FRAMINGHAM SCHOOL COMMITTEE AND FRAMINGHAM TEACHERS ASSOCIATION, UNIT B, MUP-2428 (2/27/78).

(60 Prohibited Practices by Employer)
67.4 good faith test
(80 Commission Decisions and Remedial Orders)
82.12 other affirmative action
82.3 status quo ante

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

Appearances:

James M. Litton, Esq.	- Counsel for the Labor Relations Commission
James Spencer Tobin, Esq.	- Counsel for the Framingham School Committee
Mark G. Kaplan, Esq.	- Counsel for the Framingham Teachers Association, Unit B

DECISION

Statement of the Case

On January 23, 1976 a Complaint of Prohibited Practice was filed by the Framingham Teachers Association, Unit B (Association) with the State Labor Relations Commission (Commission) alleging that practices prohibited by Section 10(a)(1) and (5) and (6) of General Laws, Chapter 150E (the Law) had been committed by the Framingham School Committee (School Committee).

Pursuant to its powers under Section 11 of the Law, the Commission investigated the matter and issued its own Complaint of Prohibited Practice on May 26, 1976. On June 1, 1976 the Commission issued an amended Complaint alleging that the School Committee had failed and refused to bargain and participate in mediation and fact-finding in good faith with the Association and had and was continuing to restrain, coerce and intimidate employees in the exercise of their protected rights in violation of Sections 10(a)(5) and (1) of the Law. The School Committee filed an Answer, denying that it had committed the alleged prohibited practices.

A formal hearing was conducted on July 29 and September 2, 1976. The parties were afforded full and fair opportunity to be heard, to examine and cross-examine witnesses and to present documentary evidence. At the opening of the hearing, the Hearing Officer granted a motion by the Association to amend the complaint to include a specific allegation that the School Committee had violated Section 10(a) (6) of the Law by its conduct. The School Committee further denied this allegation. After the conclusion of the hearing briefs were timely filed by both parties.

On the basis of the entire record herein, we make the following findings of fact:

Framingham School Committee and Framingham Teachers Association, Unit B, 4 MLC 1809

Findings of Fact

1. The Town of Framingham is a municipal corporation located in the county of Middlesex in the Commonwealth of Massachusetts and is a Public Employer within the meaning of Section 1 of the Law.

2. Framingham School Committee is the Public Employer's designated representative for the purposes of collective bargaining with school employees.

3. The Framingham Teachers Association is an Employee Organization within the meaning of Section 1 of the Law.

4. The Framingham Teachers Association is the exclusive representative for purposes of collective bargaining of the unit B administrators of the Framingham School Committee.

The most recent collective bargaining agreement between the School Committee and the Association covering Unit B (administrators) expired August 31, 1973. Negotiations for a successor agreement began in early 1974 after the Unit A teachers and the School Committee had concluded an agreement. On May 31, 1974, the School Committee and the Association executed a Memorandum of Agreement which extended the prior Unit B contract through August 31, 1974. Although the School Committee, during negotiations, had expressed its desire to eliminate the ratio method of determining salaries, the executed memorandum provided for the computation of most administrators' salaries on the basis of a ratio schedule applied to the salary schedule of Unit A teachers at the Masters' Maximum.

Upon execution of the contract extension, the parties immediately commenced negotiations for a successor agreement. The School Committee was represented by attorney Spencer Tobin and Director of Personnel Barry Coughlin. Although no School Committee members participated in the negotiation sessions, they were frequently given progress reports by Coughlin. The Association was represented by attorney Mark Kaplan and a negotiating committee composed of unit members. At the opening session in June 1974, the Association proposed, inter alia, an increase of 10% for all ratios. The School Committee representatives rejected this proposal and, without proposing specifics, sought the replacement of ratios with a fixed salary schedule. This proposal was rejected by the Association.

Negotiations continued through the summer and fall of 1974. During one of the summer negotiation sessions, the School Committee representatives made a counter proposal based on ratios. This proposal provided for the continuation of the existing ratios for most positions but with individual increases or reductions in the ratios for certain positions. The Association, which still sought an across the board 10% increase, rejected the offer. On September 13, 1974, the Association modified its position and proposed individual adjustments in the ratio schedule. When the School Committee did not alter its position, the Association made another proposal on November 27, 1974, reducing its previous ratio demands. The School Committee continued to refuse to modify

its position and the Association petitioned for mediation. The mediator met with the parties on two or three occasions before declaring an impasse. The case proceeded to fact-finding. At the fact-finding, the School Committee presented specific proposals on the ratios and evidence to support those proposals.

Following the fact finder's report on July 18, 1975, copies of the report were distributed to the Superintendent of Schools and members of the School Committee. A meeting was held among the Superintendent and the School Committee's negotiators to discuss the report. The report was discussed among members of the School Committee at its regular meeting on August 26, 1975. The delay of almost two months was caused by the School Committee's summer meeting schedule and the procedural rules of the School Committee.[1]

All School Committee members attended the August 26 meeting. Since attorney Tobin was on vacation and could not attend, Coughlin and the Superintendent explained the report. The Superintendent, although he declined to attend the bargaining sessions and the fact-finding hearings, recommended that the School Committee reject the fact-finders report. The minutes of the meeting, which were later "mysteriously" distributed to unit members, indicate that the School Committee unanimously approved the Superintendent's recommendation that the report be rejected. These minutes further reveal that during the discussion two School Committee members indicated that they thought the School Committee representatives should merely "go through the motions" during ensuing negotiations and that the School Committee should thereby send the administrators a "message." After this discussion, these same two School Committee members proposed two motions which were unanimously approved by the School Committee. The first motion stated "that the School Committee deny an 8% salary increase to members of Unit B and that the denial be used as a negotiating item at the discretion of the negotiating team who will report the status of such negotiations back to the School Committee for approval."[2] The second motion instructed the School Committee negotiators "to try to eliminate ratios for Unit B employees, and that Unit B salaries be frozen at their present levels."

The first negotiation session after fact-finding was held on September 8, 1975. At that meeting and before ascertaining the Association's position on the fact-finder's report, the School Committee's representatives informed the Association of the School Committee's decision to reject the fact-finder's report

[1]During the summer the School Committee meets once a month rather than once every two weeks. To place an item on the meeting's agenda it must be sent to the School Committee members at least four days in advance of the meeting. Personnel Director Coughlin testified that this process can result in a two to six week delay before an item is discussed at a School Committee meeting.

[2]The salary increases were later allowed by the Superintendent after the Association filed a grievance based on the School Committee's vote to deny the increase.

and simultaneously announced that the School Committee's bargaining position was now that the ratio schedule must be replaced with a salary schedule.

The Association's negotiators met with their membership and informed the School Committee, by letter dated September 10, 1975, that the Association would accept the fact finder's report. On the same date, the Association requested a meeting with the full School Committee at the suggestion of the School Committee's attorney to discuss the respective bargaining positions of the parties. The School Committee granted the request and a meeting was scheduled for October 7, 1975. At that meeting, the School Committee refused to meet with the bargaining unit members on the Association's bargaining team. Attorney Kaplan, however, was allowed to meet briefly with the School Committee at an executive session, but no substantive negotiations took place. Attorney Tobin was once again absent from this meeting. The School Committee's position similarly remained unchanged at the next bargaining session on October 28, 1975.

The School Committee's representatives on November 17, 1975, stating they were acting on their own initiative, offered a settlement proposal to the Association. This proposal was similar to the School Committee's position at fact-finding, except that it included ratio increases in five additional positions. The School Committee negotiators sought the Association's acceptance of the offer in order to strengthen their position in trying to sell the package to the School Committee. The Association expressed interest and stated that it would reassess its position if the School Committee authorized the proposal. Although the School Committee representatives indicated that they would meet with the full School Committee that week, the School Committee failed to consider the offer until nearly two months later on January 8, 1976. Finally, the School Committee rejected its representatives' settlement offer and instructed the negotiators to take a position based on ratios, that was significantly less than the position it had taken during fact-finding. The Association rejected this proposal and filed the instant complaint.

Opinion

Section 6 of the Law requires, in part, that the employer and exclusive representative "negotiate in good faith with respect to wages, hours, standards of productivity and performance and any other terms and conditions of employment...." We find that the School Committee violated its duty to bargain in good faith with the Association.

To determine whether a party has refused to bargain in good faith the Commission examines the totality of conduct. Town of Saugus, 2 MLC 1480 (1975). In many cases the failure or refusal to bargain in good faith is provable only through inference. Alba-Waldensian, Inc. v. NLRB, 404 F. 2d 1370, 69 LRRM 2882 (CA 4, 1968). In this case, however, there is direct evidence that the School Committee deliberately failed to bargain in good faith. The minutes of the School Committee meeting of August 26, 1975, belie the School Committee's desire to bargain in good faith. They reveal not only a vote to reject the fact finder's report; they also reveal that at least two members of the School Committee desired merely to go through the motions of collective bargaining rather

than conclude a collective bargaining agreement. These minutes further reveal unanimous School Committee approval of two motions designed to frustrate good faith bargaining. The School Committee unanimously moved to deny a raise to Unit B members and to use the denial as a negotiating item at the bargaining table. The School Committee also unanimously moved to negotiate the elimination of ratios and the freezing of Unit B wages at their current level thereby reverting to a position it abandoned nearly a year earlier. The meeting on August 26, 1975 occurred after a delay of five weeks after the issuance of the fact finder's report. The vote to reject the fact finder's report was taken in the absence of the School Committee's attorney and was made on the recommendation of the Superintendent of Schools who was not a participant in the negotiations.

In the following months the School Committee continued its delaying tactics. At the next bargaining session on September 8, 1975, the School Committee, without learning the Association's position on the fact-finder's report, proposed its long abandoned salary schedule as a replacement for ratios. Even when it appeared that the School Committee negotiators' settlement plan might break the impasse between the parties, the School Committee allowed almost two months to elapse before considering the plan. The Commission considers such unnecessary lapses in negotiations as evidence of bad faith. See City of Chelsea, 3 MLC 1384 (1977); Middlesex County Commissioners, 3 MLC 1594 (1977).[3]

After this two-month delay, the School Committee rejected the plan and authorized a counterproposal that was significantly less than its position in fact-finding. The School Committee knew that its counterproposal would be unacceptable to the Association, since it offered less than what had been previously rejected. When a proposal is "predictably unacceptable" or so "patently unreasonable as to frustrate agreement" an inference of bad faith is justified. Lawrence School Committee, MUP-546, at 6-7 (1974) citing U.S. Gypsum, 94 NLRB 112, 28 LRRM 1015 (1951) amended, 97 NLRB 889, 29 LRRM 1171 (1951), enf'd in part, den. in part, 206 F. 2d 410, 32 LRRM 2553 (C.A. 5, 1953), cert. den., 347 U.S. 912, 33 LRRM 2345 (1954).

Therefore, the totality of the School Committee's conduct, including the radical reversal of its bargaining position after fact-finding, the statements of its members at the August 26, 1975 meeting, its bargaining conduct in the fall of 1975 and its clearly unacceptable counterproposal in January 1976 demonstrates a lack of good faith by the School Committee. Accordingly, we conclude that the Committee violated Section 10(a) (5) of the Law by its conduct. We further conclude that the School Committee's actions interfered with, restrained and coerced its employees in violation of Section 10(a)(1) of the Law.

The Association further contends that the School Committee's conduct constituted a refusal to participate in good faith in mediation and fact-finding in

[3]Although a two month delay would not necessarily be viewed as unreasonable, the School Committee's commitment that it would consider the plan within one week at a time when the negotiations were at a critical state convinces us that the delay constituted bad faith bargaining.

violation of Section 10(a)(6) of the Law. The good faith requirement of Section 10(a)(6) "specifically contemplates compliance with the rules of the Massachusetts Board of Conciliation and Arbitration and generally contemplates a reasonableness, integrity, honesty of purpose and desire to seek a resolution of the impasse consistent with the respective rights of the parties. Marjure Transportation Co. v. NLRB, 198 F. 2d 735, 739 (C.A. 5, 1952);" Local 1009, IAFF, 2 MLC 1238, 1245 (1975). Applying this standard, we conclude that the School Committee did not violate Section 10(a)(6) of the Law. The Association does not contend that the School Committee failed to comply with the rules of the Board of Conciliation and Arbitration or, during the proceeding, engaged in any conduct indicating bad faith. Rather, it contends that the School Committee's conduct following the issuance of the fact finder's report indicates bad faith. We find that this conduct was part of the collective bargaining process and occurred after the close of fact-finding, when the dispute had been returned to the parties for further bargaining.

Finally, we consider an appropriate remedy. Section 11 of the Law directs the Commission to order a party found to have committed a prohibited practice to cease and desist from such conduct and to "take such affirmative action as will comply with the provisions of this section..." Ordinarily, refusal to bargain violations are remedied by bargaining orders. In cases involving extraordinary circumstances, however, extraordinary remedies may be required. Town of Saugus, supra, at 1486. Where the full consequences of a party's prohibited practice would not be completely remedied by a bargaining order, the Commission has found extraordinary relief appropriate to effectuate the purposes of the Law. Middlesex County Commissioners, 3 MLC 1594 (1977). See also, Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (H.O. 1977).

In Middlesex County Commissioners, supra, we found that the employer's attempt during mediation to reopen all items previously agreed to by the parties violated the employer's duty to negotiate and participate in mediation in good faith. Since the employer's conduct substantially impaired the collective bargaining process and since the full consequences of the conduct would not be completely remedied by a bargaining order, we found extraordinary compensatory relief appropriate. In Spencer-East Brookfield, supra, the employer attempted to repudiate its previous tentative agreement on Blue Cross/Blue Shield benefits. The Hearing Officer found that the employer's action constituted a refusal to bargain in good faith and ordered the parties to resume bargaining on the basis of status quo ante the employer's repudiation of its tentative agreement. This extraordinary remedy was ordered because a bargaining order would be illusory and would frustrate the principles of collective bargaining. Spencer-East Brookfield, supra at 1406-7.

Although both these cases involved situations where the parties had previously reached agreement on the disputed items, the principles underlying the imposition of extraordinary relief in those cases apply here.

The School Committee's conduct has substantially impaired the collective bargaining process. On August 26, 1975, the School Committee through two of its members instructed its collective bargaining representatives to merely "go through the motions" of collective bargaining. The School Committee's

representatives did precisely that. They rejected the fact finder's report and offered the Association a salary schedule rather than a ratio knowing full well that the offer was completely unacceptable. Such an offer constituted an unfair labor practice. The School Committee, after initially agreeing to meet with the Association, refused to negotiate with members of the Association's bargaining committee and ultimately met with the Association's attorney for a few minutes in executive session. The School Committee's representative offered a proposed settlement in November, 1975 based upon ratios. The Association expressed interest in the package. Despite promise of bringing the proposed settlement to the School Committee for approval within one week, the School Committee waited two months before it rejected the settlement and insisted on returning to a salary schedule rather than using the previously presented ratios.

The serious consequences of the School Committee's conduct require the Commission to take special precautions to assure that the parties return to the position where they would have been had the School Committee not refused to bargain in good faith. Accordingly, we order the parties to resume bargaining upon the basis of status quo ante the fact finder's report. Upon demand of the Association, the School Committee shall resume bargaining from its position taken at fact-finding.

The clearly obstructionist tactics caused the Association to incur expenses which it would not have incurred in the absence of the School Committee's unlawful conduct. These expenses include the cost of representation at the negotiation meetings which occurred between August 26, 1975 and January 8, 1976 as well as such incidental costs of preparing for negotiation sessions which are doomed to failure from the very start. An employee organization is entitled to make whole remedy under the Law. Such expenses as organizational expenses, Heck's v. NLRB, 191 NLRB 886, 82 LRRM 2955 (1972), affirmed 476 F.2d 546 (DC Cir. 1973), attorney's fees, Heck's, supra, Tidee Products, Inc., 194 NLRB 1234, 86 LRRM 2093 (1973) enforced as modified 502 F. 2d 349 (DC Cir. 1974), cert. den. 421 U.S. 991, 86 LRRM 2427 (1974), and public agency expenses, Tidee, supra, have been assessed against employers who engage blatently unlawful or prohibited practices. We think the Association is entitled to such a remedy here.

Finally, we note that the remedy imposed herein requires that the School Committee mail copies of the decision and Notice to all members of the Framingham Town Meeting. Compare Federal-Mogul Sterling Aluminum Company Division 163 NLRB 302, 64 LRRM 1354 (1967) enforced in part 391 F. 2d 713 (CA 8 1968), 67 LRRM 2686. The remedies available under Section 11 of the Law include requirements that will attempt to bring the employer into compliance with the provisions of the Law. We think that under the circumstances of this case, the School Committee should be required to provide reasonable notice to the Town's elected representatives that it has not met its lawful obligations.

Order

WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED, pursuant to G.L. c. 150E, Section 11, that the Town of Framingham School Committee shall:

Framingham School Committee and Framingham Teachers Association, Unit B, 4 MLC 1809

1. Cease and desist from interfering, restraining and coercing any employees in the exercise of their rights guaranteed under G.L. c. 150E.

2. Cease and desist from failing and refusing to bargain collectively in good faith with the Framingham Teachers Association, Unit B, as required in Section 6 of the Law.

3. Take the following affirmative action which is necessary to effectuate the policies of the Law:

(a) Upon request, immediately return to the bargaining table upon the basis of the School Committee's proposals for a collective bargaining agreement which proposals were submitted to and considered by the fact-finder in his report issued on July 18, 1975.

(b) Post in conspicuous places where employees in the Association regularly work and where notices are usually posted, copies of the attached Notice. Copies of said Notice shall be posted by the Committee immediately upon receipt thereof and shall be maintained by it for thirty (30) consecutive days thereafter.

(c) Mail to each representative to the Framingham Town Meeting a copy of the Commission's Decision, and Notice. Said mailing shall be by first class mail, postage prepaid. Evidence of mailing shall be submitted by affidavit or sworn statement including the name, address and date of mailing to each representative of the Town Meeting. Said mailing shall take place within forty (40) days of receipt of this Decision.

(d) Make the Association whole for all expenses it incurred between August 26, 1975 and January 8, 1976 for the purpose of negotiating a collective bargaining agreement with the Framingham School Committee.

(e) Notify the Massachusetts Labor Relations Commission at its office at Room 1604, 100 Cambridge Street, Boston, Massachusetts 02202, in writing, within ten (10) days of receipt of this Decision and Order what steps the Committee has taken to comply therewith.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

Joan G. Dolan, Commissioner

Framingham School Committee and Framingham Teachers Association, Unit B, 4 MLC 1809

NOTICE TO EMPLOYEES

WE WILL NOT interfere, restrain or coerce any employees in the exercise of their rights guaranteed under G.L. c. 150E.

WE WILL NOT fail or refuse to bargain collectively in good faith with the Framingham Teachers Association, Unit B.

WE WILL, upon request, immedaitely return to the bargaining table and bargain with the Framingham Teachers Association, Unit B upon the basis of our proposals for a collective bargaining agreement which proposals were submitted for and considered by the fact-finder in his report issued on July 18, 1975.

WE WILL mail to each representative of the Framingham Town Meeting a copy of the Labor Relations Commission's Decision and Notice.

WE WILL make the Association whole for expenses it incurred between August 26, 1975 and January 8, 1976 for the purpose of negotiating a collective bargaining agreement with the Framingham School Committee.

Joseph Walker, Chairman
Framingham School Committee