

MEDFORD SCHOOL COMMITTEE AND MEDFORD EDUCATIONAL SECRETARIES ASSOC., MUP-2798;  
MEDFORD SCHOOL COMMITTEE AND MEDFORD PUBLIC SCHOOL CUSTODIANS ASSOC., MUP-2799  
(11/10/77)

- (50 Duty to Bargain)
  - 51.1 employer
  - 52.53 ordinance or resolution
  - 53.2 conflicting ordinances and by-laws
  - 54.611 health insurance
  - 54.612 life insurance
  - 54.8 mandatory subjects
- (60 Prohibited Practices By Employer)
  - 67.5 negotiability of items

Commissioners participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner; Joan G. Dolan, Commissioner.

Appearances:

- |                        |  |
|------------------------|--|
| George K. Kurker, Esq. | - Counsel for the Medford School Committee                     |
| Mark G. Kaplan, Esq.   | - Counsel for the Medford Public School Custodians Association |
| Gerald A. Feld, Esq.   | - Counsel for the Medford Educational Secretaries Association  |

DECISION

Statement of the Case

On June 29, 1977 the Medford Educational Secretaries Association (Secretaries Association) filed a Complaint of Prohibited Practice with the Massachusetts Labor Relations Commission (Commission) alleging that the Medford School Committee (School Committee) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of General Laws Chapter 150E (the Law). On the same date, the Medford Public School Custodians Association (Custodians Association) also filed a complaint alleging that the School Committee had violated Sections 10(a)(5) and (1) of the Law. Both complaints were based upon essentially identical facts and have been consolidated for purposes of formal complaint and decision.

Pursuant to its authority under Section 11 of the Law, the Commission investigated the charges and issued its own complaint on August 26, 1977. The parties agreed to submit the case upon a stipulation of facts. Therefore, on October 6, 1977 the case was re-designated a formal decision. Briefs submitted by the parties have been considered.

Findings of Fact

We adopt the parties' stipulations as our findings of Fact and conclude as follows:

1. The City of Medford (City) is a municipal corporation within the Commonwealth of Massachusetts and is a Public Employer within the meaning of Section 1 of the Law.

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2. The School Committee is the representative of the Public Employer for the purpose of collective bargaining with school department employees within the meaning of Section 1 of the Law.
3. The Secretaries Association is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative for the purposes of collective bargaining of certain clerical employees employed by the School Committee.
4. The Custodians Association is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative for the purposes of collective bargaining of certain custodians employed by the School Committee.

For several years the City of Medford has contributed 50% of the cost of group health and life insurance premiums of all participating employees, including the employees in the school department pursuant to G.L. c.32B, Section 7 (group insurance law).<sup>1</sup>

During 1976, the City negotiated a collective bargaining agreement covering employees of its Fire Department which provided that the City would pay 60% of the cost of group health and life insurance premiums effective October 1, 1976. Upon learning of this agreement, counsel for the Secretaries Association and the Custodians Association submitted written demands on November 30, 1976 to the Mayor of Medford (who also serves as Chairman of the School Committee) and to the City Manager for an increase in the percentage of group health and life insurance premiums paid by the City comparable to that received by the Fire Department employees. The demands of the two employee organizations were based upon the requirement of Section 7A of the group insurance law that any premium amount in excess of 50% paid by a governmental unit must be provided uniformly to all groups or classes within the governmental unit.<sup>2</sup>

<sup>1</sup>G.L. c.32B, Section 7 provides in relevant part:

§7. Withholdings and contributions to pay premiums; payments in lieu of withholdings, etc. (a) With respect to any period of insurance which is in effect for an active or retired employee and dependent there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine A, fifty per cent of the premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty percent of such premium.

The governmental unit shall also contribute fifty per cent of any additional premium which may be required for coverage of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living.

<sup>2</sup>G.L. c.32B, Section 7A provides in relevant part:

Contribution and withholding for premiums; subsidiary or additional rate; payments in lieu of withholding; acceptance of section.

A governmental unit which has accepted the provisions of section ten and  
(cont'd.)

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On December 8, 1976 the City Solicitor, in response to a similar letter on behalf of another employee organization,<sup>3</sup> stated that the City had not accepted the provisions of Section 7A and that "(i)n the case of the Fire Fighters' contract, the increased premium contribution by the city was the result of collective bargaining with an individual bargaining unit and is confined to that unit."

On December 13, 1976, the School Committee voted to refer the demands from the Secretaries and Custodians Associations to legal counsel and so notified counsel for the Associations.

On December 17, 1976, the Custodians Association submitted its proposals for a seccessor collective bargaining agreement<sup>4</sup> to the School Committee. Among its proposals was one to increase the School Committee's contribution towards the group health and life insurance premiums for the employees represented by the Custodians Association from fifty per cent to seventy-five per cent.

2 (cont'd.)

which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

(a) With respect to any period of insurance which is in effect for an active or retired employee and dependent, there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine E, fifty per cent of a premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium together with any subsidiary or additional rate. The governmental unit shall also contribute fifty per cent of a premium together with any subsidiary or additional rate which may be required of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living. ...

(d) This section shall take effect in a county, city or district upon its acceptance in the following manner:--In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a welfare district by vote of the district welfare committee; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town either by vote of the town or by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election in said town:--"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life and health insurance for employees in the service of the town and their dependents, pay a subsidiary  
(cont'd.; 3 and 4, see page 1453)

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On March 11, 1977, the Secretaries Association submitted an identical proposal for employees represented by it to the School Committee during negotiations for its successor collective bargaining agreement.

At meetings held on April 25, 1977 with the Custodians Association and on April 29, 1977 with the Secretaries Association, the School Committee informed the respective Association negotiation committees that it would not negotiate with them on the proposals to increase the municipal employer's share of the group insurance premium. The School Committee's position was set forth in a letter to both Associations on April 26, 1977 which stated in relevant part:

...It is our position that the matter is controlled by Chapter 32B, Section 7, wherein the City is obligated to pay 50% of the premium, no more; and that the City Manager is the appropriate authority representing the City in this area. Further it is our understanding that the City has not adopted Section 7A of Chapter 32B, and therefore it is unlikely that the City is in a position to grant the additional premium payment to school department employees.

We are aware that the City manager has negotiated (a) certain municipal contract wherein he has agreed to pay 60% of the premium. This difference in interpretation of the law will have to be settled by the appropriate legal authorities.

On May 31, 1977, the City Solicitor submitted a legal opinion to the City Council in which he advised that "the city, under the provisions of Section 7, coupled with the provisions of Chapter 150E, Section 2, may carry on individual collective bargaining negotiations with the separate unions and agree on a contribution by the city of more than 50% of the premium."

The School Committee has refused since April 25, 1977 in the case of the Custodians Association and since April 29, 1977 in the case of the Secretaries Association to negotiate over the proposals to increase the contribution towards group health and life insurance premiums.

#### Opinion

The duty of an employer and the representatives of employees to bargain in good faith extends to issues of "wages, hours, standards of productivity and performance, and any other terms and conditions of employment." G.L. c.150E, Section 6. Insurance costs are clearly encompassed by this statutory language and have been recognized as mandatory subjects of bargaining by this Commission,

2 (cont'd.)  
or additional rate?" Section seven shall not apply in any governmental unit which accepts the provisions of this section.

3 On December 3, 1976 a written demand for an increase in the percentage of premiums paid by the City for health and life insurance was sent to the City Manager on behalf of the Medford Municipal Clerical Workers, an employee organization also represented by counsel for the Custodians Association.

4 The Custodians Association and the School Committee were parties to a  
(cont'd.)

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City of Worcester, MUPL-2069, MLC (1977); by courts of the Commonwealth, Brooks v. School Committee of Gloucester, 5 1977 Mass. Adv. Sh. 246, 360 N.E. 2d 647 (Mass. App. 1977); by the National Labor Relations Board, W. W. Cross and Co., 77 NLRB 1162, 22 LRRM 1131 (1948), enf'd 174 F. 2d 875, 24 LRRM 2068 (CA 1, 1949); and by courts and public employee labor boards in other jurisdictions, Local 456 International Brotherhood of Teamsters v. Town of Cortlandt, 68 M. 2d 648, 4 PERB 8020 (Sup. Ct., Westchester Cty, N.Y. 1971); Bd. of Education of the City of Yonkers and Civil Service Employees Ass'n Inc., 10 PERB 4558 (N.Y. 1977).

The Law is also clear that with respect to school employees, the municipal employer "shall be represented by the school committee or its designated representative or representatives" for purposes of collective bargaining. G.L. c. 150E, Section 1. The School Committee argues that the law under c.150E cannot be reconciled with other statutory provisions and that therefore it is relieved of responsibility from bargaining about a subject that we conclude is mandatory. We do not agree.

To support its position that it is not the appropriate authority to conduct negotiations relative to group insurance benefits, the School Committee points to G.L. c.32B, Section 3 which provides for a procedure for the purchase of group insurance<sup>6</sup> and to Section 2 which defines "appropriate public authority".<sup>7</sup>

4 (cont'd.)

collective bargaining agreement effective from July 1, 1975 to June 30, 1977. The Secretaries Association and the School Committee were also parties to a collective bargaining agreement effective from July 1, 1975 to June 30, 1977.

<sup>5</sup>Brooks was decided under the provisions of G.L. c.149, Section 178F-178N. G.L. c.150E, effective as of July 1, 1974, has not restricted the issues over which employees have the right to bargain.

<sup>6</sup>G.L. c.32B, Section 3 provides in relevant part:

Upon acceptance of this chapter as hereinafter provided, the appropriate public authority of the governmental unit shall negotiate with and purchase, on such terms as it deems to be in the best interest of the governmental unit and its employees, from one or more insurance companies, savings banks or non-profit hospital, medical, dental or other service corporations, a policy or policies of group life and accidental death and dismemberment insurance covering employees, and group general or blanket insurance providing hospital, surgical, medical and dental benefits covering employees and their dependents as provided under section eleven and section eleven A if applicable and shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf and in the name of such governmental unit. Prior to the purchase of said insurance, and execution of all such agreements or contracts within the limits established by said sections, the appropriate public authority shall consult with an advisory committee consisting of seven persons duly elected or appointed to membership on such committee by organizations of the employees affected, for the purpose of securing the written recommendations of a majority of the membership of said committee. Said advisory committee shall establish a procedure to provide a reasonable opportunity for all interested employees to meet with it so that the recommendations of the committee will be a fair representation of all  
(cont'd.; 7, see page 1455).

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We are not expert in interpreting the group insurance law of the Commonwealth. However, we do not read the word "negotiate" in Section 3 of c.32B to encompass, as the School Committee suggests, collective bargaining negotiations with employees. The plain meaning of the language is restricted to negotiations with insurance providers for the purpose of purchasing coverage. To require school employees to bargain with two different employer representatives for different portions of a collective bargaining agreement is contrary to the dictates of common sense and stability in labor relations as well as to the specific provision of the Law.

However, the School Committee further argues that no representative of the City may legally negotiate for a greater than 50% insurance premium contribution since Section 7 of c.32B both limits and mandates that the City shall contribute 50% of the premium cost. In support of this argument, it directs our attention to a recent case vacating an arbitral award on the ground that c.32B, Section 7 does not allow a City to contribute more than 50% of the cost of group insurance premiums. Smith v. Duprey, No. 76-3648 (Hampden Cty. Super. Ct., Sept. 12, 1977), Mass. Lawyer's Weekly No. J94. The Medford City Solicitor has arrived at the opposite conclusion.

We need not choose between the competing interpretations of G.L. c.32B offered by the City and the School Committee. The School Committee may now bargain over their contribution to the group insurance plan. If they agree to a provision which they believe requires the adoption of section 7A of G.L. c.32B, they will have the obligation to seek its acceptance by the City. Failing its adoption, section 7(d) of G.L. 150E provides the mechanism for resolution of the issue. If the negotiated provision were in conflict with applicable statutory law, the offending provision would be a nullity. All of these considerations are premature, however, until the School Committee has complied with its statutory authority to bargain over the mandatory subject of insurance premiums.

On the basis of the foregoing and the record as a whole we conclude that the School Committee has refused to bargain in good faith with the Association in violation of sections 10(a)(1) and (5) of the Law.

ORDER

WHEREFORE, based upon the foregoing, it is hereby ORDERED that the Medford School Committee shall:

6 (cont'd.)

employees' interests. If the appropriate public authority finds that the committee's recommendations in whole or in part cannot be included within the aforementioned agreements or contracts, at the written request of any member of said committee within thirty days from the effective date of the agreements or contracts, the appropriate public authority shall submit to said member, in writing, the reasons for the rejection of any or all of the recommendations and a copy shall be filed with the commission.

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G.L. c.32B, Section 2 defines "Appropriate public authority" as follows:  
"(a)...as to a county, the county commissioners, as to a city, the mayor; as to a town, the selectmen; and as to a district the governing board thereof."





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1. Cease and desist from:
  - a. Failing to and refusing to bargain in good faith over insurance premiums with the Medford Educational Secretaries Association.
  - b. Failing to and refusing to bargain in good faith over insurance premiums with the Medford Public School Custodians Association.
  - c. In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Law.
2. Take the following affirmative action which will effectuate the policies of the Law:
  - a. Bargain in good faith with the representatives of the Medford Educational Secretaries Association over insurance premiums as well as all other mandatory subjects of bargaining.
  - b. Bargain in good faith with the representatives of the Medford Public School Custodians Association over insurance premiums as well as all other mandatory subjects of bargaining.
  - c. Post in conspicuous places where employees represented by the Medford Educational Secretaries Association and the Medford Public School Custodians Association usually congregate, or where notices are usually posted, and for a period of thirty (30) days thereafter, copies of the attached Notice to Employees.
  - d. Notify the Commission in writing within ten (10) days of the service of this Decision and Order of the steps taken to comply therewith.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

Joan G. Dolan, Commissioner

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission, in a Decision dated November 10, 1977 found that the Medford School Committee committed prohibited practices in violation of Section 10(a)(5) and (1) of the General Laws, Chapter 150E.

Chapter 150E of the General Laws gives public employees the following rights:

- To engage in self-organization.
- To form, join or assist any union.
- To bargain collectively through representatives of their own choosing.



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To act together for the purpose of collective bargaining or  
other mutual aid or protection.  
To refrain from all of the above.

WE WILL NOT do anything that interferes, restrains or coerces employees  
in their exercise of these rights. More specifically, WE WILL upon demand,  
bargain collectively in good faith over insurance premiums with representatives  
of the Medford Educational Secretaries Association and the Medford Public Schools  
Custodians Association.

MEDFORD SCHOOL COMMITTEE

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Chairperson of the School Committee

