superior officers bargaining unit consisted of sergeants only.

David F. Cusolito has been President of the Union since approximately November 30, 1988. Sometime prior to the filing of the severance petition, as part of a sergeants' committee on severance, Cusolito and at least one other sergeant met with three Selectmen of the Town to discuss the proposed severance. At that meeting, the Selectmen indicated that, in the event that the sergeants did form a separate bargaining unit, they would continue to honor all conditions of the existing patrolmen's contract for the sergeants until a separate collective bargaining agreement was negotiated for the new unit.

After the severance took place, Cusolito participated in a second meeting with some Selectmen in which the sergeants were assured again that contractual conditions of employment negotiated by the Federation would remain in effect for the sergeants until a new agreement was reached. The subject of private details was expressly included as one of the employment conditions which would remain the same until the parties negotiated otherwise.

On February 13, 1989, consistent with the severance, the Town and the Federation signed a Memorandum of Agreement which modified the 1988-1990 collective bargaining agreement to exclude sergeants.

Subsequent to the severance, the Town continued to assign paid details to the sergeants on an equal basis with the patrolmen, in the same manner as it had assigned paid details prior to the severance.

In March 1989, the Federation filed a grievance alleging that the Town had violated its collective bargaining agreement by assigning paid detail duty to the sergeants on an equal basis with the patrolmen. The grievance went to arbitration before Arbitrator Roberta L. Golick, Esq., who found that the Town had in fact violated its agreement with the

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

Federation.¹ The sergeants' Union was not a party to the Golick arbitration and there was no evidence that the Union agreed to be bound by the resulting award.² In her award dated August 8, 1990, Arbitrator Golick ordered the Town to offer paid details first to patrolmen in accordance with Article XXXIX of their contract.

The Town immediately implemented the Golick award. After August 8, 1990, members of the superior officers' unit were no longer afforded the opportunity to work paid details unless and until all members of the patrolmen's unit indicated that they were not willing to work the detail. The Town did not give the Union prior notice or an opportunity to bargain over the change in the detail assignment procedure, and the Union objected to the Town's actions.³

Prior to August 8, 1990, paid detail work was regularly available to sergeants. Union

1

The Union urges us to find that the arbitrator's decision was based solely on the language of the contract between the Town and the Federation. It is not relevant or necessary for our decision to specify the basis for the arbitrator's decision, and we decline to do so. We do note, however, that the arbitrator raises without resolving the potential application of General Laws, Chapter 150E, and the possibility of inconsistent contractual obligations with the patrolmen and sergeants.

2

The Union requests that the findings be supplemented to include the fact that the Union was not a party to the Golick arbitration and that it did not agree to be bound thereby. We find that the record supports a finding that the Union was not a party to the arbitration, but there is no evidence on the matter of an agreement.

3

The Union challenged the hearing officer's finding that the Town did not believe it had any obligation to bargain over a change that had been ordered by an arbitrator. On the basis of the argument advanced by the Town in its arbitration brief, the Union proposed a contrary finding that the Town did believe it would have a bargaining obligation prior to making any change in the manner of assigning paid details. The record in this case is insufficient to establish the "belief" of the Town and we decline to make a finding on this point. Moreover, the "belief" or intent of the employer is not relevant in determining a violation of Section 10(a)(5) of the Law.

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

president Cusolito, who has been a sergeant since 1983, was usually offered private detail work one to two times per week prior to August 8, 1990. During the seventeen month period between the arbitrator's award and the hearing in this case, that is, between August 8, 1990 and January 15, 1992, there have been no more than five or six paid detail assignments offered to sergeants.⁴

Opinion

An employer's failure or refusal to implement the unambiguous terms of a collective bargaining agreement amounts to repudiation of the agreement and constitutes a violation of the duty to bargain in good faith. City of Boston, 14 MLC 1606, 1615 (1988) (and cases cited). Conversely, if there is no agreement, or the parties have a good faith dispute over the meaning of their agreement, there is no repudiation. See, e.g., Boston Water and Sewer Commission, 15 MLC 1319, 1322-3 (1989); Town of Milford, 15 MLC 1247, 1254 (1988).

In the present case, the Town made an oral agreement with the Union to continue to maintain the pre-severance practice of assigning outside details until they reached agreement on a separate contract with the sergeants' unit. An oral agreement between an employer and representatives of a bargaining unit can be effective and enforceable under the Law. Service Employees International Union, Local 509, 410 Mass. 141, 145 (1991). The Commission has long recognized that "a meeting of the minds can occur without anything having been reduced to writing or having been signed by either party." Town of Ipswich, 11 MLC 1403, 1410 (1985), citing Turner Falls Fire District, 4 MLC 1658, 1661 (1977).

Cusolito's testimony concerning the oral agreement made between the Selectmen and the representatives of the Union was clear and undisputed. The Selectmen agreed on two occasions that the sergeants would continue to enjoy the conditions of employment they had under the patrolmen's contract until they negotiated their first separate contract. The subject of private details was specifically included in the agreement.

4

The Union requests a supplemental finding that the Town's post-August 8, 1990 method of assigning paid details resulted in significant loss of income for employees in the sergeants' bargaining unit. This is a reasonable conclusion from the undisputed testimony of Cusolito.

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

Subsequent to the severance, the Town continued to assign paid detail work to patrolmen and sergeants on an equal basis. The Town's actions are consistent with its unambiguous and undisputed agreement. On these facts, we find the oral agreement with the sergeants to be effective and enforceable under the Law.

Around the same time that the Town made its oral agreement with the sergeants, it made a separate agreement with the patrolmen. Approximately two months after the severance was effectuated, the Town signed a memorandum of agreement excluding sergeants from the existing patrolmen's contract. Because the patrolmen's contract provided that "...employees covered by this Agreement..." had the right of first refusal for paid detail assignments, the exclusion of sergeants from the contract dispossessed them of that right. Subsequently, when the Town implemented the Golick award and changed the private detail system, it violated its agreement with the sergeants. This violation of the unambiguous terms of its agreement constitutes repudiation of that agreement and violates Section 10(a)(5), and, derivatively, Section 10(a)(1) of the Law.

The Town argues that it is legally obligated to implement the award of the arbitrator, but it offers no justification for its failure to fulfill its equally binding obligation to implement the agreement with the sergeants. Although it may have been acting in what it believed to be good faith, the Town voluntarily agreed to conflicting obligations with two separate bargaining units. The arbitrator's order is not a complete defense to the refusal to implement a collective bargaining agreement. We further note that there is no evidence that the Town took action to reconcile its conflicting obligations.

Conclusion

On the basis of the foregoing, we conclude that the Town has failed and refused to implement the unambiguous terms of its agreement with the Union, in violation of Section 10(a)(5), and derivatively Section 10(a)(1), of the Law.

Order

WHEREFORE, it is hereby ordered that the Town of Falmouth shall:

- I. Cease and desist from:

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

- A. Refusing to bargaining in good faith with the Union by refusing to implement the terms of the oral agreement between the Town of Falmouth and the Union;
 - B. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under the Law.
- II. Take the following affirmative action which will effectuate the purposes of the Law:
- A. Restore the status quo ante by reinstating the December 1988 system of assigning paid detail work;
 - B. Provide the Union with notice before changing the system of assigning paid detail work, and, upon request of the Union, bargain in good faith to agreement or impasse concerning the proposed change;
 - C. Make whole any employees represented by the Union for any loss of earnings suffered as a result of the Town's unlawful repudiation of its agreement to maintain the December 1988 paid detail system, plus interest at the rate specified in G.L. c.231 §6B;
 - D. Post in all conspicuous places where employees usually congregate and where notices to employees are usually posted, and maintain for a period for thirty (30) days thereafter, copies of the attached Notice to Employees; and take reasonable steps to ensure that these notices are not altered, deface or covered by any other material.
 - E. Notify the Commission in writing of the steps taken to comply with this decision within thirty (30) days after the date of its receipt.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

WILLIAM J. DALTON, CHAIRMAN

WILLIAM HAYWARD, JR.,
COMMISSIONER

Town of Falmouth and Falmouth Police Superior Officers Association, 20 MLC 1555

**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 Town of Falmouth violated Sections 10(a)(5) and (1) of G.L. c.150E (the Public Employee Collective Bargaining Law) when it repudiated its agreement with the Falmouth Police Superior Officers Association (Union) and changed the manner of assigning paid details.

WE WILL cease and desist from refusing to implement the terms of our agreement with the Union.

WE WILL restore the status quo ante by reinstating the private detail assignment system that was in place in December 1988.

WE WILL provide the Union with notice before changing the system of assigning paid detail work, and, upon request of the Union, bargain in good faith to agreement or impasse concerning the proposed change.

WE WILL make whole any members of the bargaining unit represented by the Union for any lost earnings they have suffered as a result of the Town's unlawful repudiation of its agreement, plus interest.

Town of Falmouth

Chief of Police