

In the Matter of CHIEF JUSTICE FOR ADMINISTRATION
AND MANAGEMENT OF THE TRIAL COURT

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL 5000, SEIU

Case No. SUP-04-5150

52.65 *meeting of the minds*
67.42 *reneging on prior agreements*
67.68 *refusal to implement contract*

January 30, 2009

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Jean Strauten Driscoll, Esq. *Representing the Chief Justice for
Administration and Management
of the Trial Court*

Michael F. Manning, Esq. *Representing the National
Association of Government
Employees, Local 5000, SEIU*

DECISION¹

Statement of the Case

On December 14, 2004, the National Association of Government Employees, Local 5000, SEIU (Union) filed a charge with the former Labor Relations Commission (Commission), alleging that the Chief Justice for Administration and Management of the Trial Court (Trial Court or CJAM) had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of MGL c.150E (the Law). Following an investigation, the former Commission issued a complaint of prohibited practice on April 5, 2006, alleging that the Trial Court had violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by repudiating an oral agreement with the Union. The Trial Court filed its answer to the complaint on April 12, 2006.

On June 27, 2006, Victor Forberger, a duly designated hearing officer (Hearing Officer), conducted a hearing. Both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. On September 15, 2006, the Union filed its post-hearing brief, and the Trial Court filed its post-hearing brief on September 18, 2006. The Hearing Officer issued Recommended Findings of Fact on June 19, 2008. Neither party filed challenges to the Hearing Officer's Recommended Findings of Fact. Accordingly, the

Board adopts those findings and summarizes the relevant portions below.

Findings of Fact²

The following facts are derived from the testimonial and documentary evidence introduced during the hearing.

The Trial Court and the Union are parties to a collective bargaining agreement (Agreement), effective by its terms from July 1, 2000 to June 30, 2003.³ Article II of the Agreement regarding "Temporary Service in a Higher Level Position" states:

Section 2.01. A Court Officer or Probation Officer pursuant to designation in accordance with G.L. c.276, s.83, who is performing temporary service in a position classified in a Job Group higher than the Job Group of the position to which he/she performs regular service, other than for the purpose of filling in for an employee on vacation, sick leave or compensatory time, shall commencing with the fourteenth calendar day of actual service in such higher position, be compensated for such service at the rate to which he/she would have been entitled had he/she been promoted to such position. A vacant higher level Court Officer position (Assistant Chief Court Officer or Chief Court Officer) may be filled temporarily provided the vacant higher level position is (1) authorized by the General Laws of the Commonwealth and (2) funded by the Legislature.

A temporary assignment involving the payment of a higher salary rate to an employee as described above requires the employee's immediate manager to obtain the written approval of the Chief Justice for Administration and Management prior to such an assignment being made. No assignment or payment shall be made without the prior written approval of the Chief Justice for Administration and Management.

In May of 2002, Michael Geary (Geary), an Assistant Court Officer and member of the Union's bargaining unit, took on the additional job duties of the Chief Court Officer, Thomas Sorrenti (Sorrenti), who went out on workers' compensation leave. Before going out on leave, Sorrenti instructed Geary to report to Acting Director of Security Thomas Connolly (Connolly) on a daily basis about what he was doing, and Geary did as instructed.

Sorrenti returned from workers' compensation leave on October 28, 2002 and assumed his regular job duties as Chief Court Officer. Geary subsequently requested that the Trial Court compensate him for the time he was temporarily assigned to the higher classification of Chief Court Officer. Connolly denied Geary's request. On November 30, 2003, Geary filed a grievance alleging that the Trial Court had violated Section 2.01 of the Agreement by failing to pay him for his temporary service in the higher classification of Chief Court officer from May to October of 2002.

1. Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's (Commission) regulations in effect prior to November 15, 2007, this case was designated as one in which the Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References to the Board include the Commission.

2. The Board's jurisdiction is uncontested.

3. The Agreement was originally between the Trial Court and the Service Employees International Union, Local 254 (Local 254). During the course of events at issue here but prior to the charge being filed, the Union succeeded Local 254 as the exclusive bargaining representative. Outside of the delay in processing the grievance described below, the Hearing Officer found that there is no other information in the record to indicate that this change in the bargaining representative affected the events at issue here in any way.

Local 254 processed the grievance through the first two steps of the grievance process. After a delay during which the Union succeeded Local 254 as the exclusive bargaining representative for the bargaining unit, the Union processed the grievance to the third step of the grievance process. On March 3, 2004, during that Step 3 hearing, the Trial Court and the Union discussed resolving the grievance. Christine Hegarty (Hegarty) served as the Trial Court's hearing officer for the grievance. Ned Tobin (Tobin), Acting Deputy Director of Security, represented the Trial Court, and, on behalf of the Union, Lawrence Cargill (Cargill) attended along with Geary. After a wide-ranging discussion that lasted from forty-five minutes to an hour, Hegarty proposed that Geary receive 60% of the difference between his and Sorrenti's salary as Chief Court Officer minus the fourteen days specified in Section 2.01 of the Agreement.⁴ Geary and Cargill agreed.⁵ Hegarty then said that there were payroll issues that had to be resolved, and that she was pretty sure she could put the deal into place.⁶ She did not explain what those payroll issues were, however.⁷ Hegarty supported this proposal even though prior arbitration decisions interpreting Section 2.01 of the Agreement had held that any payments were contingent on written approval prior to the reassignment. Geary's replacement of Sorrenti, unlike previous situations, occurred for someone out on workers' compensation, so 60% of the higher-level salary was covered by the Trial Court's workers' compensation coverage. Furthermore, Hegarty believed the proposal was a good deal for the Trial Court since it was less than what an arbitration hearing would have cost the Trial Court.

Over the next several months, Hegarty had several conversations with Connelly to convince him of the merits of the settlement, but

her efforts were unsuccessful. By telephone, Hegarty informed Cargill of the status of her efforts.⁸ After one last attempt to convince Connelly to accept the settlement, Hegarty formally denied the grievance in a letter dated June 14, 2004. Hegarty also called Cargill personally to let him know the grievance was being denied.⁹ The Union subsequently pursued the grievance to arbitration, and a hearing was held on December 7, 2004. In a decision dated January 7, 2005, the arbitrator denied the grievance. The arbitrator explained that this case was indistinguishable from prior arbitration decisions, and that these prior decisions had found that the unambiguous language in Section 2.01 of the Agreement gave "the Trial Court the discretion to refuse to allocate the money for this type of service and to thereby deny bargaining unit members pay that the contract otherwise provides for."

Opinion

The critical issue to be decided in this case is whether the parties reached an oral agreement resolving the Geary grievance on March 3, 2004. We find that they did not do so.

A public employer's deliberate refusal to implement or to abide by the unambiguous terms of a collectively bargained agreement constitutes a repudiation of that agreement in violation of the Law. *Town of Falmouth*, 20 MLC 1555 (1994), *aff'd. sub nom., Town of Falmouth v. Labor Relations Commission*, 42 Mass. App. Ct. 1113 (1997). Oral agreements between a public employer and a union can be effective and are enforceable under the Law if the agreement is otherwise valid. *Id.* (citing, *Service Employees International Union, Local 509 v. Labor Relations Commission*, 410

4. Neither Hegarty nor Tobin recalled a reference to fourteen days as part of the discussion, but Hegarty's notes of the meeting indicate that she included the fourteen days in the proposed resolution. She initially noted that the time period at issue was May 7, 2002 to October 28, 2002, but for the "proposed remedy" she noted that the time period was May 21, 2002 to October, 28, 2002. The Hearing Officer discounted her mistaken reference to 2003 in portions of these notes as an innocuous error and he also discounted Geary's initial testimony that he filled in for Sorrenti from May to October of 2003 as innocuous error. While initially not included in the proposed resolution, the parties were aware that Geary did not substitute for Sorrenti in August of 2002 when Geary was on vacation.

5. Geary and Cargill dispute this version of events. The Hearing Officer did not credit their testimony, because they contradicted each other and their testimony was not consistent with other evidence in the record. Geary stated that the parties had specifically agreed that the amount due was \$800. Geary, however, did not know how this figure was agreed upon or how it was calculated except to note that it was connected to CJAM's workers' compensation coverage. Geary also testified that calculations and additional paperwork were needed to arrive on a final figure, and that he thought he and Cargill did not leave the room to confer with each other. Cargill, on the other hand, stated that Hegarty had done some preliminary calculations to arrive at a figure of \$800, but that he and Geary agreed to settle the case for \$400 after conferring privately outside of the room. Hegarty testified that she did not make any calculations, and her notes of the grievance hearing do not contain any calculations. Cargill's testimony also contradicted his affidavit, which stated simply that an agreement had been reached for Geary to receive 60% of the salary due him for performing the work of a Chief Court Officer. Finally, the record is silent regarding what is the actual salary difference between Sorrenti's and Geary's salary for the time Sorrenti was out.

6. Hegarty did not specifically indicate that she had to seek approval for any settlement, as she has at subsequent third-step grievance hearings. Additionally, this Step 3 grievance hearing was Cargill's first for this bargaining unit.

7. There is no dispute that Hegarty closed the hearing by explaining that there were payroll issues that had to be resolved and that there was no discussion between the

parties of what these payroll issues entailed. There is a dispute over whether Hegarty mentioned Connolly, however. Hegarty testified that she had said she had to run the proposal by Connolly, while Cargill testified that she had said she had to talk to someone and that Cargill presumed she had to talk to payroll. The Hearing Officer did not credit this portion of Hegarty's testimony for the following reasons. First, this testimony presented the reference to Connolly as a blithe remark which ran counter to Connolly's importance in resolving the case. Hegarty carefully explained in her testimony that her ability to settle the case was limited by two factors. First, she could not settle the case over the objection of a department head, in this case Connolly. Second, because Connolly had to sign-off on all payroll matters, the settlement was not possible until he approved it. Furthermore, because Geary understood that Connolly had a certain amount of hostility towards Geary, any specific mention of Connolly's role regarding the proposal would have had an immediate impact on Geary. As Geary credibly testified, if he had heard specifically that Connolly's approval of the proposal was needed, he would have known immediately that the proposal was dead. Finally, Hegarty's notes do not reference Connolly's role regarding the proposal.

8. The parties dispute whether Hegarty mentioned Connolly in her phone calls to Cargill. According to Cargill, Hegarty did not mention Connolly until she denied the grievance, and he assumed that any mention by Hegarty about talking to someone was a reference to payroll. According to Hegarty, she informed Cargill of Connolly's reluctance to sign-off on the proposal. The Hearing Officer did not include this information because he found it immaterial to the question of whether an oral agreement fully resolving Geary's grievance was accomplished on March 3, 2004. The Hearing Officer did not rely on this information in determining the general credibility of these witnesses.

9. Cargill's testimony on whether Hegarty contacted him was ambiguous. While Hegarty's letter denying the grievance did not reference Connolly, Cargill testified that Hegarty denied the grievance because Connolly would not agree to the proposal. Since there is nothing in the record to suggest that Connolly supplied this information and Hegarty testified that she contacted Cargill, the Hearing Officer found that Hegarty called Cargill when she denied the grievance.

Mass. 141, 145 (1991)). To determine whether the parties reached an agreement, the Division considers whether there has been a meeting of the minds on the actual terms of the agreement. *Town of Ipswich*, 11 MLC 1403, 1410 (1985), *aff'd. sub nom., Town of Ipswich v. Labor Relations Commission*, 21 Mass. App. Ct. 1113 (1986). To achieve a meeting of the minds, the parties must manifest an assent to the terms of the agreement. *Suffolk County Sheriff's Department*, 30 MLC 1, 6 (2003); *City of Boston/Boston Public Library*, 26 MLC 215, 216-217 (2000). If the evidence is insufficient to find an agreement concerning the issue in dispute or if the parties hold differing, good faith interpretations of the terms at issue, the Board will find no violation of the Law. *Boston Water and Sewer Commission*, 15 MLC 1319, 1323 (1989); *Commonwealth of Massachusetts*, 18 MLC 1161, 1163 (1991).

Here, the testimony established that there was a wide-ranging forty-five minute to an hour settlement conversation of Geary's compensation grievance. What resulted from that conversation is not clear, and therefore, no meeting of the minds was reached. Although Hegarty proposed that Geary receive 60% of the difference between his and Sorrenti's salary as Chief Court Officer (minus the fourteen days), the Union's witnesses disputed this fact and each other. Indeed, Geary testified that the parties agreed to a specific \$800 amount, while Cargill testified that though the amount was \$800, they agreed to settle the case for \$400. In his affidavit, however, Cargill's testimony was that an agreement had been reached for Geary to receive 60% of the salary due to him. Thus, there was no meeting of the minds with respect to the terms of the agreement, and, therefore, there was no agreement. *City of Boston/Boston Public Library*, 26 MLC 215, 217 (2000) (no violation because there was no meeting of the minds on the creation of a smoke room, especially in light of differing views by three union witnesses as to the alleged terms of the agreement); *Town of Wellesley*, 23 MLC 86, 90 (1996) (no agreement was found, and therefore no violation of the Law existed, where the union and employer each had differing positions on what the standard was for granting approval of off-site training).

Moreover, it is evident that there was no agreement on March 3, 2004 because Hegarty said that there were payroll issues that had to be resolved before the settlement could be finalized. Although the record reflects that she told Geary and Cargill that she said she was pretty sure that she could put the deal in place, it also reflects that she did not guarantee this. Thus, not only was there no meeting of the minds concerning the terms of the agreement, it is apparent that the settlement discussions were not complete and no settlement was ever reached.

Conclusion

Based on the record and for the reasons stated above, we conclude that the Trial Court did not violate Sections 10(5) and (1) of the Law. Accordingly, we dismiss the complaint of prohibited practice.

SO ORDERED.

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