

CITY OF CAMBRIDGE AND CAMBRIDGE POLICE ASSOCIATION, MUP-3386 (5/6/81). Ruling on Motion to Reassert Jurisdiction in Case Deferred to Arbitration.

- (20 Jurisdiction)
  - 22.2 pre-award deferral to arbitration
- (90 Commission Practice and Procedure)
  - 91.6 deferral to prior arbitration award

Commissioners participating:

Phillips Axten, Chairman  
 Joan G. Dolan, Commissioner  
 Gary D. Altman, Commissioner

Appearances:

- Michael C. Gilman, Esq.                   - Representing the City of Cambridge
- Robert L. Wise, Esq.                   - Representing the Cambridge Police Association

**RULING ON MOTION TO REASSERT JURISDICTION  
 IN CASE DEFERRED TO ARBITRATION**

**Statement of the Case**

On March 24, 1981, the Cambridge Police Association (Association) filed with the Labor Relations Commission (Commission) a request to reassert jurisdiction in a matter previously deferred to arbitration. We allow the request.

The matter first came before the Commission when, on March 14, 1979, the Association filed a prohibited practice charge alleging that the City of Cambridge (City) had violated Sections 10(a)(5), (3), and (1) of General Laws Chapter 150E (the Law). Following investigation, the Commission issued a Complaint of Prohibited Practice and Deferral Order on April 11, 1979. The Complaint alleged the following:

- a. By practice established prior to January 29, 1979, police officers employed by the City were permitted to attend court sessions and receive compensation for such attendance on so-called "short days."
- b. On January 29, 1979, the City promulgated and implemented Joint Order No. 1 which, in part, changed the procedure by which police officers could attend court sessions or receive compensation for such attendance on so-called "short days."
- c. The Order described in paragraph 3(b), above, was promulgated and implemented without prior consultation or negotiation with the Association.

The Complaint further alleged that by the acts described in paragraphs (b) and (c), above, the City had violated Sections 10(a)(5) and (1) of the Law. Because the alleged conduct of the City appeared to be covered by the collective bargaining agreement between the City and the Association, the Commission deferred the matter to arbitration, but retained jurisdiction.



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On April 17, 1980, a hearing was held before Arbitrator David M. Grodsky involving the following issue:

Did the City violate Articles I, Section 1; III, Section 1; IV, Section 2; XI, XX, Section 3 and XXI of the collective bargaining agreement when on January 29, 1979, the Chief of Police issued General Order #1 that no officer, for health and safety reasons, shall request or receive a trial date for a short day unless authorized by the Cambridge Police Prosecutor or members of his staff? If so, what shall be the remedy?

On February 13, 1981, Arbitrator Grodsky issued his award. The arbitrator found that the City did not violate the agreement.

Discussion and Ruling

In Cohasset School Committee, MUP-419 (6/19/73), the Commission adopted the policy first enunciated by the National Labor Relations Board (Board) in Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971), that where conduct complained of in an unfair labor practice charge is also arguably a violation of a collective bargaining agreement between the parties to the dispute, the Commission will defer to the parties' agreed-upon dispute resolution procedures. Cohasset and Collyer involve situations where, at the time the unfair labor practice charge is brought, the issues have not yet been submitted to arbitration. In Boston School Committee, 1 MLC 1287 (1975), the Commission adopted Spielberg Manufacturing Co., 112 NLRB 1080, 36 LRRM 1152 (1955), wherein the Board set forth its deferral policy in situations where, at the time the unfair labor practice charge is brought, the issues have already been the subject of an arbitration award.

Deferral in Cohasset/Collyer cases is appropriate where the conduct complained of is potentially both a violation of the Law and a violation of the collective bargaining agreement between the parties, and where the parties through that agreement have committed themselves to mutually agreeable procedures for resolving their disputes. Deferral in Boston School Committee/Spielberg cases is appropriate where the arbitration proceedings have been fair and regular, all parties agreed to be bound by the proceedings, the decision of the arbitrator is not repugnant to the purposes and policies of the Law, and the arbitration award disposes of the substantially identical issue presented to the Commission. When the Commission defers under Cohasset, it retains jurisdiction pending completion of the arbitration proceedings. If, at that time, a party moves for further consideration by the Commission, the Commission will consider the arbitrator's decision in light of the Boston School Committee/Spielberg standards. See, Cohasset, supra; Collyer, supra; P. Nash, Arbitration Deferral Policy Under Collyer-Revised Guidelines (1973), ( )  
4 Lab. Rel. (CCH) par. 9031.22

We have thoroughly and carefully reviewed the arbitrator's decision in light of the Boston School Committee standards. We are left uncertain of the precise analysis and holding of the arbitrator and are therefore unable to conclude that the arbitrator has disposed of the substantially identical issue upon which we issued a Complaint. When it is unclear whether an arbitrator has resolved the issue pending



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before the Commission, we believe that deferral is inappropriate.<sup>2</sup> Thus, we will not defer to an arbitration award when it cannot be said with reasonable certainty that the arbitrator has resolved the issue pending before us.

Conclusion

WHEREFORE, based on the foregoing, we reassert jurisdiction and order that an Expedited Hearing shall be held on the Complaint on Tuesday, May 26, 1981 at 10:00 a.m.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman  
JOAN G. DOLAN, Commissioner  
GARY D. ALTHAN, Commissioner

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<sup>2</sup>Apparently, the Board would agree. See, ITT Continental Baking Co., Case No. 25-CB-11118, 103 LRRM 1499 (Advice Memorandum) (1/24/80).

