

In the Matter of COMMONWEALTH OF
MASSACHUSETTS/COMMISSIONER OF
ADMINISTRATION AND FINANCE

and

MASSACHUSETTS NURSES ASSOCIATION

Case No. SUP-4235

52.63	<i>oral agreements</i>
52.65	<i>"meeting of the minds"</i>
54.2	<i>hours</i>
67.42	<i>reneging on prior agreements</i>
82.12	<i>other affirmative action</i>
91.1	<i>dismissal</i>
92.51	<i>appeals to full commission</i>

May 10, 2000

Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Lisa Newell, Esq. *Representing the Commonwealth of
Massachusetts/Commissioner
of Administration and Finance*

Alan J. MacDonald, Esq. *Representing the Massachusetts
Nurses Association*

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

On January 7, 1997, Hearing Officer Diane M. Drapeau, Esq. issued a decision in this matter pursuant to 456 CMR 13.02(3), finding that the Commonwealth of Massachusetts/Commissioner of Administration and Finance (the Commonwealth) had not violated Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law) as alleged in the Complaint of Prohibited Practice. Specifically, the hearing officer found that the Commonwealth had not repudiated an agreement with the Massachusetts Nurses Association (the Association) to post a certain job notice.¹ On January 17, 1997, the Association filed a Notice of Appeal pursuant to 456 CMR 13.15(3) and on January 31, 1997, the Association filed a Supplementary Statement pursuant to 456 CMR 13.15(4). The Commonwealth did not file a Supplementary Statement. We have reviewed the hearing officer's decision, the Association's Supplementary Statement, and the record, and, for the reasons set forth below, reverse her decision.

The obligation to bargain in good faith includes an obligation to implement the unambiguous terms of an agreement. *See, Higher Education Coordinating Council*, 25 MLC 37 (1998). Further, an agreement need not be in writing to give rise to the obligation. *See, Town of Falmouth*, 20 MLC 1555 (1994) *aff'd sub nom. Town of Falmouth v. Labor Relations Commission*, 42 Mass App. Ct. 1113

(1997). However, if there is no agreement, or if 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).

In her decision, the hearing officer found that the parties did not have a meeting of the minds concerning the full-time nature of the position to be posted because they had not discussed the matter. To achieve a "meeting of the minds" the parties must manifest an assent to the terms of the agreement. *Town of Ipswich*, 11 MLC 1403 (1985) *aff'd sub nom. Town of Ipswich v. Labor Relations Commission*, 21 Mass. App. Ct. 1113 (1986). Here, although the parties had not specifically discussed whether the vacancy would or would not be posted as a full-time position, it is clear from our review of the record that the parties had understood that the agreement reached on April 27 or 28, 1995, included an agreement to re-post the notice as a full-time position.

First, the parties consistently referred to the position to be posted in accordance with the agreement as position No. 03705. Prior to May 10, 1995, position 03705 was posted as a single full-time position.² Further, although the parties did not confirm that the position would remain a full-time position, the parties' conduct indicated that they had intended for it to remain full-time position. On January 26, 1995, following a discussion concerning the original notice, the Commonwealth agreed to re-post the position and then implemented that agreement by posting a notice that described the position as a full-time position. That conduct indicates that the parties had understood that the position would remain full-time. Moreover, the discussion about weekend coverage, including the Association's proposal that the position have two days off in the middle of the week confirms that the parties had always understood that the position would be full-time.

In her decision, the hearing officer finds that, because the Commonwealth did not respond to the Association's proposal concerning weekend coverage, there was no evidence that the Commonwealth agreed with the proposal. However, the agreement at issue is not whether the parties had agreed that the position would have two days off in the middle of the week, but rather whether the parties had agreed that the position would be full-time. Therefore, we find that, under the totality of the circumstances, at the time the Commonwealth had agreed to re-post the position on April 27 or 28, 1995, the parties had the requisite meeting of the minds concerning the full-time nature of the position. It is undisputed that the Commonwealth did not post the position as a full-time position as contemplated by the April 27 or 28, 1995 agreement.

Conclusion

For the reasons set forth above, we conclude that the Commonwealth violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by repudiating an agreement it had

1. The full text of the hearing officer's decision is reported at 23 MLC 166.

2. In the May 10, 1995 posting, the Commonwealth split the single, full-time position into two part-time positions. Those positions were designated as position Nos. 03705-A and 03705-B.

made with the Association to post a notice for a full-time R.N. IV position (#03705) at Westborough State Hospital.

Remedy

In its Supplementary Statement, the Association requests that, as a remedy, we order the Commonwealth to re-post the position as a full-time position as required by the parties' agreement then order the Commonwealth to consider applicants' eligibility, qualifications, and seniority as they were in May 1995, when the posting should have been posted in accordance with the parties' agreement. This remedy, the Association argues, is the only way to give the members of the bargaining unit the benefit of the bargain. We agree. Section 11 of the Law grants the Commission broad discretion in formulating remedies that will best effectuate the policies of the Law. *Labor Relations Commission v. City of Everett*, 7 Mass. App. Ct. 826 (1979). In formulating remedies, we attempt to put the parties back in the positions they were in prior to the unlawful conduct. *See, e.g., City of Worcester*, 25 MLC 169 (1999). Here, the best way to put the parties in the positions they were in prior to the Commonwealth's unlawful repudiation is to order the Commonwealth to post the position as a single, full-time position and to consider applicants based upon their eligibility, qualifications and seniority as they were in 1995.

Order

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Commonwealth shall:

1. Cease and desist from:

- a. Failing to bargain collectively in good faith by repudiating an agreement with the Association to post a certain position as a full-time position.
- b. In any similar manner interfering with, restraining, or coercing employees in the exercise of their rights under the Law.

2. Take the following affirmative action that will effectuate the purpose of the Law:

- a. Immediately implement the agreement to post position No. 03705 as a full-time position and consider applicants based upon their eligibility, qualifications and seniority as they were in 1995.
- b. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.
- c. Notify the Commission within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

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