

TOWN OF ANDOVER AND LOCAL 1658, IAFF, MUPL-2084 (6/24/77).

- (50 Duty to Bargain)
 54.581 minimum manning
 (70 Union Administration and Prohibited Practices)
 76. Refusal to bargain in good faith

Commissioners participating: James S. Cooper, Chairman; Garry J. Wooters.

Appearances:

- William J. Lafferty, Esq. - Counsel for Local 1658, International Association of Firefighters, AFL-CIO
 Michael C. Gilman, Esq. - Counsel for the Town of Andover

DECISIONStatement of the Case

On June 24, 1976, the Town of Andover (Town) filed a Complaint of Prohibited Practice with the Labor Relations Commission (Commission) alleging that Local 1658, International Association of Firefighters, AFL-CIO (Association or Local 1658) had engaged in certain practices prohibited by Section 10 of Chapter 150E of the General Laws (the Law). The Commission investigated the Complaint pursuant to its authority under section 11 of the Law, and on September 30, 1976, issued its own Complaint of Prohibited Practice alleging that the Association has violated Section 10(b)(1) and (2) of the Law by insisting to impasse on the inclusion of certain proposals during negotiations for a collective bargaining agreement. By agreement of the parties, proceedings in the case were suspended pending resolution of the decision in Town of Danvers, 3 MLC 1559 (1977). Following the issuance of that decision, the parties agreed to submit this matter for resolution by the Commission on the basis of stipulated facts.

Findings of Fact

On the basis of the entire record in this matter and the stipulations of the parties, the Commission finds:

1. The Town of Andover is a municipal corporation, situated in the County of Middlesex, and is a "public employer" within the meaning of Section 1 of the Law.
2. Local 1658, International Association of Firefighters, AFL-CIO is an "employee organization" within the meaning of Section 1 of the Law.
3. Local 1658 is the exclusive representative for the purposes of collective bargaining of all employees of the Town of Andover Fire Department.

"The parties' last collective bargaining agreement was for the period July 1, 1974 though June 30, 1976 with certain provisions for continuation of its terms beyond the expiration date...."



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"During the course of negotiations for a successor agreement to be effective July 1, 1976, the Union presented the Town with its written proposals for a new agreement..."

"Article VIII of the Union's proposals...is entitled 'Manning' and reads as follows:

'To insure adequate fire protection to the town and to minimize the physical dangers to employees occasioned by undermanning, the minimum manning shall be as follows:'

'Central Station: Each tour shall have one deputy, one lieutenant and six firefighters and one EMT.*

*Shall be renegotiated if EMT requirements change.'

'Sub-Station: Each tour shall have one lieutenant and two firefighters.'

'Should the complement increase this Article shall be renegotiated.'

"At the negotiating session on January 9, 1976 in response to the Union's manning proposal, the Town asserted said proposal was not a mandatory subject of bargaining and refused to negotiate thereon. The Town's position on manning was consistent throughout negotiations, mediation, factfinding, and is the same today."

"On or about March 10, 1976 the Union filed its petition for mediation and factfinding with the State Board of Conciliation and Arbitration."

"The parties met with State Mediator William Doherty on or about June 11, 1976, at which time the Union continued to pursue its manning proposal as quoted in paragraph 3. Mr. Doherty indicated he would certify to the Board that the parties were at impasse."

"On or about September 21, 1976 the Board appointed Mark Santer as factfinder in the parties' contract dispute. Factfinding hearings were held before Mr. Santer on November 1, 2, 18, and December 16, 1976."

"During factfinding hearings, the Union presented the following manning proposal as part of its Union Exhibit 18...:

Central Fire Station

1 Engine Co.

1 Ladder Co.

To man other equipment,
desk duty and ambulance

1 Deputy Chief

1 Officer (Lt.)

6 Firefighters (of which 2 shall
be EMT's)

TOTAL

8 Firefighters



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Sub-Station

1 Engine Co.

1 Officer

2 Firefighters

TOTAL

3 Firefighters¹

"The Andover Fire Department is comprised of one (1) central station and two (2) sub-stations."

"The Andover Fire Department employs the following fire-fighting personnel: 1 Chief, 4 Deputy Chiefs, 12 Lieutenants, 41 Firefighters."

"Factfinder Mark Santer issued his report on March 14, 1977, and recommended the Union withdraw its manning proposal."

"No new agreement was negotiated subsequent to the issuances of the factfinder's report and up to the present date."

"By letter dated May 13, 1977 the Union withdrew its demand as to manning"

OPINION

A party violates its obligation to bargain in good faith when it insists to the point of impasse on the inclusion of non-mandatory subject matter in a collective bargaining agreement. Town of Danvers, 3 MLC 1559 (1977); NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958). In cases subject to final offer arbitration, it may be particularly important to determine the mandatory or non-mandatory nature of a proposal, in order that a party not be compelled to adopt a proposal in a non-mandatory area. Thus, the Commission has indicated in dicta that a party which presents non-mandatory matter to a factfinder, over the objection of the other party, commits a prohibited practice where the bargaining dispute is subject to resolution through the procedures of Section 4 of Chapter 1078 of the Acts of 1973. Local 1009, IAFF, (Worcester), 2 MLC 1238 (1975). The doctrine was intended to protect against imposition of non-mandatory matters on either party to the bargaining relationship, not to produce a procedural obstacle to the operation of statutory impasse procedures. The Worcester case clearly indicated that the doctrines expressed therein were not intended to interrupt the fact finding proceedings. Id. at 1241. "[W]e underscore that the fundamental purpose of the requirement imposed herein is not to secure a prompt resolution of the legal question, but merely to afford the proponent of challenged topics an opportunity to re-assess its position..."

On the facts of this case, we conclude that the policies enunciated in the Worcester decision have been satisfied. The procedure has afforded the parties the opportunity to test the negotiability of the manning proposal, and reassess their position prior to entering final offer arbitration. The challenged topics have been withdrawn, and the arbitration process may proceed without legal uncertainty.

¹The quoted language is from the agreed Statement of Facts jointly submitted by the parties.



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We entertain no doubt that the manning proposal of the Association is one which mandates a particular level of services on a shift basis, and is not legally distinguishable from that which we found non-mandatory in Danvers, supra. Thus, the Association breached its duty to bargain in good faith when it insisted to impasse and beyond on a contract containing such a provision. However, in light of the recommendation of the factfinder and the subsequent withdrawal of the proposal, we conclude that our remedy need only prevent any reintroduction of the proposal during the impasse resolution procedures, and an appropriate notice. We reject the suggestion by the employer that an award of cost is appropriate. The status of manning on a shift basis was in doubt when the proposal here in question was made.

That the Commission subsequently found such provisions to be permissive subject of bargaining does not make the advocacy of such a proposal in such bad faith as to warrant, for the first time, an award of costs or attorney's fees by this agency.

We specifically advise that our finding of a violation of Section 10(b)(2) should not be read to require that the impasse resolution procedures be begun anew. Such a sanction would be purely punitive, and unrelated to any harm to the public employer as a result of the Association's advocacy of the manning proposal.

Conclusions of Law

Upon the foregoing, the Commission finds:

1. Local 1658, International Association of Firefighters, AFL-CIO, failed to and refused to bargain in good faith, by insisting to impasse and beyond on the inclusion of non-mandatory subjects of bargaining in a collective bargaining agreement, in violation of section 10(b)(2) of the Law.
2. Local 1658, International Association of Firefighters, AFL-CIO, restrained, coerced and intimidated the Town of Andover in the exercise of its right to bargain in good faith, by insisting to impasse and beyond on the inclusion of non-mandatory subjects of bargaining in a collective bargaining agreement, in violation of Section 10(b)(1) of the Law.

Wherefore, pursuant to its authority under Section 11 of the Law, it is hereby ORDERED, that:

1. Local 1658, International Association of Firefighters, AFL-CIO, cease and desist from insisting on the inclusion of non-mandatory matter in a collective bargaining agreement, including specifically, the subject matter contained in Article VIII of the Association proposal set forth above.
2. Local 1658, International Association of Firefighters, AFL-CIO post the attached Notice to Employees in the same places and locations where notices to employees are normally and regularly posted, and to leave same posted for a period of not less than thirty (30) consecutive days.



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3. Local 1658, International Association of Firefighters, AFL-CIO, notify the Commission within ten (10) days of receipt of this decision and order, of the steps taken to comply therewith.

SO ORDERED.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

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

WE WILL NOT bargain in bad faith with the Town of Andover by insisting, to the point of impasse, on the inclusion of non-mandatory subjects in a collective bargaining agreement.

WE WILL NOT, insist, over the objection of the Town of Andover, present non-mandatory matters for inclusions in a collective bargaining agreement to any arbitration panel constituted pursuant to SECTION 4 of Chapter 1078 of the Acts of 1974.

President, Local 1658, International
Association of Firefighters, AFL-CIO

