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**ABINGTON SCHOOL COMMITTEE AND ABINGTON TEACHERS  
ASSOCIATION, MUP-8630 (3/15/95).**

54.5833 non-smoking policy  
67.14 management rights  
67.8 unilateral change by employer  
82.53 impact of remedies on other statutes – general

**Commissioners Participating:**

William J. Dalton, Chairman  
William G. Hayward, Jr., Commissioner  
Claudia T. Centomini, Commissioner

**Appearances:**

Ira C. Fader, Esq. - Representing the Abington  
Teachers Association

Joseph Emerson, Jr., Esq. - Representing the Abington  
School Committee

**DECISION**

**Statement of the Case**

The Abington Teachers Association (Association or Union) filed a Charge of Prohibited Practice with the Labor Relations Commission (Commission) on September 9, 1991, alleging that the Abington School Committee (School Committee) had engaged in a prohibited practice within the meaning of Sections 10(a)(1) and (5) of Massachusetts General Laws, Chapter 150E (the Law).

The Commission investigated the Union's charge and issued a Complaint of Prohibited Practice on January 20, 1993, alleging that the School Committee had violated Sections 10(a)(5) and (1) of the Law by unilaterally implementing a particular smoking policy without bargaining with the Union to resolution or impasse. The School Committee filed its Answer on January 25, 1993.

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The Commission scheduled an expedited hearing for June 8, 1993. On that date, the parties agreed to submit a written, stipulated evidentiary record in lieu of the hearing. The Union filed a brief on July 13, 1993, and the School Committee filed a brief on July 20, 1993. Based on the parties' factual stipulations, the Committee's Answer and in consideration of the arguments contained in the parties' briefs, the Commission makes the following findings of fact and renders the following opinion.<sup>1</sup>

Findings of Fact<sup>2</sup>

1. The Union is the exclusive collective bargaining representative for all full-time members of the teaching staff in the Abington Schools.
2. There are six schools in the Abington public school system:
  - Woodsdale School (grades 1-6)
  - North School (elementary)
  - Center School (elementary)
  - Abington High School
  - Frolio Junior High School
  - Kindergarten/pre-school located at South Shore Vocational Technical School
3. Prior to July 1, 1991, the Committee had never prohibited teachers from smoking in school buildings as a condition of employment. Smoking was restricted to designated areas in certain schools.
4. Prior to July 1, 1991, there were two areas in the Woodsdale school which the principal and teaching staff agreed would be designated as smoking areas. One was utilized by female employees and was located in an alcove within the women's (sic) teacher's room. A second was located in a hallway near the custodian's station. These rooms were designated as smoking areas in approximately 1990. Prior to 1990, teachers were also permitted to smoke in the classroom before or after school if no students were present and in the teachers' lounge.

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On July 22, 1993, the Commission redesignated this case "formal" pursuant to Commission Rule 13.02(1), 456 CMR 13.02(1).

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Because the parties submitted written stipulations in lieu of witness testimony, it was unnecessary for an Administrative Law Judge to issue recommended findings of fact.

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5. Prior to July 1, 1991, teachers in the North School and the Center School smoked within their respective school buildings, including within their own classrooms provided students were not present. There was no rule against smoking within the buildings, and no specific areas were designated as smoking areas.
6. Prior to July 1, 1991, there was one designated smoking area in the Abington High School. This was located in an otherwise unused classroom. This classroom was designated by the building principal and teaching staff as a smoking area in early 1990. Before 1990, teachers were permitted to smoke in the classroom before or after school if no students were present.
7. Prior to July 1, 1991, there was one smoking area designated by the building principal and teaching staff in the Frolio Junior High School. There are two teachers' rooms in the building, and smoking was always permitted in the room closest to the front door of the building.
8. Prior to July 1, 1991, teachers employed by the School Committee in the kindergarten wing of the South Shore Vocational Technical School were permitted to smoke in a small alcove-like area in a corridor located off the main school corridor.
9. On July 1, 1991, the School Committee discussed, per its agenda, the issue of incorporating an existing school policy banning student smoking on school premises into the Student Handbook for distribution at the start of the 1991-1992 school year. The issue of banning smoking by teachers was not scheduled for discussion. No representatives of the Association were present at the School Committee meeting.
10. In the course of the July 1, 1991 meeting, a School Committee member moved that the Abington schools be made smoke-free. Following discussion, the School Committee voted in favor of the motion.
11. Following the School Committee's vote on July 1, 1991, the Association sent a letter protesting the vote and demanding to bargain. The Association also filed a grievance over the matter. Prior to the start of the 1991-92 school year, the parties did meet pursuant to the grievance process to discuss the matter but were unable to reach resolution. In view of the parties' dispute over whether the matter was mandatorily subject to bargaining, resolution or impasse over the issue prior to the start of school was not possible.
12. On September 1, 1991, the Committee implemented the "smoke free" policy. Sometime prior to the start of the 1991-92 school year, the School Committee acting

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throughout its agents posted "NO SMOKING" signs in every school building. Teachers thereafter were not permitted to smoke in the school buildings, including in the areas previously designated as smoking areas.

Decision

A public employer violates Sections 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. City of Holyoke, 13 MLC 1336 (1986); School Committee of Newton v. Labor Relations Commission, 388 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. Town of Wilmington, 9 MLC 1694 (1983). Where a decision to change a condition of employment is outside the employer's control or involves a permissive subject of bargaining, an employer must bargain the impact of the decision on all mandatory subjects of bargaining. See Town of Dennis, 12 MLC 1027 (1985); School Committee of Newton v. Labor Relations Commission, *supra*; Board of Regents of Higher Education, 19 MLC 1248 (1992).

In Town of Danvers, 3 MLC 1559 (1977), the Commission first articulated the balancing test that it has consistently applied to determine whether a particular topic is mandatorily bargainable. Under that test, the interests of the public employer in maintaining its managerial prerogative to effectively govern are balanced against the employees' interest in bargaining about subjects that directly affect wages, hours, standards of productivity and performance, and other terms and conditions of employment. *Id.* at 1577; see, also, Boston School Committee, 3 MLC 1603 (1977).

The extent to which employees should be permitted to smoke in the workplace is a benefit that directly affects the conditions under which they work each day. Therefore, employees have an interest in bargaining about smoking policies that restrict that benefit. However, as we recognized in Danvers, this interest is not absolute. It must be balanced against the public employer's managerial interest to determine whether the decision to restrict smoking in the workplace is a core governmental decision reserved to the discretion of the governmental employer. Boston School Committee, 3 MLC 1603 (1977).

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We envision that there may be cases where the public employer's interest in banning smoking is so intertwined with its mission as a governmental entity that its overriding interest takes the issue of smoking out of the realm of bargaining. Here, however, there has been no objective showing that the Abington School Committee's decision to ban smoking resulted from any overriding interests or educational policy concerns inherent in its mission. Accordingly, on these facts, we find that the smoke-free policy at issue was a mandatory subject of bargaining and that the School Committee violated its duty to bargain with the Union by failing to give the Union notice and an opportunity to bargain over the July 1, 1991 decision to ban smoking at the Abington Public Schools.<sup>3</sup>

REMEDY

Although not included in their factual stipulations, the parties have directed our attention to the effect of Section 36 of the Education Reform Act of 1993 on this case. This statute, which was enacted into law and became effective on June 18, 1993, provides in pertinent part as follows:

The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel.

Because the School Committee's decision to ban smoking preceded legislative implementation of Section 36 of the Education Reform Act of 1993, the Committee had a duty to bargain with the Union prior to implementing the July 1 smoking policy. However, Section 36 of the Education Reform Act precludes restoration of the use of any tobacco products by school personnel within the school buildings, facilities, or buses. Consequently, a status quo ante order is not appropriate in this case. However, we do order the Committee to cease and desist from refusing to bargain over all mandatory subjects of

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The parties stipulated that their discussions concerning the smoking ban did not produce either resolution or impasse. Further, there is no evidence indicating that the Association waived its bargaining rights.

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bargaining, to impact bargain with the Association upon request, and to post the attached Notice to Employees.<sup>4</sup>

ORDER

WHEREFORE, based on the foregoing, it is hereby ordered that the Abington School Committee shall:

1. Cease and desist from:
  - a. Failing and refusing to bargain collectively in good faith with the Association over all mandatory subjects of bargaining.
  - b. In any like or similar manner, interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action that will effectuate the purposes of the Law:
  - a. Upon request of the Association, bargain in good faith over the impact of the July 1, 1991 decision to make the Abington Public Schools smoke free.
  - b. Post in conspicuous places where bargaining unit members usually congregate, and leave posted for not less than thirty (30) days the attached Notice to Employees;
  - c. Notify the Commission within thirty (30) days of receipt of this decision and order of the steps taken to comply herewith.

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The School Committee does not argue, and we do not find, that Section 36 of the Education Reform Act of 1993 precludes the School Committee from bargaining over the impact of its smoking ban.

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**SO ORDERED.**

**COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION**

**WILLIAM J. DALTON, CHAIRMAN**

**WILLIAM HAYWARD, JR.,  
COMMISSIONER**

**CLAUDIA T. CENTOMINI, 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 Labor Relations Commission has ruled that the Abington School Committee has committed a prohibited practice in violation of Sections 10(a)(5) and (1) of the Massachusetts General Laws, Chapter 150E, the Public Employee Collective Bargaining Law. The Commission determined that the School Committee unlawfully failed to bargain with the Abington Teachers Association over their July 1, 1991 decision to make all Abington Public Schools smoke free.

**WE WILL NOT fail and refuse to bargain in good faith with the Abington Teachers Association on all mandatory subjects of bargaining.**

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

**WE WILL bargain with the Abington Teachers Association upon request over the impacts of our decision to ban smoking in the Abington Public Schools.**

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**Superintendent of Schools**