

In the Matter of BOARD OF HIGHER EDUCATION
and

MASSACHUSETTS COMMUNITY COLLEGE
COUNCIL/MTA/NEA

Case No. RBA-02-154

94. *Arbitration Under Chapter 150E, Section 8*

November 29, 2002

Helen A. Moreschi, Chairwoman

Mark A. Preble, Commissioner

Peter G. Torkildsen, Commissioner

James Brown, Esq. *Representing the Board of Higher
Education*

Michelle Gallagher *Representing the Massachusetts
Community Council/MTA/NEA*

RULING ON REQUEST FOR BINDING ARBITRATION

Statement of the Case

On July 12, 2002, the Massachusetts Community College Council/MTA/NEA (Union) filed a Request for Binding Arbitration pursuant to Section 8 of Massachusetts General Laws, Chapter 150E (the Law). On September 3, 2002, the Board of Higher Education (Employer) filed an Opposition to the Union's Request pursuant to 456 CMR 16.02 (5).

The Union represents a bargaining unit of faculty employed by the Employer in the division of continuing education at several community colleges located throughout the Commonwealth of Massachusetts. Thomas Sweeney (Sweeney) was a member of the Union's bargaining unit at Roxbury Community College. The Union and the Employer are parties to a collective bargaining agreement (Agreement) effective from January 1, 2000 through December 31, 2003. Article 7 of the parties' Agreement contains a grievance procedure that culminates in final and binding arbitration. However, Article 7.06 (G) of the Agreement provides that "any grievance citing Article 10.03 will go to mediation only" and Article 7.07 (C)(2) specifies that an arbitrator will have no authority to arbitrate Article 10.03 grievances.

On December 14, 2001, the Employer notified Sweeney that he was not being reappointed to teach at Roxbury Community College pursuant to Article 10.03 of the Agreement. On January 7, 2002, Sweeney filed a grievance alleging a violation of Article 10.03 of the contract. In accordance with Article 7.06(g) of the Agreement, the parties conducted the final step of mediation on May 15, 2002 without resolution. The Union has previously attempted to arbitrate an Article 10.03 grievance and the arbitrator found that Article 10.03 issues are not arbitrable.

Opinion

Section 8 of the Law authorizes the Commission to order final and binding arbitration where: (1) there is a written collective bargain-

ing agreement in effect at the time of the alleged event; (2) there is a dispute over the interpretation or application of the written agreement; and (3) the agreement does not provide for final and binding arbitration. *University of Massachusetts/Medical Center*, 25 MLC 93, 94 (1998), citing *Town of Grafton*, 23 MLC 221, 222 (1997). In evaluating a request for binding arbitration, the Commission performs a limited review of the merits of a grievance to ensure that it is at least "arguably arbitrable". *Essex County Management Association*, 20 MLC 1519 (1994), citing *Town of Shrewsbury*, 4 MLC 1441, 1445 (1977). The Commission undertakes this review to ensure that its order does not compel the parties to perform a futile act. *Essex County Management Association*, 20 MLC at 1521, citing *Sturbridge School Committee*, 1 MLC 1381(1975). Here, the Agreement provides for final and binding arbitration and specifically excludes Article 10.03 from arbitration. Furthermore, an arbitrator has previously ruled that a grievance alleging a violation of Article 10.03 was not arbitrable. Under these circumstances, final and binding arbitration is not appropriate. Therefore, the Union's Request for Binding Arbitration is denied.

SO ORDERED.

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