In the Matter of TOWN OF HANSON

and

HANSON FIREFIGHTERS, LOCAL 2713 IAFF

Case No. MUP-11-1064

52.63 oral agreements
52.65 "meeting of the minds"
54.41 ground rules
91.1 dismissal

December 13, 2012
Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Leo J. Peloquin, Esq.	*Representing the Town of Hanson*
Paul Hynes, Esq.	*Representing the Hanson Firefighters, Local 2713 IAFF*

DECISION ON APPEAL OF HEARING OFFICER DECISION

Summary

On October 31, 2012, a duly designated Department of Labor Relations (DLR) Hearing Officer dismissed a complaint [39 MLC 107] alleging that the Town of Hanson (Town or Employer) had failed to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by repudiating the terms of an oral successor collective bargaining agreement. After the submission of certain stipulated facts and a full hearing, the Hearing Officer determined that the parties did not have a meeting of minds and, further, that the parties' bargaining ground rules precluded the parties from entering into an oral agreement. The Hanson Firefighters, Local 2713, IAFF (Union) filed a timely request for review of the decision to the Commonwealth Employment Relations Board (Board) challenging one of the Hearing Officer's findings and her legal conclusion regarding the ground rules. The Town filed a reply. After reviewing the record on appeal, we summarily affirm the Hearing Officer's decision in its entirety.

For all the reasons stated in the attached Hearing Officer's decision, the Board agrees that the Town Manager's statement to the Union president, that the Union's proposal for a successor collective bargaining agreement "sounded good" and that he "liked it," was insufficient to establish that the Town had assented to a tentative agreement on all issues, subject only to the Fire Chief's approval of two additional personal days. As the Hearing Officer correctly noted, the key legal inquiry to determine if there is a meeting of the minds is whether both parties have manifested assent and not, as the Union contends, whether the Union reasonably believed that this conversation resulted in an oral agreement having been reached. Based on the testimony presented, the Hearing Officer concluded that the Town Manager's statements were not specific enough to establish that he had verbally assented to an agreement. The Board finds no reason to disturb the Hearing Officer's assessment of the testimony that grounds her legal conclusion.[1]

The Board further affirms the Hearing Officer's determination that the parties' ground rules precluded the parties from entering into an enforceable oral successor collective bargaining agreement. We recognize, as the Union correctly points out, that in certain circumstances, an oral agreement may be an antecedent to a written agreement. In this case, however, the parties' ground rules mandate that only tentative agreements that are initialed and, by logical extension, in writing, can serve as the antecedent to the final written agreement.[2] The Hearing Officer therefore correctly held that the ground rules precluded the oral exchanges between the negotiators from establishing a binding tentative agreement. Nothing in the Union's supplementary statement causes us to reach a contrary conclusion. We therefore summarily affirm the Hearing Officer's decision in its entirety and dismiss the complaint.

SO ORDERED.

APPEAL RIGHTS

Pursuant to the Supreme Judicial Court's decision in *Quincy City Hospital* v. *Labor Relations Commission*, 400 Mass. 745 (1987), this determination is a final order within the meaning of MGL c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to MGL c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of re-**

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1. The Union challenged only one of the Hearing Officer's findings—that it was "unclear" who was the first to speak with the Fire Chief regarding personal days—the Town Administrator (Read) or the Union president (Carroll). Carroll's testimony reflects that the Chief told the Carroll he had talked to Read about personal days but later stated in the same conversation that he would let Read know that the ground rules were" not an issue." Read testified that he sent an email to the Chief. On review, the Union asserts that a reasonable interpretation of this testimony is that when Carroll spoke with the Chief, the Chief had received an email from Read but had not answered it yet. The Union argues that knowing that Read had followed through on the only condition he had placed on their successor agreement—asking the Chief about personal days—adds justification to its belief that it had reached an oral agreement once the Chief approved the personal days. We reject this interpretation because the record is unclear as to who spoke to or emailed whom first and, in any case, resolution of the dispute is unnecessary to resolve the legal dispute before us.

2. The Ground Rules state, in pertinent part:

...

5. All tentative agreements shall be initialed and shall be subject to reaching a complete agreement.

6. Upon reaching a tentative agreement on all issues, the negotiators shall reduce the agreement to writing. Such agreement shall then be subject to ratification by the Union's membership and by the Board of Selectmen and funding by Town Meeting.