In the Matter of TOWN OF BELCHERTOWN

and

AFSCME, COUNCIL 93, AFL-CIO

Case No. MUP-2397

67.42 reneging on prior agreements
91.1 dismissal

December 21, 2000
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Kim Rozak, Esq.	*Representing Town of Belchertown*
Wayne Soini, Esq.	*Representing AFSCME, Council 93, AFL-CIO*

DECISION[1]

STATEMENT OF THE CASE

AFSCME, Council 93, AFL-CIO (Union) filed a charge with the Labor Relations Commission (Commission) on April 28, 1999, alleging that the Town of Belchertown (Town) had engaged in prohibited practices within the meaning of Sections 10 (a) (1) and (5) of Massachusetts General Laws, Chapter 150E (Law). The Commission investigated the charge and issued a complaint of prohibited practice on April 6, 2000, alleging that the Town had violated Sections 10 (a) (5) and, derivatively, 10 (a) (1) of the Law by repudiating the terms of an agreement. The Town filed an answer to the complaint on April 18, 2000. The parties agreed to file stipulations of fact in lieu of an evidentiary hearing. Both parties filed briefs.

JOINT STIPULATIONS OF FACT[2]

1. The Town is a public employer within the meaning of Section 1 of the Law.

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3. On April 28, 1999, the Union filed a charge of prohibited practice with the Commission alleging that the Town had engaged in a prohibited practice within the meaning of Sections 10 (a) (1) and (5) of the Law by permitting a non-unit member, a police lieutenant, to work unit overtime.

4. For the period July 1, 1995 through June 30, 1998, the Town and the Union were parties to a collective bargaining agreement. According to the recognition clause of the agreement covering the period July 1, 1995 through June 30, 1998, the Union was the exclusive bargaining agent for all permanent full-time and regular part-time police officers including sergeants and lieutenants, but excluding the Chief and all other members of the Department.

5. The Town and the Union executed a Memorandum of Agreement (MOA) on March 29, 1999.

6. The duration of the MOA is July 1, 1998 through June 30, 2001.

7. The MOA states, in part, "[t]his Agreement shall be subject to ratification by the Union and the Board of Selectmen of the Town of Belchertown, and shall be subject to appropriation by the Town Meeting."[3]

8. The Town meeting to appropriate funds for the MOA took place on May 10, 1999.

9. The Town of Belchertown Police Department employs one police lieutenant, William Zobka (Lieutenant Zobka).

10. For the period March 29, 1999 through May 10, 1999, Lieutenant Zobka worked overtime shifts.[4]

OPINION

The issue presented by this case is whether the Town repudiated the MOA by permitting Lieutenant Zobka to work overtime after the parties signed the MOA but before the Town appropriated funding. To establish that the Town repudiated the MOA, the Union must show that the Town deliberately refused to abide by the agreement. *Commonwealth of Massachusetts*, 26 MLC 87, 89 (2000). If the evidence is insufficient to find an agreement underlying the matter in dispute or if the parties hold differing good faith interpretations of the terms of the agreement, the Commission will find that no repudiation has occurred. *City of Everett*, 26 MLC 25 (1999).

Here, the Union alleges that Section 7 (b) of the Law obligated the Town to implement paragraphs 2 and 15 of the MOA on the date both parties signed the MOA, because those paragraphs were non-cost items and did not require a legislative appropriation. The Union concludes that, by assigning Lieutenant Zobka to work overtime after the parties signed the MOA on March 29, 1999, the Town repudiated the MOA. The Town, however, contends that the language of the MOA articulated in Joint Stipulation No. 7 provided that the Town could not implement the MOA until the date of the Town meeting to appropriate funds. Consequently, the Town asserts that it did not repudiate the MOA by assigning Lieutenant Zobka to work overtime prior to May 10, 1999.

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1. Pursuant to 456 CMR 13.02 (2), the Commission designated this case as one in which the Commission will issue a decision in the first instance.

2. The parties have not contested the Commission's jurisdiction over this matter.

3. Paragraph 2 of the MOA provided that the classification of lieutenant would be deleted as a bargaining unit title. Paragraph 15 of the MOA stated, in part: "The Union agrees that a lieutenant will be allowed to continue to participate in outside details if there are no full-time officers available to work the outside detail, provided, however, if a detail consists of two or more officers, the Chief may assign the lieutenant to serve as a superior officer on the outside detail."

4. Lieutenant Zobka worked overtime as follows: 8.5 hours on April 17, 1999; 8.5 hours on April 19, 1999; 8 hours on April 27, 1999; 6 hours on April 29, 1999; 8.5 hours on April 30, 1999; 8 hours on May 4, 1999; and 2 hours on May 8, 1999.

After examining the MOA language in dispute here, it is unclear whether an appropriation by the Town meeting was a condition precedent to implementing the MOA. When language in an agreement is ambiguous, the Commission may look at the underlying bargaining history to determine the parties' intent. *City of Lawrence*, 23 MLC 213, 215 (1997). Here, however, the record does not contain any evidence of the parties' bargaining history. Because of the explicit reference to an appropriation in the MOA, the MOA could be construed as including a contractual condition precedent to implementing paragraphs 2 and 15. At best, the agreement is ambiguous on that point. Therefore, we cannot find that the Town repudiated the MOA in the manner alleged by the Union.

Although the parties' arguments reference Section 7(b) of the Law, it is not necessary for us to consider the effect of that section in this case. Because it is unclear from the language of the MOA whether the parties' had agreed to implement paragraphs 2 and 15 immediately or whether to condition the implementation date on an appropriation from the Town meeting, we base our decision solely on the contract language to which the parties stipulated.

CONCLUSION

Based on the record before us, we conclude that the Town did not repudiate the MOA in violation of Section 10 (a) (5) and, derivatively, Section 10 (a) (1) of the Law by permitting Lieutenant Zobka to work overtime after the parties signed that MOA. Accordingly, the complaint of prohibited practice is dismissed.

SO ORDERED.

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