

BILLERICA SCHOOL COMMITTEE AND BILLERICA FEDERATION OF TEACHERS, LOCAL 1677, AFL-CIO, MUP-3500 (1/25/80). Decision on Appeal of Hearing Officer's Decision.

- (50 Duty to Bargain)
  - 52.122 grievance procedure
- (60 Prohibited Practices by Employer)
  - 67.15 union waiver of bargaining rights
  - 67.8 unilateral change by employer
- (80 Commission Decisions and Remedial Orders)
  - 82. Remedial Orders
- (90 Commission Practice and Procedure)
  - 92.51 appeals to full commission

Commissioners participating:

James S. Cooper, Chairman  
Joan G. Dolan, Commissioner

Appearances:

Duane R. Batista, Esq. - Representing the Billerica School Committee

Joan A. Buckley - Representing the Billerica Federation of Teachers, Local 1677, AFT, AFL-CIO

DECISION ON APPEAL  
OF HEARING OFFICER'S DECISION

Statement of the Case

Hearing Officer James Litton issued a decision in the above-captioned matter on September 28, 1979 wherein he concluded that the Billerica School Committee (School Committee) had unilaterally altered a past practice involving a mandatory subject of collective bargaining in violation of Sections 10(a)(5) and (1) of General Laws Chapter 150E (Law). Billerica School Committee, 6 MLC 1501 (1979). The School Committee filed a timely notice of appeal under Section 11 of the Law and the Commission's Rules and Regulations, 402 CMR 13.13. The School Committee's supplementary statement raises several objections to the hearing officer's conclusions and orders. On the basis of our review of the record, we AFFIRM the hearing officer's conclusions and modify his remedial order.

Findings of Fact

The findings of fact are set forth fully in the hearing officer's decision. We summarize those facts as follows:

The undisputed past practice of the School Committee and Billerica Federation of Teachers (Union) was to hear grievances in closed session at the School Committee level. The parties concluded negotiations over a collective bargaining agreement on May 31, 1979. The subject of open or closed grievance sessions was not discussed during the negotiations and the agreement is silent on the subject.



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On June 13, 1979, the School Committee considered a Union grievance regarding the use of substitute teachers. The matter appeared on an agenda without any indication that the hearing would be open or closed. The School Committee, apparently acting without the advice of counsel, misinterpreted the Open Meeting Law<sup>1</sup> as requiring the holding of an open grievance meeting. Notwithstanding the Union's immediate objection, the School Committee voted to hear the grievance in open session and resolved the grievance to the satisfaction of the Union. The Union filed charges with the Commission on June 25, 1979.

The June 13, 1979 incident appears to be unique. At all other times, both before and after that date, grievances have been heard before the School Committee in closed session.

The hearing officer concluded that the School Committee had unilaterally altered a past practice involving a mandatory subject of bargaining--namely, the procedure by which grievance hearings are to be conducted. Further, the hearing officer rejected the School Committee's defense that the Union had waived its right to bargain by failing to demand bargaining. In this regard, the hearing officer found that the Union's immediate public protest was sufficient to put the School Committee on notice of its duty to bargain. The remedial order included, in part, the following:

1. The School Committee shall cease and desist from insisting that grievance hearings be conducted in open sessions when such a procedure is objected to by the Federation.
2. Upon request the School Committee shall bargain with the Federation about whether grievances before the School Committee should be processed in open session.

The hearing officer also ordered that the School Committee Chairperson post a notice prepared by the Commission for thirty days.

#### Opinion

The School Committee's initial assertion challenges the constitutionality of compelling a public body to hold grievance hearings involving public issues in closed session. We are not customarily called upon to consider the constitutionality of our orders. In view of the Supreme Judicial Court's recognition in *Ghiglione v. Southbridge School Committee*, 1978 Mass. Adv. Sh. 2150, 378 N.E.2d 984 (1978) that it is permissible under the open meeting law to conduct grievance hearings in executive session, we may presume the constitutionality of an order requiring the School Committee to conduct closed grievance hearings.

We reject the School Committee's argument that the issue of holding grievance meetings in open or closed sessions is not a mandatory subject of

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<sup>1</sup>General Laws Chapter 39, Sections 23A-23C.

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bargaining. We have concluded on several occasions that the issue is a mandatory subject of bargaining and find no reason to depart from these precedents. See Town of Ayer, 4 MLC 1478 (1977).

Although we are aware that this case involves one isolated instance of a mistake of law made without advice of counsel, mistake of law is no defense to a unilateral change. Compare, Boston School Committee, 6 MLC 1129 (H.O., 1979); Commonwealth of Massachusetts, 5 MLC 1800 (H.O., 1979) and Town of Burlington, 4 MLC 1236 (H.O., 19-7), aff'd. Oct. 30, 1978 (unpublished).

The School Committee further argues that the outcome of the open grievance meeting was favorable to the Union, and that the Union therefore suffered no harm. Our finding of a violation, however, turns on the unilateral nature of the change and not on the School Committee's inherent fairness. Town of North Attleboro, 4 MLC 1053 (H.O., 1977), aff'd. in pertinent part, 4 MLC 1585 (1977). Further, we agree with the hearing officer that the Union's immediate protest was sufficient to put the School Committee on notice of its duty to bargain.<sup>2</sup> Ashland School Committee, 4 MLC 1251 (H.O., 1977), aff'd. 5 MLC 1151 (1978); City of Everett, 2 MLC 1471 (1976), aff'd. sub. nom. Labor Relations Commission v. City of Everett, 1979 Mass. App. Adv. Sh. 1310, 391 N.E.2d 694 (1979).

The School Committee contends that the unilateral change was not significant enough to give rise to a bargaining obligation or to necessitate a remedial order. We disagree. The Commission, like the National Labor Relations Board, possesses wide latitude in determining whether a matter is so trivial as to warrant either a dismissal or a modification of a customary remedy. See Teamsters, Local 705 v. NLRB, 509 F.2d 425, 87 LRRM 2860 (C.A.D.C. 1974), enf'd. 205 NLRB 387, 83 LRRM 1668 (1973). Notwithstanding the School Committee's efforts to minimize its actions of June 13, 1979, on the basis of our review of the record, we are not inclined to depart from our customary conclusions and remedies in unilateral change cases. See City of Everett, supra, cases cited at 2 MLC 1475. Nor do we consider the requirement of a posting too drastic and demeaning a remedy for public officials who have violated the Law. To the contrary, we view the remedial requirement of a posting to constitute a means of effectuating the purposes and policies of the Law.

The School Committee finally urges a modification of the order and remedy issued by the hearing officer on the grounds that the order goes beyond the scope of Section 11 of the Law as well as the scope of the violation. Under Section 11 of the Law, however, we note that the General Court has granted to the Commission broad authority to order appropriate relief after a finding of a violation of the Law. Inasmuch as there is no question either that the matter is presently before the Commission or that we have found the actions

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<sup>2</sup>Our conclusion finds further support in the minutes of the June 13, 1979 School Committee meeting which were received into evidence. Following the School Committee's unanimous vote to conduct an open session, the Union representative stated that she was proceeding under protest, that she would file an unfair labor practice, and that the matter should be discussed in executive session.

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of the School Committee to constitute a violation of Sections 10(a)(5) and (1) of the Law, we cannot seriously doubt our authority to issue appropriate orders in this case. We agree with the School Committee, however, that the scope of the hearing officer's order should be modified, inasmuch as the order effectively prohibits the School Committee from bargaining over the issue of grievance hearing procedures. Our modification requires the continuation of the past practice until the parties reach either impasse or resolution of the issue.

#### Conclusion

On the basis of the foregoing, we AFFIRM the conclusion of the hearing officer that the BillERICA School Committee has engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of the Law.

#### ORDER

WHEREFORE, pursuant to Section 11 of the Law, the Commission hereby issues the following orders:

1. The School Committee shall continue its prior practice of conducting contractual grievance hearings in closed session until such time as the School Committee and Union have bargained in good faith to impasse or resolution about whether any or all grievance hearings shall be conducted in open session.
2. The School Committee shall immediately post, in plain view, and leave posted for thirty (30) days from the date of posting, in a conspicuous place in each of its school buildings where teachers usually congregate and where notices are usually posted, a signed copy of the Notice attached hereto.
3. The School Committee shall notify the Commission in writing within ten (10) days of notice of this decision of the steps taken to comply herewith.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman  
JOAN G. DOLAN, Commissioner



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

The Massachusetts Labor Relations Commission has concluded that the Billerica School Committee engaged in prohibited practices within the meaning of General Laws Chapter 150E, Sections 10(a)(5) and (1) by conducting a grievance hearing in open session on June 13, 1979.

WE SHALL continue our prior practice of processing contractual grievance hearings in closed sessions until such time as the Billerica Federation of Teachers, Local 1677 and the Billerica School Committee have bargained in good faith to impasse or resolution over the issue of whether grievance hearings shall be conducted in open session.

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CHAIRPERSON  
BILLERICA SCHOOL COMMITTEE

