

TOWN OF DRACUT AND IBPO, MUP-3699 (9/30/80). Decision on Appeal of Hearing Officer's Decision.

- (50 Duty to Bargain)
54.588 dress and grooming standards
- (60 Prohibited Practices by Employer)
67.8 unilateral change by employer
- (90 Commission Practice and Procedure)
92.51 appeals to full commission

Commissioners participating:

Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

Edward J. Owens, Esq. - Counsel for the Town of Dracut
Robert J. Canavan, Esq. - Counsel for the International Brotherhood of Police Officers

Decision on Appeal of
Hearing Officer's Decision

On May 28, 1980 Hearing Officer Rachel J. Minter issued her decision in this matter pursuant to the expedited hearing procedures established by Section 11 of General Laws Chapter 150E (the Law). The hearing officer concluded that the Employer had unilaterally instituted more restrictive grooming standards as a condition of employment for police officers and that the Town's action violated Sections 10(a)(5) and (1) of the Law. Town of Dracut, 7 MLC 1037 (1980).

Pursuant to Commission Rules and Regulations 402 CMR 13.13, the Employer requested a review by the Labor Relations Commission (Commission) of the hearing officer's decision. On June 6, 1980, the hearing officer submitted to the Commission her statement of the case. No supplementary statements have been filed by the Employer or by the International Brotherhood of Police Officers.

Opinion

Where no supplementary statement is received, the Commission will adopt the fact findings of the hearing officer and limits its review to the hearing officer's conclusions of law. Town of Dedham, 3 MLC 1332 (1976).

The Commission has reviewed the hearing officer's conclusions of law, and we find no error. The employer implemented new appearance standards. Police officers were restricted in their hair length and in wearing beards and mustaches. The hearing officer held that grooming standards are a mandatory subject of bargaining, and that the Town by unilaterally implementing these standards violated Sections 10(a)(5) and (1) of the Law. Finding no error in the hearing officer's conclusions of law, we affirm the Decision and Order of the hearing officer in its entirety.

COMMONWEALTH OF MASSACHUSETTS LABOR
RELATIONS COMMISSION

JOAN G. DOLAN, COMMISSIONER
GARY D. ALTMAN, COMMISSIONER

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CITY OF BOSTON AND NAGE, MCR-3037 (9/30/80). Decision on Appeal of Hearing Officer's Decision.

- (30 Bargaining Unit Determination)
 - 34.1 appropriate unit
 - 34.2 community of interest
 - 34.5 established practice (history)
 - 34.71 departmental unit
 - 34.8 similarity of work
 - 34.9 unit modification
- (90 Commission Practice and Procedure)
 - 92.51 appeals to full commission

Commissioners participating:

Phillips Axten, Chairman
 Gary D. Altman, Commissioner

Appearances:

- Eric J. Nadworny - Representing the City of Boston
- Edward Murphy - Representing the National Association of Government Employees
- Robert D. Manning - Representing Local 285, Service Employees International Union, AFL-CIO
- John F. McMahon
- Wayne Soinl - Representing American Federation of State, County and Municipal Employees, AFL-CIO

**DECISION ON APPEAL
 OF HEARING OFFICER'S DECISION**

On January 31, 1980 the National Association of Government Employees (NAGE) filed a petition with the Massachusetts Labor Relations Commission (Commission) under G.L. c.150E, Section 4 for certification as exclusive representative for the purposes of collective bargaining of all civilian employees of the police department of the City of Boston (City). Some of these employees are currently members of one of two Citywide units represented by the American Federation of State, County and Municipal Employees (AFSCME), or by the Service Employees International Union (SEIU). On June 5, 1980 Hearing Officer Robert McCormack issued his decision in this case in which he dismissed the petition because he found the unit for which NAGE petitioned to be inappropriate.¹

Pursuant to Commission Rules and Regulations 402 CHR 13.13 NAGE filed a timely notice of appeal and a supplementary statement in which it objected to the legal conclusion of the hearing officer dismissing the petition.

¹ For the complete text of the hearing officer's decision see 7 MLC 1074 (1980).



City of Boston and NAGE, 7 MLC 1343

Opinion

The Commission has considered the decision of the hearing officer and finds no error.² In essence, NAGE argues that its proposed civilian unit in the Boston police department is at least less inappropriate than the existing City-wide units, and that therefore an election should have been ordered. However, pursuant to Section 4 of the Law the Commission must find an appropriate unit before it can direct an election:

If after hearing, the Commission finds that there is a controversy concerning the representation of employees, it shall direct an election...to determine whether...the employees in an appropriate unit desire to be represented.... (emphasis added).

It is not sufficient that the unit for which NAGE petitioned may be "closer to the mark" of being an appropriate unit than the existing AFSCME or SEIU units. Moreover, upon the entire record in this case, the Commission adopts the findings and conclusion of the hearing officer that the unit which NAGE seeks is inappropriate. Accordingly, the petition must be DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman
GARY D. ALTMAN, Commissioner

²In the absence of supplementary statements contesting specific factual findings, the Commission will adopt the findings of fact of the hearing officer and will limit its review to the hearing officer's conclusions of law. Town of Dedham, 3 MLC 1332 (1976); City of Medford, 3 MLC 1584 (1977).

