TOWN OF EAST LONGMEADOW AND AFSCME, LOCAL 1364, RBA-14, 23 (7/23/76)

(90 Commission Practice And Procedure)
94. Arbitration order under chapter 150E, §8

Commissioners participating: James S. Cooper, Chairman; Madeline H. Miceli; Henry C. Alarie.

Appearances:

Kathryn M. Noonan, Esq. - Counsel to the Commission
James E. Dowd, Esq. - Counsel to the Town
Augustus J. Camelio, Esq. - Counsel to AFSCME

Ruling on Motion to Dismiss Requests for Binding Arbitration

On January 7, 1976 the American Federation of State, County, and Municipal Employees, Council 41, AFL-CIO, Local 1364 (AFSCME) filed with the Labor Relations Commission (Commission) a request, pursuant to Section 8 of G.L. c.150E, for binding arbitration of a dispute involving a one-day suspension or reduction in rank by the Town of East Longmeadow (Town) of an employee represented by AFSCME. On January 14, 1976 the Town moved that the Commission dismiss the request for the reasons that Section 8 requires that a written collective bargaining agreement which lacks a provision for binding arbitration be in effect to order binding arbitration. The Town claimed that the events described in the petition occurred when no agreement was in existence.

On February 13, 1976 AFSCME filed a second request for binding arbitration involving the discharge of an employee by the Town. On April 23, 1976 the Town moved for dismissal of the matter, again asserting that the prerequisites for ordering binding arbitration were not satisfied.

Pursuant to notice on May 21, 1976, a hearing was held on the Town's motions before Kathryn M. Noonan, a duly designated hearing officer of the Commission.

Findings of Fact

The Town and AFSCME executed a collective bargaining agreement effective from June 30, 1974 to June 30, 1975. The contract contained a grievance/arbitration procedure which provided arbitration upon request of either party under the auspices of the State Board of Conciliation and Arbitration. After the expiration date of the contract, the parties engaged in neogtiations for a successor agreement which was executed during the Spring of 1976. Although the Termination Clause of the agreement provided for its renewal in writing by both parties, the parties did not execute such a renewal.

On or about August 12, 1975 the Board of Public Works of the Town upheld the one-day suspension of Francis DiAugustine imposed on July 8, 1975. Subsequently, AFSCME petitioned for arbitration of the dispute at the Board of Conciliation and Arbitration (Board). The Town challenged the jurisdiction of the Board asserting that the grievance arose after the contract had expired. The Board declined jurisdiction and directed the Union to petition the Commission pursuant to Section 8.

On or about September 10, 1975 the Town indefinitely suspended John J. Picking. This action is the subject of RBA-23.

At the hearing, AFSCME endeavored to show that the agreement continued in effect beyond its stated expiration date. In light of our disposition of this matter, we make no finding concerning the quesion of the contract's viability at the time the facts giving rise to the grievance occurred.

OPINION

Section 8 of the Law provides:

> "The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the Commission upon the request of either party;..."

Unmistakeably, this section requires the Commission to make a dual finding before an order of binding arbitration is appropriate. To be entitled to an arbitration order, a dispute must involve the interpretation of a written agreement which lacks a binding arbitration provision.

As the record in this matter indicates, the parties executed an agreement which provided for binding arbitration of disputes concerning its interpretation or application. If the agreement was in effect at the time the facts giving rise to the grievances occurred, the parties had a contractual provision available to resolve the dispute and accordingly had no need of or right to a Section 8 order. Similarly, a Section 8 order is not mandated, if the agreement was not effective at the time the disputes arose because no question of the interpretation of the agreement is at issue. See: Dept. of Public Utilities, SUP-69, 1 MLC 1137 (1974).

ORDER

Wherefore, on the basis of the foregoing, the Commission orders that the requests for binding arbitration be dismissed.

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

Henry C. Alarie, Commissioner