

WORCESTER HOUSING AUTHORITY AND MASSACHUSETTS LABORERS DISTRICT COUNCIL, INTERNATIONAL BROTHERHOOD OF LABORERS, LOCAL 243, MUP-3103 (12/4/78).

- (20 Jurisdiction)
 - 26.1 jurisdiction over housing authorities
- (60 Prohibited Practices by Employer)
 - 67.72 refusal to attend mediation session

Commissioners participating:

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

Appearances:

James Cosgrove, Esq.	- Counsel for the Worcester Housing Authority
Paul F. Kelly, Esq.	- Counsel for the Massachusetts Laborers District Council

DECISION

Statement of the Case

Massachusetts Laborers District Council (Union) filed a charge with the Labor Relations Commission (Commission) on June 15, 1978, alleging that the Worcester Housing Authority (Employer) had violated Sections 10(a)(5) and (6) of General Laws Chapter 150E. After investigation, the Commission issued a Complaint of Prohibited Practice on August 25, 1978, alleging in essence that the Employer had violated Sections 10(a)(6) and (1) of the Law by refusing to participate in mediation pursuant to Section 9 of the Law. By its answer filed on September 8, 1978, and a previously filed Motion to Dismiss, the Employer denies that it is subject to the provisions of Section 9 of the Law.

A Formal Hearing was held on September 27, 1978. In lieu of testimony, the parties submitted an agreed statement of facts, and exhibits, and each party filed a Brief. A full and fair opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence into the record was afforded to the Union and the Employer. Based upon the parties' stipulation we make the following findings.

Findings of Fact

1. Worcester Housing Authority is a public body politic and corporate, organized pursuant to General Laws Chapter 121B.
2. Chapter 610 of the Acts of 1977 amended Chapter 121B by striking out the fourth paragraph of Section 29 and inserting in its place the following:

Worcester Housing Authority and Massachusetts Laborers District Council,
International Brotherhood of Laborers, Local 243, 5 MLC 1459

Notwithstanding any provision of law to the contrary the provisions of sections four, ten and eleven of chapter one hundred and fifty E shall apply to said authorities and their employees.

3. Massachusetts Laborers District Council is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative for the purpose of collective bargaining of certain employees of the Worcester Housing Authority.

On or about November 15, 1977, the Employer received a written request from the Union for collective bargaining negotiations over the terms of an agreement to take effect on April 1- 1978. The Employer responded in writing on November 15, 1977, advising the Union that it was ready and willing to commence such negotiations. Subsequently, a series of bargaining sessions took place from December 23, 1977 to May 1, 1978, when impasse was reached.

On or about May 5, 1978, the Union filed a Petition for Mediation and Fact Finding with the Board of Conciliation and Arbitration (Board). By letter dated May 16, 1978, the Employer notified the Union that it declined to take part in mediation or fact-finding since it was not subject to Section 9 of Chapter 150E. The Union thereafter filed the instant charge.

Opinion

The sole legal issue in this case is whether a housing authority may be found to have violated Section 10(a)(6), and therefore also derivatively, Section 10(a)(1) of the Law.

Section 10(a)(6) of the Law provides that:

It shall be a prohibited practice for a public employer or its designated representative to:

...
refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in sections eight and nine.

Section 9 of the Law sets forth procedures for determination of an impasse by the Board, and the subsequent appointment of a mediator and, where necessary, a fact-finder or arbitrator.

The Employer asserts that Chapter 610 of the Acts of 1977 should be strictly construed, and that by its terms only Sections 4, 10, and 11 of c.150E are made applicable to Housing Authorities. The Employer does not explain, however, by which method of statutory construction Section 10(a)(6)

Worcester Housing Authority and Massachusetts Laborers District Council,
International Brotherhood of Laborers, Local 243, 5 MLC 1459

may be read out of Section 10.¹ Moreover, if we accept the Employer's argument, Sections 10(a)(1) and (5) must similarly not apply to Housing Authorities or their employees, since each of these sections references and incorporates portions of the Law not specifically made applicable to housing authorities.

Section 10(a)(1) provides that it shall be a prohibited practice to "interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter." However, the core of employee rights is set forth in Section 2 of the Law. Chapter 610 does not specifically make Section 2 of the Law applicable to housing authorities.

Section 10(a)(5) provides that an employer may not "refuse to bargain collectively in good faith with the exclusive representative as required in Section six." The Employer asserts that only Sections 4, 10, and 11 apply to it. If we were to accept the Employer's argument, it would necessarily lead to the conclusion that a housing authority has no obligation to bargain since Section 6 is not enumerated in Chapter 610 of the Acts of 1977.

A logical extension of the Employer's argument would result in the virtual emasculation of Section 10 of the Law.² Such a result is unwarranted and

¹In its brief, the Employer also argues that the Commission should defer action in this matter pending the outcome of a declaratory relief action currently before the Superior Court in Worcester County involving the same legal issue. (Worcester Housing Authority v. Duke, Docket No. 11817). We do not agree that such a course of action would be appropriate or that because the issue is solely one of statutory interpretation the Commission has no special knowledge or expertise to be brought to bear. As the Supreme Judicial Court said in School Committee of Wellesley v. Labor Relations Commission, 1978 Mass. Adv. Sh. 2707,

We have, however, also recognized that an administrative interpretation is accorded deference particularly 'where as here, an agency must interpret a legislative policy which is only broadly set out in the governing statute.' (citations omitted).

²Section 10(a) sets forth practices prohibited by employee organizations as follows:

- (1) interfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter;
- (2) refuse to bargain collective in good faith with the public employer, if it is an exclusive representative, as required in section six;
- (3) refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in sections eight and nine.

(Footnote continued to page 1462)

Worcester Housing Authority and Massachusetts Laborers District Council,
International Brotherhood of Laborers, Local 243, 5 MLC 1459

unnecessary in view of our interpretation of the intent of the legislation embodied in c.610 of the Acts of 1977.

Statutes should be read "'so as to constitute a harmonious whole'...by attributing to the Legislature certain commonsense general purposes." Town of Dedham v. Labor Relations Commission, 365 Mass. 392, 312 N.E.2d 548 (1974), citing Mathewson v. Contributory Retirement Appeal Board, 335 Mass. 610 at 610, 141 N.E.2d 522 (1957).

As the Employer has documented in its Brief, starting in 1965 the legislature began to allow, and then to mandate, collective bargaining between housing authorities and their employees. At various times, the legislature has specified various provisions of Chapters 150A and 150E of the General Laws as applicable in whole, in part, or "so far as apt." We discern in the gradual, albeit non-linear, extension of collective bargaining rights and obligations to housing authorities and their employees, a legislatively-fashioned policy of fostering negotiations and encouraging the peaceful settlement of disputes. Section 9 of the Law provides a mechanism for moving toward dispute resolution when the parties have exhausted their own resources and are at impasse. None of the procedures in Section 9 abrogates the powers of the housing authorities. No solution may be imposed by a mediator or fact-finder. Rather the procedures are designed to place an experienced neutral into the midst of a bargaining impasse to promote voluntary resolution by the parties.

The statutory construction urged by the Employer here not only leads to illogical results but conflicts with the overall legislative purposes of stable labor relations. We conclude that Section 10(a)(6) applies to housing authorities. On the stipulated facts of this case it is clear that the Worcester Housing Authority has refused to participate in fact-finding in violation of Sections 10(a)(1) and (6) of the Law.

ORDER

WHEREFORE, pursuant to Section 11 of General Laws Chapter 150E, it is hereby ORDERED that the Worcester Housing Authority shall:

1. Cease and desist from:
 - a. Refusing to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in Section 9 of c.150E;

(Footnote continued from page 6):

²We are unable to discern whether the Employer would argue that, because reference is made in each of these subsections of Section 10 to other provisions of the Law, these subsections similarly do not apply to employee organizations representing Housing Authority employees, or whether they are intended to apply while putting no corresponding legal obligation on the employer. Either interpretation, in our view, defies logic.

Worcester Housing Authority and Massachusetts Laborers District Council,
International Brotherhood of Laborers, Local 243, 5 MLC 1459

- b. In any like or related manner interfering, restraining or coercing any employee in the exercise of any right guaranteed by the Law.
- 2. Take the following affirmative action which will effectuate the purposes of the Law:
 - a. Participate in good faith in mediation and fact-finding proceedings pursuant to the petition filed on or about May 5, 1978 by the Union with the Board of Conciliation and Arbitration;
 - b. Post in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached NOTICE TO EMPLOYEES;
 - c. Notify the Commission, within ten (10) days of the service of this Decision and Order, of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman
GARRY J. WOOTERS, Commissioner
JOAN G. DOLAN, Commissioner

Worcester Housing Authority and Massachusetts Laborers District Council,
International Brotherhood of Laborers, Local 243, 5 MLC 1459

NOTICE TO EMPLOYEES

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

Chapter 610 of the Acts of 1977 amended part of the General Laws of Massachusetts under which Housing Authorities operate. It made Housing Authorities subject to certain provisions of the Public Employee Bargaining Law in c.150E.

Specifically, it made it a prohibited practice for a Housing Authority to refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in Sections eight and nine of c.150E.

WE WILL NOT refuse to participate in good faith in mediation and fact-finding proceedings pursuant to the petition filed on or about May 5, 1978 by the Massachusetts Laborers District Council with the Board of Conciliation and Arbitration.

Chairman, Board of Commissioners,
Worcester Housing Authority

