In the Matter of TOWN OF NORTH ATTLEBORO

and

TOWN OF NORTH ATTLEBORO FIREFIGHTERS, LOCAL 1992, IAFF

Case No. MUP-1289

28.	*Relationship Between c. 150E and Other Statutes Not Enforced by Commission*
65.9	*other interference with union*
67.8	*unilateral change by employer*
75.1	*dues and initiation fees*
82.3	*status quo ante*

January 6, 2000
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Paul V. Mulkern, Jr., Esq.	*Representing the Town of North Attleboro*
David B. Rome, Esq.	*Representing the Town of North Attleboro Firefighters, Local 1992, IAFF*

DECISION[1]

STATEMENT OF THE CASE

On August 4, 1995, the Town of North Attleboro Firefighters, Local 1992, IAFF (Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Town of North Attleboro (Town) had engaged in prohibited practices in violation of Sections 10(a)(1), (2), and (5) of Massachusetts General Laws Chapter 150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of the Commission's rules, the Commission investigated the Union's charge and, on February 2, 1996, issued a Complaint of Prohibited Practice alleging that, by denying the Union's request to implement an authorized union dues increase for certain bargaining unit members, the Town: 1) failed to bargain in good faith, in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law; and, 2) interfered in the administration of the Union's organization by determining for the Union how its dues may be used, in violation of Section 10(a)(2), and derivatively, Section 10(a)(1) of the Law.

On May 22, 1996, the Town and the Union filed a joint statement of agreed facts with the Commission.[2] Both parties filed briefs with the Commission on July 1, 1996.

FINDINGS OF FACT[3]

The Union is the exclusive collective bargaining representative for all permanent full-time members of the Town's fire department, excluding the fire chief. The Town and the Union are parties to a collective bargaining agreement covering the period July 1, 1993 through June 30, 1996. During negotiations for the 1993-1996 agreement, the Union proposed a dental insurance plan, but the Town did not agree to the Union's proposal.

Since 1970, the Town has deducted Union dues from the paychecks of bargaining unit members and has transmitted those dues to the Union. Further, since 1970, the Union has notified the Town when changes in the rate of deduction for union dues has been authorized by the bargaining unit members, and, without inquiry, the Town has adjusted the payroll deductions accordingly. The single reference to Union dues in the parties' 1993-1996 agreement is found in Article XVII, Section 1: Agency Service Fee that provides:

> Section 1: Agency Service Fee
>
> Pursuant to General Laws Chapter 150E, Section 12, it shall be a condition of employment for anyone hired on or after July 1, 1980, that on or after the thirtieth (30th) day of employment in the bargaining unit, or the effective date of this agreement whichever is later, each and every member of the bargaining unit, *so affected*, shall pay to the Union an agency service fee which shall be proportionally commensurate with the cost of collective bargaining and contract administration. The agency fee shall be deducted weekly and shall be equal in amount to the sum set from time to time by the Union as their weekly dues.

The Town does not offer its employees a dental insurance plan. However, acting on an early April 1995 request from the Town's fire department, the Town began payroll deductions for certain Union members and a few non-Union employees for dental insurance coverage. The amount of those payroll deductions was either $4.38 per week or $10.62 per week, the dental insurance premium for individual plan or family plan coverage respectively, and the Town was directed to forward this increase to Dental Maintenance Service. On the advice of counsel, the Town stopped these dental insurance plan payroll deductions in mid-April 1995. In an April 21, 1995 memorandum, the Town informed the Union that it would discontinue the increase in the payroll deductions because:

1. Pursuant to 456 CMR 13.02(1), the Commission has redesignated this case as one in which the Commission issues a decision in the first instance. 456 CMR 13.02(2).

2. The joint statement of agreed facts contains the following prefatory language:

> This Joint Statement of Agreed Facts is entered into by and between the North Attleboro Firefighters, Local 1992, I.A.F.F. and the Town of North Attleboro (the parties). This statement is intended as a comprehensive statement of all facts which either party wishes to introduce, and each party waives its right to a hearing. In hereby stipulating and agreeing to the following facts, the parties do not stipulate to the relevance of the facts contained herein, and reserve the right to contest the relevance of specific facts.

3. The Commission's jurisdiction is uncontested.

> Labor counsel has cited to this office the provisions of M.G.L. c. 180, section 17J ("Public Employee Wage Deductions") which in part states, "Deductions on payroll schedules may be made from the salary of any ... municipal or other public employee ... for any insurance or employee benefit offered IN CONJUNCTION WITH (emphasis added) the employee organization ..." .... It is the town's position that in this matter the dental insurance being offered to your organization's membership (and others) is not being offered by the town "with" the union and therefore, the increased deductions are not, in the judgment of the town, in compliance with the provisions of the statute.

On May 8, 1995, the Union requested that the Town increase weekly payroll deductions for union dues for the same Union members who had increased their payroll deductions for the dental insurance plan. The May 8, 1995 Union-authorized increase in dues was identical to the dental insurance premium that the Union members had first deducted in early April 1995. On May 24, 1995, the Union repeated this request to the Town.

On June 6, 1995, the Town acknowledged receiving the Union's request to increase Union dues payroll deductions and restated its interpretation of M.G. L. c. 180, Section 17J.[4] Further, the Town requested that the Union confirm in writing the Union President's representation that increased dues money would not be used directly or indirectly to pay the dental insurance premiums for the members whose dues were being increased. The Town stated that, when it received that confirmation, it would implement the new three tier dues schedule. On June 16, 1995, the Union informed the Town that the purposes for which the Union spent its dues was solely the Union's business and not subject to Town interference. The Town did not implement the new Union dues schedule.

For the purposes of the record in this case the parties stipulated that:

> 1. The dues increase for the seventeen (17) Union members that the Union requested on May 8, 1995 was an amount calculated to cover the dental insurance premium expense for those seventeen (17) members. Thus, the dues for members with individual coverage were increased by $4.38 per week and the dues for members with family coverage were increased by $10.62 per week. The premium expense for individual coverage was $4.38 per week and for family coverage was $10.62 per week. It was the intention of the Union to transmit all of the increase (above the regular dues of $6.22 per week) to Dental Maintenance Service.
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> 2. Prior to May 8, 1995 all dues increases that the Union asked the Town to implement through payroll deduction applied uniformly to all Union members.

OPINION

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first affording its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. *Commonwealth of Massachusetts* v. *Labor Relations Commission*, 404 Mass. 124, 127 (1989); *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 572 (1983); *City of Boston*, 16 MLC 1429, 1434 (1989); *City of Holyoke*, 13 MLC 1336, 1343 (1986). A public employer's duty to bargain includes working conditions established through custom and practice as well as those governed by the provisions of a collective bargaining agreement. *City of Boston*, 16 MLC at 1434 (1989); *Town of Wilmington*, 9 MLC 1694, 1699 (1983). The Commission has determined that dues check-off, a procedure through which the employer deducts union dues from an employee's wages and pays that amount directly to a union, constitutes a mandatory subject of bargaining. *University of Massachusetts*, 7 MLC 2090, 2092 (1981). *See generally*, Hardin, *The Developing Labor Law*, Ch. 27, Section VI (3d ed. 1992).[5]

Here, the Town had an established practice for about twenty-five years prior to May 1995 of deducting Union dues from an employee's paycheck. Each time the Union requested the Town to adjust the amount of dues deducted, the Town complied with the Union's request without further inquiry. However, the Town altered the established dues check-off practice when, on June 6, 1995, it refused to implement the Union's May 8, 1995 dues increase authorization unless the Union would confirm that the dues increase was not for dental insurance premiums, and only constituted Union dues. Therefore, the Town failed to give the Union prior notice and an opportunity to bargain to resolution or impasse prior to changing that dues check-off practice.

The Town maintains that its conduct was permissible under the Law because the Union's request for increased dues deductions was a subterfuge to evade the requirements of M.G.L. c. 180, Section 17J and the Town did not want its payroll deduction system used by the Union for this purpose. Although the Town may be correct that payroll deductions for insurance premiums paid to a recipient of the employee's choice under M.G.L. c. 180, Section 17J is limited to insurance plans offered jointly by the Town and the Union, we do not read this statute to prohibit a union from offering its own insurance benefit. The Town does not point to any other statute or case law that would prohibit a union from using part of a member's

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4. M.G.L. c. 180, Section 17J provides in part:

> Deductions on payroll schedules may be made from the salary of any state, county, municipal or other public employee of an amount which such employee may specify in writing to any state, county or municipal officer, or public department head, board, commission or agency by whom or which he is employed, for any insurance or employee benefit offered in conjunction with the employee organization, which, in accordance with the provisions of chapter one hundred and fifty E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed; provided, however, that such purpose has been approved by the comptroller. ..... [t]he treasurer of the county or municipality by which such employees is employed, shall deduct from the salary of such employee such amount of authorized deductions as may be certified to him on the payroll and transmit the sum so deducted to the recipient specified by such employee.

5. M.G.L. c. 180, Section 17A authorizes payroll deductions for union dues for state, county and municipal employees if certain conditions are met. The Town and the Union dispute whether the Town has accepted this statute. It is unnecessary to resolve this dispute to determine whether the Town's conduct violated Sections 10(a)(1), (2) and (5) of the Law.

dues to offset the cost of non-employer sponsored insurance benefits.

The Town also asserts that its conduct did not constitute a change in the dues check-off practice because its long-standing practice was to deduct the same dollar amount of Union dues for all members. The Town argues that the agency service fee provision of the collective bargaining agreement evidences the parties' reasonable expectations that the dollar amount of Union dues would be the same for all members. It is undisputed that the Union-authorized dues increases in May 1995 created a three tier dues structure.

The definition of practice necessarily involves the Commission's policy judgment about what combination of facts establishes a past practice for purposes of applying the law prohibiting unilateral changes. *City of Lynn*, 19 MLC 1599, 1602 (1992), *rev'd on other grounds, Lynn* v. *Labor Relations Commission*, 43 Mass. App. Ct. 172 (1997). We decline to define the parties' dues check-off practice to include the same dollar amount for all Union members because the amount of dues is an internal Union matter. Rather, the record reflects that the Town routinely adjusted its payroll records as the Union requested over a twenty-five year period, without inquiry or objections. Here, the Town's objection was limited solely to the purposes of the dues increase, not the internal Union-authorized three tier dues structure. Therefore, we conclude that, by unilaterally changing the dues check-off practice without first giving the Union notice and an opportunity to bargain to resolution or impasse, the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. *Cf. Whittier Regional School Committee*, 13 MLC 1325 (1986), *remanded on other grounds, Whittier Regional School Committee* v. *Labor Relations Commission*, 401 Mass. 560 (1988) (A public employer's failure to enforce a contractual agency service fee provision constituted an abrogation of the parties' agreement, in violation of Section 10(a)(5) and (1) of the Law.)

Section 10(a)(2) allegation

We next consider whether the Town's conduct constituted a violation of Section 10(a)(2) and, derivatively, Section 10(a)(1) of the Law. Under Section 10(a)(2) of the Law, it is a prohibited practice for a public employer to dominate, interfere, or assist in the formation, existence, or administration of any employee organization. To establish a violation of Section 10(a)(2), the evidence must demonstrate that the Town's conduct significantly interfered with the existence and administration of the Union. *City of Boston*, 14 MLC 1606, 1618 (1988). Public employer conduct that deprives a union of an economic benefit is a violation of the Law. *City of Boston*, 14 MLC at 1618, *citing, New Bedford School Committee*, 13 MLC 1009, 1016 (1986). A public employer interferes with the administration of a union in violation of the Law if the employer fails to remit to a union employee dues payments deducted pursuant to written authorization. *City of Boston*, 14 MLC at 1617.

It is undisputed that the Town declined to implement authorized union dues deduction increases from employees' paychecks absent a written confirmation from the Union that the dues would not be used for dental insurance premiums. By doing so, the Town imposed a condition to be satisfied before the Town would increase the amount of dues deducted from an employee's paycheck and remit them to the Union. Because the amount of union dues is an internal union matter not subject to Town scrutiny, however, we determine that, by refusing to implement authorized union dues deduction increases absent a written confirmation from the Union that the dues would not be used for dental insurance premiums, the Town interfered with the Union's existence and administration of its internal financial affairs, in violation of Section 10(a)(2) and, derivatively, Section 10(a)(1) of the Law.

CONCLUSION

For the reasons stated, we conclude that the Town altered the established dues check-off practice by denying the Union's May 1995 request to implement authorized union dues increases without first giving the Union notice and opportunity to bargain to resolution or impasse in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. By this conduct, the Town also interfered with the existence and administration of the Union, in violation of Section 10(a)(2) and, derivatively, Section 10(a)(1) of the Law.

ORDER

Based on the above, it is hereby ordered that the Town of North Attleboro shall:

1. Cease and desist from:

   a. Unilaterally altering the union dues check-off practice in effect immediately prior to June 6, 1995, without first giving the Town of North Attleboro Firefighters Local 1992, IAFF notice and an opportunity to bargain to resolution or impasse;

   b. Failing to bargain in good faith with the Town of North Attleboro Firefighters Local 1992, IAFF about the union dues check-off practice;

   c. Interfering with the existence and administration of the Town of North Attleboro Firefighters Local 1992, IAFF by refusing to implement authorized union dues check-off increases; and,

   d. In any like or related manner, interfering with, restraining, or coercing 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. Reinstate the union dues check-off practice in effect immediately prior to June 6, 1995;

   b. Upon demand, bargain in good faith with the Union about the union dues check-off practice;

   c. Post immediately in all conspicuous places where members of the bargaining unit usually congregate and where notices are usually posted, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and,

   d. Notify the Commission in writing within ten (10) days of receiving this Decision and Order of the steps taken to comply with it.

SO ORDERED.