CITY OF CHELSEA AND IAFF, LOCAL 937, MUP-2373 (10/14/76)

(60 Prohibited Practices By Employer)
67.7 refusal to meet or delay in meetings
68. Refusal to participate in arbitration proceedings

Hearing Officer: Stuart A. Kaufman, Esq.

Appearances:

Jonathan P. Hiatt, Esq. - Representing the International Association of Firefighters, AFL-CIO, Local 937
J. Joseph Lydon, Esq. - Representing the City of Chelsea

HEARING OFFICER'S DECISION

Statement of the Case

On Novebmer 13, 1975, the International Association of Firefighters, AFL-CIO, Local 937, herein called the Association, filed a Complaint of Prohibited Practice with the State Labor Relations Commission, herein called the Commission, alleging that the City of Chelsea, herein called the City, had engaged in practices described in Section 10(a)(1), (3), (4) and (5) of Chapter 150E of the General Laws, herein called the Law. Pursuant to its authority under Section 11 of the Law, the Commission conducted an investigation in the above-entitled matter and issued a Complaint of Prohibited Practice on March 18, 1976. The Complaint alleged, in pertinent part,

> "That since March, 1975, the City has refused to bargain with the Union on a new collectively [sic.] in good faith concerning grievances, and has refused to bargain collectively in good faith with the Union over the formulation of rules and regulations for the conduct of employees in the City's Fire Department",

and that the City had thereby violated Sections 10(a)(1), (3), (4) and (5) of the Law. The Complaint and accompanying notice of hearing were duly served on all interested parties. The City filed an answer to the Complaint on March 23, 1976, denying the material allegations of the Complaint.

Pursuant to Section 11 of the Law, an Expedited Hearing was held in Boston on April 29, 1976 before Stuart A. Kaufman, a duly designated Hearing Officer of the Commission. All parties were afforded full and fair opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence.

Based upon the entire record, I hereby make the following findings of fact:

Findings of Fact

1. The City is a municipal corporation situated in the County of Suffolk within the Commonwealth of Massachusetts and is a Public Employer within the meaning of Section 1 of the Law.

2. The Mayor of the City is the chief executive officer of the Public Employer within the meaning of Section 1 of the Law.

3. The Chief of the Fire Department is an agent of the Public Employer for the purpose of negotiating over Rules and Regulations affecting said Department.

4. The Union is an Employee Organization within the meaning of Section 1 of the Law and is the exclusive representative for the purpose of collective bargaining of a unit of firefighters employed by the City.

On November 21, 1974 the City and the Union executed a collective bargaining agreement containing, in part, the following language:

ARTICLE XVI

DURATION OF AGREEMENT

Section 1. This agreement is effective from July 1, 1974, unless otherwise specified, and shall continue in force and effect, subject to Section 2 of this Article, to and including June 30, 1975.

Section 2. On or after February 1, 1975 the Local shall notify the City of its proposals for a new agreement to be effective on the termination of this Agreement, and the parties will proceed forthwith to bargain collectively with respect thereto. Notification under this Section will be accomplished by the Local's delivery of a copy of its proposals to the Mayor of the City, with one additional copy to the Chief of the Fire Department. Upon such notice and initial bargaining, the contract will remain in full force and effect until a new agreement is reached. When such new agreement is reached, all new or revised benefits will be made retroactive to the proper termination date stated in the prior agreement.

Pursuant to the timetable established in Section 2 of the aforementioned Article, representatives of the Union met with the Mayor in early March, 1975 for the purpose of submitting written proposals for a new agreement. At that meeting, the Mayor requested the Union to "hold off" from submitting the proposals because he was preoccupied with the City budget and would be unable to give full attention to bargaining, a request to which the Union acceded.

The Union met with the Mayor for the second time in late March or early April, 1975 and indicated that it was once again prepared to offer written proposals for a new agreement and was ready to commence negotiations. The Mayor repeated his request to the Union to "hold off" because he was still working on the budget and also because of contractual difficulties with the City Solicitor. In prior years, the City Solicitor had conducted negotiations on behalf of the City, but was refusing to continue his services as the City's negotiator in 1975 unless he received additional compensation from the City. The Union again agreed to the Mayor's request.

Shortly thereafter, the Mayor called for a meeting with the representatives of all of the municipal employee organizations in the City and presented to them

a packet of written material. Included in the packet was a letter from the City Solicitor to the Mayor indicating that he would no longer negotiate for the City unless his salary was increased. The Mayor also presented details of the City's budget problems and announced that the City could not proceed with collective bargaining because it had no agent to act on its behalf.

On May 30, 1975 the Union submitted a written request to the Mayor for a meeting to negotiate a new contract and indicated that it had completed its proposals. Having received no timely response from the Mayor to the May 30, 1975 letter, the Union submitted a further request to the Mayor on June 17, 1975 to meet for the purpose of negotiating a new contract, but again received no response. During the summer of 1975 the City made no effort to comply with the Union's requests to negotiate. On October 8, 1975 the counsel for the Union submitted a written request to the Mayor to meet for the purpose of negotiating a 1975 collective bargaining agreement. The Mayor informed the Union counsel by telephone that the request for negotiations would be delayed pending the appointment of an attorney to negotiate for the City.

On October 17, 1975 the Mayor submitted a request to the City Board of Aldermen containing, in part, the following language:

> "In order to prevent the issueance of a prohibited labor practice against the City of Chelsea by the Labor Relations Board, I again hereby request that you appropriate the sum of five thousand dollars in order to pay for the services of a labor relations consultant."

Due to procedural objections at the Board of Alermen meeting of October 27, 1975, the Board did not act upon the Mayor's request and postponed action on the matter until a later date.

On October 24, 1975, the Union counsel again requested the Mayor to meet and negotiate. The Mayor responded that the City would not engage in bargaining without proper legal counsel. The Union filed a Complaint of Prohibited Practice in the instant case on November 13, 1975. For several months thereafter the City continued to ignore written and oral requests from the Union to negotiate. The City finally appointed a counsel to act as its designated representative for the purposes of collective bargaining on March 18, 1976. As of the date of the Expedited Hearing, no negotiations had yet taken place between the City and the Union.

Article XI of the November 21, 1974 contract between the City and the Union contains a multi-step grievance procedure which, in part, establishes the following schedule:

> Step 1. Grievances may be first presented by the employee and/or the Local representative to the Senior Captain or the next highest ranking officer by rank or seniority commanding the station, and an earnest effort shall be made to adjust the grievance in an informal manner.
>
> Step 2. If the grievance is not resolved in Step 1 the grievance shall be then reduced to writing by the Local and presented to the Chief of the Fire Department. The Chief shall meet with the grievance committee

within five (5) days from the time the grievance is presented to him and he shall answer the grievance in writing within five (5) days after the meeting. Grievant(s) will sign written grievance before it is presented to the Chief.

Step 3. If the grievance is not resolved at Step 2 or answered by the Chief within the time limit set forth above, the written grievance shall be submitted to the Mayor of his representative by the Grievance Committee within ten (10) calendar days after the last aforementioned five (5) day period, exclusive of Saturdays, Sundays or Holidays. The Mayor or his representative shall meet with the Grievance Committee within five (5) days after receipt of the written grievance to discuss the grievance, and will answer the grievance in writing within five (5) days after the meeting.

Pursuant to the provisions of the aforementioned Article, the Union submitted numerous grievances to the Chief in 1975. In each instance, the Chief responded in timely fashion that he was "unable to handle them" at his level and advised the Union to process the respective grievances to the Mayor at Step 3 of the grievance procedure. Examples of the kinds of grievances for which the Union sought relief were: failure to fill vacancies in the offices of Fire Department Lieutenant and Deputy Chief, and transferring firefighters to avoid overtime payments.

In early March, 1975 the Mayor requested the Union to "hold off" on grievances as well as contract proposals, but the Union continued to submit grievances through the contractual grievance procedure. In late July or early August, 1975, the Union and Mayor met informally in connection with a few of the pending grievances but the Mayor took no action on any of the grievances. The Union also submitted several more grievances to the Mayor at this meeting.

Although at least one dozen grievances had been filed by the Union pursuant to the contractual grievance procedure, the Mayor at no time formally met with the Union or forwarded an answer to the Union on any pending grievance prior to the filing of this Complaint. Subsequently, there have been some discussions between the Union and Mayor over the pending grievances, but no wirtten answers have yet been received by the Union.

The facts surrounding the controversy over the rules and regulations of the Chelsea Fire Department span a period of eight years and involve the Union, Fire Chief, Board of Aldermen, Mayor and City Solicitor as well as a state-wide committee of Fire Chiefs and Union officials. Chapter 5-14 of the Chelsea Ordinances authorizes the Fire Chief to make rules and regulations for the conduct of the fire department, subject to the approval of the Mayor and Board of Aldermen. In 1968 the Chief drafted an updated set of rules and regulations pursuant to the aforementioned Ordinances, but the Board of Aldermen rejected them with prejudice. In lieu of further drafting, the Chief promulgated a series of General Orders between 1968 and 1975 which accomplished the same purpose as the rejected rules and regulations but did not require approval by the Aldermen. In all, the Chief promulgated forty one (41) General Orders containing several hundred procedural and substantive requirements on the members of the Fire Department. Particularly offensive to the Union was General Order 74-5 relating to changes in disciplinary proceedings affecting the Fire Department.

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In late March or early April 1975, the Union requested a meeting with the Mayor to negotiate over the rules and regulations. Before any further communications between the Mayor and Union in this matter, a state-wide liaison committee of fire chiefs and union officials agreed to meet with the Chief and Union in an effort to resolve the controversy over the rules and regulations. As the result of such a meeting in April, 1975, the Fire Chief agreed to sit down with the Union and draft a mutually agreeable set of rules and regulations and to refrain from issuing more General Orders. Negotiations quickly deteriorated within one week as the Fire Chief suspended the Union President pursuant to one of the controversial General Orders.

The Union thereupon took the issue of the propriety of the General Orders to the Board of Aldermen. On June 30, 1975 the Board overrode the Mayor's veto of the following Resolution:

"WHEREAS, in accordance with the city ordinance dealing with fire protection and prevention. Sec. 5-14. The Chief of the Fire Department shall make such rules and regulations for the conduct and control of the Fire Department as he shall deem advisable. The same being subject to the approval of the Mayor and Board of Aldermen, and

WHEREAS, in 1968 the Board of Aldermen saw fit to turn down the proposed rules and regulations drawn up by the chief of the department, in their entirety, with prejudice, and

WHEREAS, the chief of the department did knowingly implement general orders in lieu of rules and regulations, and

WHEREAS, the general orders, numbered in attached copy are in fact rules and regulations, as proven to the Board of Aldermen June 10, 1975, and have been used illegally in the operation of the Chelsea Fire Department, therefore be it

RESOLVED, that the Board of Aldermen suspend the general orders in the attached copy, until such time as the union officials and the chief of the department have drawn up a new set of rules and regulations agreeable to both parties and which have been approved by the Board of Aldermen and the Mayor of the City."

As a result of the action of the Board of Aldermen the Fire Chief agreed to negotiate with the Union over the language of new rules and regulations. After approximately thirteen meetings between the Chief and Union during the summer of 1975, substantial progress had been made. Nevertheless, the Chief was unable to draft the appropriate language by himself and announced to the Union that in mid-September he was seeking legal assistance from the City Solicitor and would return to the negotiation sessions in six to eight weeks. The City Solicitor, however, was unwilling to assist the Fire Chief in this regard, and the Chief determined that he would not return to the bargaining table without such assistance. As of the date of the Expedited Hearing, the Chief had not yet returned to the bargaining table to continue negotiations with the Union over the rules and regulations. Moreover, the Chief had resumed his previous practice of promulgating General Orders in lieu of rules and regulations.

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Opinion

Section 6 of the Law requires the employer and exclusive representative to meet at reasonable times to negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment. This obligation is enforced through the prohibited practice section of the Law, specifically Section 10(a)(5), which provides that it shall be a prohibited practice for a Public Employer to refuse to bargain collectively in good faith with the exclusive representative as required in Section 6. While this Commission has not prescribed particular bargaining session attendance formulae which will satisfy the duty to negotiate in good faith, (see e.g. Southern Worcester County Regional Vocational School District and Bay Path Vocational Association, MUP-2090, MUPL-2010, 2 MLC 1488, 1499) the adamant refusal by an employer to respond to repeated requests for negotiating meetings by an exclusive representative consitutes a per se refusal to bargain, not requiring an affirmative demonstration of bad faith. See City of Chelsea, MUP-2331, 2 MLC 1432 (1976), King Phillip Regional School Committee, MUP-2125, 2 MLC 1393 (1976).

It would be difficult to imagine a more flagrant pattern of refusal to negotiate than in the present case. The Findings of Fact recite nearly one dozen requests by the Union to negotiate which were either disregarded or never satisfied by the City. Indeed, the City never even went through the motions of bargaining.

I reject the City's contention that the absence of a negotiator for the City for nearly one year constitutes a valid defense to a charge of refusal to bargain. It is incumbent upon the City to provide a negotiator to conduct bargaining sessions. Insulating Fabricators, Inc., 144 NLRB 1325, 54 LRRM 1247 (1963), "M" System, Inc., 129 NLRB 527, 47 LRRM 1017 (1960). Indeed, the Mayor in his October 17, 1975 letter to the Board of Aldermen, conceded that the City had committed a prohibited practice by not providing a negotiator. Were the City allowed to avoid its statutory obligations by merely lamenting the absence of a negotiator, the fundamental employee rights contained in the Law would become meaningless.

I similarly reject the City's contention that it has no duty to negotiate because the collective bargaining agreement between the City and Union allegedly expired on July 1, 1975.[1] The obligation to negotiate is mandated by Section 6 of the Law and is independent of the existence of any collective bargaining agreement between the parties. Were I to adopt the City's contention, not only would no newly certified or recognized unit of employees ever be able to require their employer to negotiate, but also employers would be encouraged to delay negotiating over the terms of successor agreements.

[1] The City has filed a Motion to Dismiss on this ground. Inasmuch as the determination of the existence of a contract is independent of the duty to negotiate, I do not find it necessary to make such a determination at this time. A subsequently filed petition, MUP-2515, addresses this specific issue and is pending before the Commission. In view of my conclusion, the City's Motion is clearly denied.

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For reasons no less compelling, I find that the City's conduct regarding the processing of grievances filed by the Union to be violative of Sections 10(a)(6) and (1) of the Law.

With the enactment of the Law in 1973, the General Court adopted a policy favoring the use of grievance arbitration proceedings to resolve disputes over the interpretation or application of existing collective bargaining agreement.[2] Although a majority of the Commission has not as yet delineated the standards for good faith participation in such proceedings,[3] I find that the continuing refusal by the Mayor to comply with the procedural grievance arbitration provisions of a duly executed contract constitutes a "per se" violation of the duty to participate in good faith. The Findings of Fact recite at least one dozen instances where the Mayor has taken no action to formally meet with the Union or answer the grievance in writing pursuant to Step 3 of the collective bargaining agreement. The Mayor has not only failed to observe the terms of a contract but also has frustrated the use of the grievance procedure in contravention of the policies enunciated in the Law.

As previously stated, the employer's obligation to negotiate in good faith is not satisfied by disregarding requests to negotiate. Neither is it satisfied by unilaterally suspending bargaining sessions for over six months. The Record reveals that after approximately thirteen negotiation sessions between the Chief and Union over the rules and regulations of the fire department during the summer of 1975, the Chief announced to the Union that he needed time to draft the rules and regulations properly and would "get back to them in six to seven weeks." The Chief, however, was unable to receive any requested legal assistance from the City Solicitor's office in this regard and thereafter made no further effort towards resuming negotiations with the Union over the rules and regulations. I find that the failure of the City to provide legal assistance to the Chief is no more tolerable under the Law than the refusal of the City to provide a negotiator for one year. See Insulating Fabricators, supra, "M" System, supra.

Whether each of the "General Orders" promulgated by the Chief between the years 1969 and 1975 is a proper subject for collective bargaining is beyond the scope of this opinion. The issue was not argued with requisite specificity at the Expedited Hearing by either party, and I find insufficient evidence within

[2] Compare International Association of Machinists v. Hournet Corp., 466 F.2d 1249, 1251 (9th Cir. 1972) quoting from United Steelworkers of Averica v. Warrior & Gulf Co., 363 U.S. 574 (1960) ("The Supreme Court has established a strong presumption in favor of arbitration as the preferred method of settlement of industrial disputes"). Indeed, consistent with the Commonwealth's policy of encouraging arbitration, the Commission, adopting the Board's Collyer doctrine, has concluded that it should defer to the parties' contractual grievance and arbitration machinery disputes which may constitute not only a prohibited practice but also a claimed violation of the parties' contract, where certain enumerated conditions precedent for deferral are satisfied. Cohasset School Committee, Mass. Case No. MUP-419 (6/19/73).

[3] See concurring opinion of Chairman Macmillan in Longmeadow, MUP-2070, 2 MLC 1008, 1015 (1975).

the Record from which I can make a finding at this time. My primary concerns in this regard are to bring the Chief back to the bargaining table accompanied by sufficient legal assistance from the City. If, after good faith efforts by the Chief and Union, the parties are at impasse over the negotiability of certain rules and regulations, either party is free to file an appropriate Complaint with the Commission. I issue the following Order with some optimism; certainly the City's appointment of a negotiator subsequent to the filing of this Complaint reflects a positive sign that the City is finally willing to live up to its responsibilities under the Law.

The City's performance in 1975 has been disgraceful and has bred deep frustration within the firefighters of the City of Chelsea. Indeed, it was this kind of firefighter frustration which prompted the General Court to enact a three-year arbitration statute for firefighter and police officers.[4] It is unlikely that the City's actions in 1975 will be of any help to management groups in their efforts to persuade the General Court to discontinue the arbitration statute during the 1977 Legislative Session.

Conclusion

Based upon the foregoing, I conclude that the City of Chelsea has engaged in practices prohibited by Sections 10(a)(1), (5) and (6) of the Law.[5]

Order

Wherefore, based upon the foregoing, it is ORDERED, pursuant to Section 11 of the Law, that the City of Chelsea shall:

1) Cease and desist from:

   (a) Failing to and refusing to bargain collectively in good faith with the Union, as required by Section 6 of the Law.

   (b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their protected rights.

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[4] Section 4 of Chapter 1078 of the Acts of 1973, which will expire on June 30, 1977 unless extended by the General Court.

[5] Although the Commission's Complaint did not allege specific violations of Section 10(a)(6) of the Law, the parties fully litigated the issue of participation in arbitration proceedings at the Expedited Hearing. I am in no way precluded from dealing with such unfair labor practices when they are related to and grow out of practices already alleged in the Complaint. See NLRB v. Fant Milling Co., 360 U.S. 301 (1959) reversing 42 LRRM 2566.

(c) In any like or related manner, refusing to participate in good faith in grievance arbitration proceedings.

(d) In any like or related manner refusing to participate in good faith in collective bargaining with the Union.

(e) In any like or related manner, enacting, through its Fire Chief, any further General Orders relating to the conduct of the Fire Department until such time as an agreement is reached between the City and Union over rules and regulations of said Department.

2) Take the following affirmative action which it is found will effectuate the policies of the Law:

(a) Upon request, immediately commence bargaining with the Union over the terms of a collective bargaining agreement.

(b) Upon request, immediately meet with the Union for the purpose of answering all grievances filed by the Union prusuant to Step 3 of the collective bargaining agreement's grievance procedure.

(c) Upon request, immediately meet with the Union for the purpose of negotiating over the rules and regulations of the Fire Department.

(d) Upon receipt of the request in Paragraph 2(c) above, immediately assign a member of the City Solicitor's Office to assist the Chief in the drafting of rules and regulations of the Fire Department.

(e) Post immediately in conspicuous places in its fire department buildings where firefighters usually congregate or where notices are usually posted, including City Hall, and maintain for a period of sixty (60) days thereafter, copies of the attached notice to employees.

(f) Notify the Commission, in writing, within ten (10) days of service of this decision, of the steps taken to comply with this Order.

Stuart A. Kaufman
Hearing Officer

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
LABOR RELATIONS COMMISSION, AN AGENCY
OF THE COMMONWEALTH OF MASSACHUSETTS

WE WILL NOT refuse to bargain collectively concerning wages, hours, and other terms and conditions of employment with the International Association of

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Firefighters, AFL-CIO, Local 937, as the exclusive representative of certain firefighters of the City of Chelsea.

WE WILL NOT, in any like or related manner, refuse to participate in good faith in grievance arbitration proceedings initiated by our employees.

WE WILL NOT, in any like or related manner, enact any further General Orders relating to the conduct of the Fire Department until such time as an agreement is reached with the above-named Union over rules and regulations of said Department.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by the Law.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of certain firefighters, with respect to wages, hours and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, upon request, meet with the afore-named Union for the purpose of answering all grievances filed by said Union.

WE WILL, upon request, assign a member of the City solicitor's office to assist the Fire Chief in the drafting of rules and regulations of the Fire Department.

BY_____
Mayor
City of Chelsea