In the Matter of CITY OF MELROSE

and

MELROSE FIRE FIGHTERS, LOCAL 1617, I.A.F.F.

Case No. MUP-1010

28.	*Relationship Between c.150E and Other Statutes Not Enforced by Commission*
52.52	*legislative approval*
53.5	*other influences on bargaining*
67.13	*economic justification*
68.1	*failure to comply with arbitration award*
82.111	*interest*
92.47	*motion to dismiss*
92.6	*time limits*

June 29, 2001
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Harold Lichten, Esq.	*Representing the Melrose Fire Fighters, Local 1617, I.A.F.F.*
John Kenney, Jr., Esq.	*Representing the City of Melrose*

DECISION[1]

Statement of the Case

On October 18, 1994, the Melrose Fire Fighters, Local 1617, I.A.F.F. (the Union) filed a charge with the Labor Relations Commission (the Commission) alleging that the City of Melrose (the City) had violated Sections 10(a)(5) and (1) of M.G.L.c.150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on July 10, 1995 alleging that the City had violated Sections 10(a)(5), (6) and, derivatively, Section 10(a)(1) by failing to submit to the Board of Aldermen an appropriation request to fund a Joint Labor Management Committee (JLMC) decision within thirty days and by failing to participate in good faith in an arbitration invoked by the JLMC. The Commission scheduled the case for a hearing on October 26, 1995, March 5, 1996 and September 25, 1996, but the parties requested that the Commission postpone the hearing dates because the parties were attempting to resolve the matter. On September 25, 1996, the Commission sent a letter administratively closing the case but stating that the case could be reopened at the request of either party. On May 28, 1997, the Union wrote to the Commission asking that the case be reopened and consolidated with Case No. MUP-1838. The Union reiterated this request on February 15, 2000, after the Commission issued a complaint in Case No. MUP-1838 and scheduled that case for hearing. On March 7, 2000, the Commission denied the Union's request to consolidate the two cases for hearing, but notified the parties a hearing was scheduled in Case No. MUP-1010. On June 5, 2000, the City filed a motion to dismiss.[2]

On June 7, 2000, Margaret M. Sullivan, a duly designated hearing officer of the Commission, conducted a hearing at which all parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. Both parties submitted post-hearing briefs on July 10, 2000. On April 3, 2001, the hearing officer issued her Recommended Findings of Fact. Neither party filed challenges to those Recommended Findings of Fact pursuant to 456 CMR 13.02(2). We have considered the arguments of the parties and the record in this matter. Based on that review, we make the following findings of fact and conclusions of law.

Findings of Fact[3]

The Union is the exclusive collective bargaining representative for all uniformed fire fighters employed by the City, excluding the Chief of the Fire Department. On or about May 6, 1994, the JLMC convened a tri-partite arbitration panel pursuant to St. 1987, c.589 to rule upon certain issues that were in dispute during the parties' successor contract negotiations, including: wages, vacations, night shift differentials, longevity, education pay, the cap on the number of emergency medical technicians in the fire department, the bid process, and sick leave. On July 25, 1994, the JLMC issued an award ordering the City to pay the fire fighters wage increases of 2% on July 1, 1993, 2% on January 1, 1994, 2% on July 1, 1994 and 3% on January 1, 1995.[4]

On August 15, 1994, Mayor Richard Lyons (Mayor Lyons) sent the City's Board of Aldermen a copy of the JLMC award for its review and approval.[5] Mayor Lyons attached a letter to the JLMC award stating in part that:

> Please be advised that I support the decision of the JLMC and recommend funding necessary to comply with the decision 93-92F. Funding of the 1993-1995 contract in the amount of $239,572.66 is required. A request will be made to the Board of Aldermen through the supplemental budget process.

Mayor Lyons did not identify a funding source for the JLMC award, as he typically did with appropriation requests, because he believed that the City did not have sufficient monies available to fund the cost items in the award.[6] On September 26, 1994, the Board of Aldermen passed an order that reviewed and approved the July 25, 1994 JLMC award.

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

2. The hearing officer took that motion under advisement, and we address it below.

3. The Commission's jurisdiction in this matter is uncontested.

4. The JLMC award also contained other cost items including night shift differentials, longevity and education pay.

5. When the City previously had negotiated successor collective bargaining agreements with other employee organizations, Mayor Lyons had requested that the Board of Aldermen review and approve the contract as well as approve the funding source. Here, he wanted to follow the same practice with the JLMC award.

6. Mayor Lyons acknowledged that the Board of Aldermen routinely authorized the transfer of funds between City accounts for non-salary matters.

After receiving official notification of the local aid revenue that the City would receive from the state for that fiscal year, Mayor Lyons submitted a supplemental budget request on October 3, 1994 to the Board of Aldermen in the amount of $290,436.93, including $242,654.11 to fund the July 25, 1994 JLMC award.[7] Mayor Lyons's request stated that the supplement would provide funding for the following items: 1) Fire Department contract through 6/30/95 in the amount of $242,654.11 (Account #01-5110-017, Salary & Wages) and 2) Northeastern Metropolitan Regional Vocational School in the amount of $47,782.82 (Account #01-57100-109). Mayor Lyons had increased his estimate of the monetary cost of the JLMC award by approximately three thousand dollars from his August 15, 1994 estimate to cover any interest that was owed to the fire fighters for the period starting on August 15, 1994 at a rate of ten percent. On October 17, 1994, the Board of Aldermen approved the supplemental budget request, including the $242,654.11 to fund the JLMC award.

In December 1994, the City paid certain monies to individual fire fighters in response to the JLMC award (the December 1994 payment). The City never informed the fire fighters whether it had calculated the amount of interest that was payable on the JLMC award and that it had included monies representing the amount of accrued interest in the December 1994 payment. When the Union's secretary/treasurer Robert Forsey (Forsey) received his December 1994 payment, he determined that his payment did not include monies for any interest that had accrued on the JLMC award.[8] Forsey made this determination by calculating the back pay that he was owed and subtracting that figure from the total amount of his December 1994 payment.

Opinion

Motion to Dismiss

On June 5, 2000, the City filed a motion to dismiss the present case pursuant to the equitable doctrine of laches. The City argues that the Union's delay in exercising a timely request to have this case litigated after the case was administratively closed in September 1996 prejudiced the City because personnel changes have left the City without adequate resources to mount a defense. Generally, the Commission does not award parties relief in equity. *See Town of Hudson*, 25 MLC 143, 146, (FN 21) (1999). However, assuming *arguendo* that the Commission is willing to grant equitable relief, the facts of the present case do not support a finding of laches. The Union wrote to the Commission on May 28, 1997, eight months after the case was administratively closed, seeking to re-open the case. At that time, the Union put the City on notice that it was seeking to litigate the claim, and any administrative delay in rescheduling the case after the Union's May 28, 1997 request to re-open cannot furnish a basis for the application of laches. *See School Committee of Brockton* v. *Massachusetts Commission Against Discrimination*, 423 Mass. 7, 13 (1996). Therefore, we deny the City's motion to dismiss and address the merits of the case below.

Failure to Submit the JLMC Award for Funding in a Timely Manner

Section 4A of St.1987, c. 589 (Section 4A) grants the JLMC oversight responsibility for all collective bargaining negotiations involving municipal police officers and fire fighters. On May 6, 1994, the JLMC, having previously determined that issues in the parties' negotiations for a successor contract remained unresolved for an unreasonable period of time, convened a tri-partite arbitration panel to rule upon the issues in dispute. Subsequently, the JLMC issued an award on July 25, 1994. Section 4A requires that: "the employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request." Here, the Union argues that the City violated its obligation to bargain in good faith under c.150E by failing to submit a request to fund the JLMC award within thirty days.

First, we need to examine the interaction between c.150E and Section 4A to determine whether an employer's failure to timely submit a JLMC award for funding to the legislative body constitutes a failure to bargain in good faith in violation of Section 10(a)(5) of the Law. *See e.g. Town of Stoughton*, 19 MLC 1149 (1992). The statutes should be read "'so as to constitute a harmonious whole'... by attributing to the Legislature certain commonsense general purposes." *Dedham* v. *Labor Relations Commission*, 365 Mass. 392, 402 (1974); *quoting from Mathewson* v. *Contributory Retirement Appeal Board*, 335 Mass. 610, 614 (1957). Nothing in Section 4A or c.150E precludes the Commission from asserting jurisdiction even though the JLMC has jurisdiction over the same parties or the same dispute. *See Town of Stoughton*, 19 MLC 1149, 1156 (1992). Section 4A requires parties to support a JLMC decision "in the same way and to the same extent that the employer or the exclusive employee representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws."

There are several sections of c.150E that address the obligations of an employer and an employee representative to support a collective bargaining agreement. Section 7(b) of c.150E requires certain public employers, including municipalities, to submit to the appropriate legislative body an appropriation request to fund the cost items contained in a collective bargaining agreement within thirty days after the date on which the collective bargaining agreement is executed by the parties. Further, it is well established that a public employer that fails to take all steps necessary to secure funding for the cost items of a collective bargaining agreement refuses to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of c.150E. *See e.g. Mendes* v. *City of Taunton*, 336 Mass. 109 (1975); *Town of Belmont*, 22 MLC 1636.

7. When the Board of Aldermen received a funding request, the Board of Aldermen could approve the request, could deny the request or could table the request and take no action on it.

8. Forsey could not recall the dollar figure of the December 1994 payment.

1639 (1996); *Town of Fairhaven*, 22 MLC 1360, 1362 (1996); *City of Chelsea*, 13 MLC 1144, 1149 (1986); *Worcester School Committee*, 5 MLC 1080, 1083 (1978). Because Section 4A requires parties to support a JLMC decision in the same manner and to the same extent that c.150E requires parties to support a successor agreement, we conclude that a public employer and an employee organization have a good faith bargaining obligation pursuant to Section 10(a)(5) of the Law to timely submit an appropriation request to fund a JLMC award.

Although the City does not dispute its good faith bargaining obligation in the present case, the City argues that it complied with the funding requirements of Section 4A within twenty days. The JLMC issued the award on July 25, 1994, and Mayor Lyons submitted the award to the Board of Aldermen on August 15, 1994. However, Lyons submitted the JLMC award to the Board of Aldermen for their approval. Nothing in Section 4A requires a legislative body to approve or disapprove a JLMC award. Rather, the Board of Aldermen's role is to approve or disapprove an appropriation request to fund the award. Mayor Lyons's submission to the Board of Aldermen did not include a request for funding. Instead, he noted that "a request will be made to the Board of Aldermen through the supplemental budget process." The City insists that no appropriation request was made at that time, because the mayor believed that the City did not have sufficient monies to fund the JLMC award. However, an employer's concerns about the sufficiency of funding sources does not excuse its obligation to bargain in good faith by timely submitting an appropriation request to fund a JLMC award. *See e.g. Town of Ipswich*, 4 MLC 1600 (1977). Because Mayor Lyons did not submit the appropriation request until October 3, 1994, after the City received the local aid revenue figures from the state, the City failed to submit a request to fund the JLMC award within thirty days of July 25, 1994.

Refusal to Participate in Good Faith in Mediation, Fact-Finding or Arbitration

A public employer violates Section 10(a)(6) of the Law if it fails to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in Sections 8 and 9 of the Law. Section 9 describes the role of the Board of Conciliation and Arbitration (the Board) in conducting mediation, arbitration or fact-finding when parties are at impasse in contract negotiations.[9] Therefore, as a threshold matter, we must also decide whether Section 10(a)(6) applies to an employer's failure to participate in good faith in an arbitration ordered by the JLMC. Pursuant to Section 4 of c.1078 (Section 4),[10] the Board appointed a panel to arbitrate those disputes in which a municipality and its police officers or fire fighters were at impasse in successor contract negotiations. In 1977, the Legislature amended c.1078 and inserted Section 4A.[11] Section 4A created the JLMC to oversee successor contract negotiations for police officers and fire fighters, including the arbitration of contract disputes that previously had been governed by Section 4.[12] Reading the statutes to constitute a harmonious whole, we conclude that an employer who refuses to participate in good faith in arbitration invoked by the JLMC, including complying with its obligation to submit an appropriation request, violates Section 10(a)(6) of the Law.

We have already determined that the City failed to bargain in good faith in violation of Section 10(a)(5) of the Law by not timely submitting an appropriation to fund the JLMC award. Because the City's failure to bargain in good faith arose out of an arbitration proceeding at the JLMC, we conclude that the City's conduct also violated Section 10(a)(6) of the Law. See *Framingham School Committee*, 4 MLC 1809, 1814 (1978).

Remedy

Section 11 of the Law grants the Commission broad authority to fashion appropriate orders to remedy unlawful conduct. *Labor Relations Commission* v. *City of Everett*, 7 Mass.App.Ct. 826 (1979); *Millis School Committee*, 23 MLC 99 (1996). Here, the Union argues that the Commission should order the City to pay interest that accrued during the City's seven week delay in submitting an appropriation to fund the JLMC award on the retroactive wages that the JLMC award granted the fire fighters. However, Section 4A makes a JLMC award contingent upon the municipal legislative body approving an appropriation request to fund the award. Pursuant to Section 4A, if a municipal legislative body votes not to approve an appropriation request to fund a JLMC award, the JLMC award will cease to be binding on the parties and the matter will be returned to the parties for further bargaining. The funding contingency in Section 4A mirrors the funding contingency that Section 7(b) of the Law imposes on otherwise valid municipal collective bargaining agreements. It is well established that no cost item in a collective bargaining agreement between a public employer and an employee organization can assume any monetary significance until there is a legislatively established appropriation from which the item can be paid. *See County of Suffolk* v. *Labor Relations Commission*, 15 Mass.App.Ct. 127, 132 (1983). The Commission's traditional remedy in cases in which a municipal employer has failed to timely submit an appropriations request to fund a collective bargaining agreement is to order the employer to submit a funding request. *See e.g. City of Lawrence*, 16 MLC 1760. 1764 (1990); *City of Medford*, 9 MLC 1792, 1797 (1983). If the Commission were to grant the Union's request and to order the City to pay interest on the fire fighters' retroactive wages for the period of time that the City delayed in submitting an appropriation request to fund the JLMC award, the Commission would be ordering the City to act as if the economic terms of the JLMC award were in place as of August 25, 1994, even though the funding contingency in Section 4A had not been satisfied at that time. Accordingly, we decline to order the payment of interest in this case.

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9. Section 8 of the Law details how parties may include in any written agreement a grievance procedure culminating in final and binding arbitration in the event of any dispute concerning the interpretation or application of the written agreement.

10. St.1980, c.580 (Proposition 2 ½) repealed Section 4.

11. St.1977, c.730.

12. St. 1987, c.589 amended Section 4(A) to include a provision, Section 3(a), enabling the JLMC to require parties to attend an interest arbitration.

Conclusion

Based on the record and for the reasons stated above, the City violated Section 10(a)(5), Section 10(a)(6), and, derivatively, Section 10(a)(1) of the Law by failing to submit an appropriation request to fund the JLMC award within thirty days of the award's issuance.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the City of Melrose shall:

1. Cease and desist from:

   a. Refusing to bargain in good faith by failing to submit an appropriation request to fund the July 25, 1994 award of the Joint Labor-Management Committee within thirty days as required by St.1987, c.589, s.4A.

   b. In any like manner, interfere with, coerce or restrain its employees in the exercise of their protected rights under the Law.

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

   a. Post in all conspicuous places where its employees represented by the Union usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached [not published] Notice of Employees.

   b. Notify the Commission in writing of steps taken to comply with this decision within ten (10) days after receipt of this decision.

SO ORDERED.

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