

COMMONWEALTH OF MASSACHUSETTS AND METROPOLITAN POLICE PATROLMEN'S UNION AND AFFILIATES, LOCAL 55, A/W TEAMSTERS, SUP-2200 (11/6/78).

- (60 Prohibited Practices by Employer)
65.11 defenses - contract bar
(90 Commission Practice and Procedure)
92.33 rules of evidence

Commissioners Participating:

James S. Cooper, Chairman
Garry J. Wooters, Commissioner
Joan G. Dolan, Commissioner

Appearances:

- | | |
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| Jean C. Libby, Esq. | - Counsel for the Commonwealth of Massachusetts |
| James T. Grady, Esq. | - Counsel for the Metropolitan Police Patrolmen's Union and Affiliates, Local 55 |

DECISION AND ORDER

Statement of the Case

On June 27, 1978, the Metropolitan Police Patrolmen's Union and Affiliates, Local 55, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (the Teamsters) filed a charge with the Labor Relations Commission (Commission) alleging that the Commonwealth of Massachusetts (Commonwealth) refused to bargain in violation of Section 10(a)(5) of General Laws Chapter 150E (the Law).

Pursuant to its authority under Section 11 of the Law, the Commission investigated the Teamsters' charge and issued a complaint of prohibited practice on July 26, 1978.

A Formal Hearing was held at the offices of the Commission on August 11, 1978 before Hearing Officer Sharon Henderson Ellis. All parties were afforded a full and fair opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Briefs were received on August 29, 1978. On September 20, 1978, the Commonwealth moved to reopen the record to present additional evidence. The motion is hereby denied.¹

¹ Commission records are reopened only for good and sufficient cause in extraordinary and compelling circumstances. See City of Everett, 2 MLC 1471 (1976); Town of Saugus, 4 MLC 1218 (H.O., 1977). Although the document the Commonwealth seeks to introduce was unavailable at the time of hearing, its contents are cumulative in nature. The document is among those types of evidence which do not compel a re-opening of the record.



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Jurisdiction

1. The Commonwealth of Massachusetts acting through the Commissioner of Administration is a public employer within the meaning of Section 1 of the Law.
2. The Office of Employee Relations is the designated representative of the public employer for the purpose of collective bargaining.
3. The Metropolitan Police Patrolmen's Union and Affiliates, Local 55, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America is an employee organization within the meaning of Section 1 of the Law.
4. The Teamsters are the exclusive representative for purposes of collective bargaining for certain employees of the Commonwealth including patrolmen, patrolwomen, lieutenants, and sergeants of the Metropolitan District Commission.

Findings of Fact

Prior to special legislation enacted by the General Court on November 22, 1977, Metropolitan District Commission (MDC) police were part of Unit 5, the bargaining unit designated for all state law enforcement personnel except state police. Unit 5 was one of ten state-wide units established by the Commission after special rule-making sessions held in 1975. See Commonwealth of Massachusetts, 1 MLC 1318 (1975). After a secret ballot election, the Massachusetts Law Enforcement Council (MLEC) was certified as Unit 5's exclusive bargaining representative.

On July 11, 1977, after negotiations were concluded, the MLEC and the Commonwealth executed a collective bargaining agreement. The contract extends from July 1, 1977 through June 30, 1980. Its recognition clause covers all employees in Unit 5, including MDC police.

Sometime during 1977 legislation was filed to create a separate bargaining unit for MDC police.² The bill provided:

²The bill was filed as House Bill No. 1502, later designated as Senate No. 1722, and finally designated as House Bill No. 6524.

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The appropriate bargaining unit in the case of the metropolitan district commission police for officers subordinate to the rank of captain shall be composed of members of the metropolitan district commission police holding and in the rank of lieutenant, sergeant, patrolwoman and patrolman.

After approval by the House and Senate, the bill was submitted to Governor Dukakis on October 21, 1977. The Governor declined to sign the bill and expressed his concern that the law would permit the MDC police to withdraw from the existing collective bargaining agreement. In his address to the Senate the Governor said:

I could not sign any bill that would have the effect of negating the agreement into which negotiators from both sides put so much time and effort. Senate Doc. No. 1939.

The Governor returned the bill to the legislature with his recommendation that the bill be changed to include the following amendment:

The passage of this act shall not affect the validity or implementation of any collective bargaining agreement or contract signed before the effective date of the act, and any such agreement or contract shall continue in full force and effect notwithstanding the passage of this act. Senate Doc. No. 1939.

The proposed amendment was rejected by the Senate on October 25, 1977, and by the House on November 3, 1977.

On November 21, 1977, the Governor vetoed the resubmitted bill. In his veto message he said:

The proponents of this bill have pushed for its passage at this time because they want to withdraw from [the current contract with Unit 5] and negotiate for a new one.... If this veto is overridden, serious legal questions will arise regarding the validity of the current contract with Unit 5, the law enforcement unit that now includes the MDC police. That contract has more than two and one-half years left in its term. Senate Doc. No. 1975.

Notwithstanding the objections of the Governor, the Act became law on November 22, 1977. The law was designated as Chapter 753 of the Acts of 1977. Chapter 753 includes the same language as House Bill No. 6524, set out supra as page 4, with the exception of the following emergency preamble:



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Whereas, the deferred operation of this act would tend to defeat its purpose, which is to establish a collective bargaining unit within the metropolitan district commission police, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

On November 29, 1977, the Teamsters petitioned the Commission to represent the new unit. In its decision of March 31, 1978, the Commission held that the MLEC contract was not a bar to an election. Commonwealth of Massachusetts, 4 MLC 1830 (1978). A secret ballot election was conducted and on June 5, 1978, the Teamsters were certified as the unit's exclusive bargaining representative.

On June 14, 1978, the Teamsters formally requested bargaining. By letter dated June 26, 1978, the Commonwealth through its Office of Employee Relations replied that it would not bargain because it considered the MDC police to be bound by the terms of the existing contract with the MLEC. The Commonwealth continued to deal with the MDC police according to the terms of the MLEC collective bargaining agreement. The police have filed grievances pursuant to the provisions of the contract. Some of the Teamsters' written communications with the Commonwealth note that the actions are filed "without prejudice to the contract".

Opinion

The issue presented by this case is whether the Commonwealth must bargain with the Teamsters about wages and other matters which are already covered by the Unit 5 collective bargaining agreement between the Commonwealth and the MLEC.

Ordinarily, a collective bargaining agreement relieves an employer of his obligation to bargain during the term of the agreement, at least about matters already covered by the terms of the agreement. City of Salem, 4 MLC 1196 (H.O., 1977); aff'd 5 MLC _____ (11/1/78); Jacobs Mfg. Co., 94 NLRB 1214 (1951), enf'd 196 F.2d 680 (1952). Because of the unique character of the legislative action taken in this matter, however, the case is not well-suited to traditional labor law analysis. We are compelled to resolve the issue presented on the basis of what we understand to be legislative intent.

Subsequent to the Commonwealth and MLEC's execution of a three-year bargaining agreement for Unit 5, the Legislature enacted special legislation placing the MDC police in a separate bargaining unit, thus removing them from Unit 5. While legislative intent is not entirely clear, the following incidents compel us to believe that the General Court intended to give the MDC police, through their bargaining representative, full bargaining rights to negotiate a new collective bargaining agreement.

Governor Dukakis urged the passage of a special amendment which would have provided the defense which the Commonwealth now urges. The failure to adopt the



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amendment evinces the Legislature's intent to give the MDC police's new representative full bargaining rights. In further support of this conclusion we note that Massachusetts laws do not become effective until ninety days after the date of enactment. Chapter 753, however, includes an emergency preamble making it immediately effective.³ Whenever possible, the words of a statute are not to be considered superfluous. School Committee of Stoughton v. Labor Relations Commission, 1976 Mass. App. Ct. Adv. Sh. 509, 346 N.E.2d 129; Commonwealth v. Gove, 366 Mass. 351, 320 N.E.2d 900 (1974). We doubt that the Legislature would have enacted this emergency preamble if it intended to require the MDC police to wait until June 30, 1980 to acquire bargaining rights.

We are reluctant to require renewed bargaining by the Commonwealth. This action encourages neither stable and continuing labor relations nor effective dealings between the parties. Nevertheless, we are convinced that the bargaining obligation is compelled by the terms of Chapter 753 of the Acts of 1977.⁴

However reluctantly, we find, therefore, that the Commonwealth, by its refusal to bargain, is in violation of Sections 10(a)(1) and (5) of General Laws Chapter 150E. We direct the Commonwealth to bargain upon request about wages, hours, and other terms and conditions of employment of the employees in the unit created by Chapter 753 of the Acts of 1977.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

James S. Cooper, Chairman
Garry J. Wooters, Commissioner
Joan G. Dolan, Commissioner

³The full text of the emergency preamble is set forth in the findings of fact at page 5.

⁴The Commonwealth argues that by filing grievances the Teamsters waived their right to bargain a new contract. We do not agree. We cannot find that the Teamsters waived their rights where they made a timely and formal request to bargain accompanied by notice that the filing of the grievances does not prejudice the Teamsters' right to negotiate a contract. Boston School Committee, 4 MLC 1912 (1978).

