CAMBRIDGE SCHOOL COMMITTEE AND CAMBRIDGE TEACHERS ASSOCIATION, MUP-3319 (5/27/80). Decision on Appeal of Hearing Officer's Decision.

(50 Duty to Bargain)
54.31 impact of management rights decision
(60 Prohibited Practices by Employer)
67.4 good faith test (totality of employer's conduct)
67.8 unilateral change by employer
(90 Commission Practice and Procedure)
92.51 appeals to full commission

Commissioners participating:

James S. Cooper, Chairman
Joan G. Dolan, Commissioner
(Commissioner Axten not participating)

Appearances:

Americo A. Salini, Jr., Esq. - Counsel for the Cambridge Teachers Association

Duane R. Batista, Esq. - Counsel for the Cambridge School Committee

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On December 12, 1979, Hearing Officer Sharon Henderson Ellis issued her decision in this case[1] in which she found that the Cambridge School Committee (School Committee) refused to bargain in good faith with the Cambridge Teachers Association (Association), in violation of Sections 10(a)(5) and (1) of G.L. c.150E (the Law), when it unilaterally implemented a reorganization plan without first bargaining over the impact on employees.

Both the Association and the School Committee filed timely appeals pursuant to 402 CMR 13.13, and each submitted a supplementary statement and a reply brief.[2]

Findings of Fact[3]

[1]Reported at 6 MLC 1651.

[2]The School Committee also filed a Motion to Conduct Rule-Making Hearings, asking that the Commission promulgate regulations setting out the bargaining obligations of public employers, particularly with respect to unilateral changes and impact of management decisions, instead of deciding these questions on a case-by-case basis. This motion is hereby denied.

[3]Neither party disputes the hearing officer's findings of fact. We hereby adopt those findings and limit our review to issues of law. City of Medford, 3 MLC 1584.

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On May 3, 1978[4] Superintendent of Schools William Lannon released to the School Committee his plan for the reorganization of the Cambridge school system; a copy was provided to the Association at that time. Following a period of public debate over the plan, on July 14, when it became clear that the School Committee would approve the plan, the Association requested bargaining over the impact of reorganization on employees. The parties met on July 18. On July 19, the School Committee voted to adopt the reorganization plan.

On August 18, counsel for the School Committee wrote to the Association asking that it submit proposals for impact bargaining. This letter was misdirected and was not received by the Association until September 8.

On September 6, the School Committee voted to abolish the position of Michael Turner, headmaster of the Cambridge Latin School and acting headmaster of the Rindge Technical High School, and appointed Edward Sarasin as headmaster of the new comprehensive high school. As a result of this action by the School Committee, the Association filed a prohibited practice charge with the Commission (Case No. MUP-3212).

Prior to a decision on the Association's charge in Case No. MUP-3212, the parties entered into the following settlement agreement on October 19:

> The Cambridge Teachers Association/MTA and the Cambridge School Committee agree to meet for the purpose of negotiating over the impact of the Reorganization Plan on bargaining unit employees.
>
> Negotiations will take place on Tuesday, November 21, 1978 at 4:00 p.m., November 28 at 4:00 p.m., December 7 at 4:00 p.m., December 14 at 4:00 p.m. Parties will meet on other dates if needed.
>
> Pursuant to the above settlement, the Association withdraws their charge of prohibitive practices in MUP-3212, without prejudice.

On November 15, one week prior to the first agreed-upon bargaining session over the impact of the reorganizationplan, the School Committee voted to vacate twelve positions.

Impact bargaining was held on November 28, December 7, December 14 and January 9, 1979. At the first meeting, the Association presented no proposals, but requested from the School Committee the names, duties and salaries of incumbent administrators who would be displaced by reorganization. The Association protested what it considered to be a failure to maintain the status quo as to members of the bargaining unit, with the School Committee taking the contrary position that it could continue to implement the reorganization plan during impact bargaining.[5] Throughout bargaining, the

[4]All dates refer to 1978, unless otherwise specified.

[5]On December 20, the School Committee voted to fill seven positions, and voted to fill an additional position on January 16, 1979.

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School Committee reiterated its request that the Association submit specific proposals; the Association did not actually reduce its demands to writing until April 3, 1979, although it did articulate a number of concerns during negotiations, particularly that no displaced administrator be assigned to classroom duties. The parties did reach agreement on the fate of displaced employees nearing retirement and on maintenance of current salaries through the term of the existing collective bargaining agreement.

Opinion

Unilateral Change

It is clear that the decision to adopt the reorganization plan is the kind of educational policy-making and managerial discretion over which the School Committee has no obligation to bargain. School Committee of Braintree v. Raymond, 369 Mass. 686, 343 N.E.2d 145 (1976); School Committee of Hanover v. Curry, 369 Mass. 683, 343 N.E.2d 44 (1976); Leominster School Committee, 4 MLC 1512 (1977). The School Committee does have a duty to bargain over the impact of the reorganization on wages, hours and other terms and conditions of employment of bargaining unit employees. Newton School Committee, 5 MLC 1016 (1978). It may not implement changes in conditions of employment until it has met these bargaining obligations. City of Boston, 3 MLC 1450 (1977); Town of North Andover, 1 MLC 1106 (1974).

The hearing officer found that, by its November 15 vote to vacate twelve positions, the School Committee was proceeding to implement the reorganization plan prior to scheduled impact bargaining, and concluded that this constituted an unlawful unilateral change.[6]

The School Committee's initial argument on appeal is that the November 15 vote, by which the School Committee chose to abolish certain positions, was not "implementation" of the reorganization plan, but was still a part of the Committee's managerial decision-making process. This, the School Committee argues, is more than mere semantics: There is a duty to impact bargain before putting into effect a management decision, but not before making that decision.[7]

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[6]The School Committee's appeal challenges the finding of a unilateral change; the Association's appeal contends that the hearing officer should also have found that the School Committee negotiated in bad faith and should have ordered a broader remedy.

[7]We are troubled that this theory (drawing a distinction between a vote of the School Committee and "implementation") is one which the School Committee never litigated before the hearing officer. In fact, in its Answer the School Committee admitted that "concurrent with the negotiation sessions, the School Committee is implementing its reorganization plan;" it joined in a stipulation that certain actions of the School Committee, including the November 15 vote, constituted "acts of implementation;" and consistently maintained that it had the right to implement reorganization during bargaining. Under these circumstances, we could find that the School Committee is estopped from raising this argument on appeal. It is unnecessary to so rule, as the result in this case will remain unchanged.

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The School Committee next contends that the November 15 vote vacating positions had no actual effect upon wages, hours or terms and conditions of employment since employees holding these positions continued to perform the same duties until December 20, when the School Committee voted to fill the positions under the reorganization plan and the incumbent bargaining unit members were displaced. Therefore, the School Committee argues, its only duty was to bargain before reorganization actually impacted upon the bargaining unit (i.e., before December 20), and it fulfilled this obligation at the November 28, December 7 and December 14 impact bargaining sessions.

We have carefully considered the School Committee's argument on this point. However, the issue of whether or not there was "implementation" or actual change in conditions of employment on November 15 need not be resolved, because, unlike the hearing officer, we do not decide this case under a unilateral change analysis.[8] Instead, we view the School Committee's actions in light of the general duty to bargain in good faith.

Bargaining in Bad Faith

In determining what constitutes bargaining in "good faith" the Commission must examine the totality of the parties' conduct under the circumstances. King Phillip Regional School Committee, 2 MLC 1393 (1976). Having done so in the present case, we must conclude that the School Committee's November 15 vote, although not a unilateral change, did constitute bad-faith bargaining when considered in light of the events surrounding it.

On September 6, the School Committee voted to vacate Turner's position and appoint someone else to the combined headmaster position; the School Committee concedes that Turner's job duties were affected on that date. The displacement of Turner, before the parties had engaged in any significant bargaining, prompted the Association's filing of a prohibited practice charge on September 29. The parties settled that charge, with the School Committee agreeing to impact bargaining sessions commencing on November 21. Then, on November 15, the Committee voted to abolish twelve more positions.

Given the background of the Association's reaction to abolishing Turner's position and the School Committee's subsequent promise to bargain, we find that the School Committee should have known that a second vote vacating positions, one week before the first scheduled bargaining session, would be inherently destructive of the negotiating climate. An employer must take into consideration how its actions will affect bargaining and be responsible for the reasonably

[8] As we do not reach the hearing officer's finding of a unilateral change, it is unnecessary to discuss the School Committee's argument that a requisite element of a unilateral change violation is a showing of "substantial detriment." However, we note that at least twelve bargaining unit employees faced possible job loss, reassignment to a lesser position, and/or a salary cut, and we must therefore view with skepticism the Shcool Committee's characterization of the impact of reorganization as a "perceived minor inconvenience or annoyance" to "a handful of people." (School Committee Supplementary Statement at p.19).

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foreseeable consequences of its conduct. Once the School Committee committed itself to impact bargaining on specific dates, its unexplained action one week before bargaining got underway gave at least the appearance that it did not take the upcoming negotiations seriously.

We do not decide the issue of whether the School Committee had the legal right to vote to vacate twelve positions on November 15, only that, under the circumstances that vote, coupled with the School Committee's prior actions, constituted a failure to bargain in good faith. The School Committee introduced no evidence of a good-faith reason which might explain why the vote had to be taken when it was, nor is there any indication that any explanation was offered to the Association. In the absence of such evidence, we infer on these facts a bad-faith motivation from the timing of the vote. It is irrelevant to a determination of bad faith that the job duties of the twelve employees were unchanged by the vote, as the Association could not have known on November 15 just when employees might be displaced and thus entered into bargaining at a distinct disadvantage.

Therefore, we conclude that the November 15 vote, considered in context, was inconsistent with the kind of sincere desire to resolve differences through mutual negotiations which is inherent in the duty to bargain in good faith. See King Phillip Regional School Committee, supra.

The Remedy

The Association asserts on appeal that the remedy ordered by the hearing officer is inadequate.

We are mindful of the hearing officer's attempts to balance her finding of unlawful conduct by the School Committee against the Association's extraordinary dilatoriness in presenting clear and specific proposals, despite repeated requests for them by the employer. While the Association's failure to conduct its bargaining with optimal professionalism does not "excuse" the School Committee's violation of c.150E, the hearing officer properly took into account the relative conduct of the parties in formulating her remedy, and we find that, with minor modifications, it adequately redresses the prohibited practices committed in this case.

Conclusion and Order

We therefore AFFIRM the hearing officer's finding that the School Committee violated Sections 10(a)(1) and (5) of the Law, as modified by this Opinion.

WHEREFORE, pursuant to the authority vested in the Commission by Section 11 of the Law, IT IS HEREBY ORDERED that:

1. The Cambridge School Coimmittee shall cease and desist from refusing to bargain collectively in good faith by implementing changes in terms and conditions of employment of bargaining unit employees without first providing the Cambridge Teachers Association with advance notice and a complete and fair opportunity to bargain.

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2. The School Committee shall cease and desist from restraining, coercing or intimidating the Cambridge Teachers Association in the exercise of its right to bargain over terms and conditions of employment of employees represented by the Association.

In order to effectuate the purposes of the Law, the School Committee IS HEREBY ORDERED to take the following affirmative action:

1. Upon request, bargain in good faith to resolution or impasse any reorganization impact matters which affect terms and conditions of employment and which continue unresolved.

2. Post in a conspicuous place, where notices to employees are customarily posted, and leave posted for a period of not less than sixty (60) days, the appended Notice to Employees.

3. Notify the Commission within ten (10) days of receipt of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, CHAIRMAN
JOAN G. DOLAN, COMMISSIONER

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Cambridge School Committee and Cambridge Teachers Association, 7 MLC 1026

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

The Massachusetts Public Employees Collective Bargaining Law (Chapter 150E) gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or other mutual aid or protection;
To refrain from any and all of these activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

1. The Cambridge School Committee shall cease and desist from refusing to bargain in good faith by implementing changes in terms and conditions of employment of its employees without first providing the Cambridge Teachers Association with advance notice and a complete and fair opportunity to bargain.

2. The School Committee shall cease and desist from restraining, coercing or intimidating the Cambridge Teachers Association in the exercise of its right to bargain over terms and conditions of employment of employees represented by the Association.

In order to effectuate the purposes of the Law, the School Committee shall:

3. Upon request, bargain in good faith to resolution or impasse any reorganization impact matters which affect terms and conditions of employment and which continue unresolved.

CAMBRIDGE SCHOOL COMMITTEE

By: _____
Superintendent of Schools

_____
Chairman, School Committee

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