
CITY OF BOSTON AND BOSTON POLICE PATROLMEN'S ASSOCIATION, MUP-4132 (5/22/81).

- (50 Duty to Bargain)
52.65 "meeting of the minds"
(60 Prohibited Practices by Employer)
67.64 refusal to sign contract

Hearing Officer:

Sharon Henderson Ellis

Appearances:

James B. Cox

-Counsel for the City of Boston

Alan J. McDonald

- Counsel for the Boston Police Patrolmen's
Association

HEARING OFFICER'S DECISION

Statement of the Case

On December 23, 1980 the Boston Police Patrolmen's Association (Association) filed a charge of prohibited practice with the Labor Relations Commission (Commission) alleging that the City of Boston (City) had failed to execute an agreed-upon consolidated contract in violation of Sections 10(a)(5) and (1) of General Laws Chapter 150E (the Law).

Pursuant to its authority under Section 11 of the Law, the Commission investigated the Association's charge and issued its own Complaint of Prohibited Practice on March 3, 1981.

On March 31, 1981 an Expedited Hearing was held before Hearing Officer Sharon Henderson Ellis, a duly designated hearing officer of the Commission. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was provided to both parties. Briefs were filed by the Association and the City on April 16 and April 22, respectively.

Jurisdictional Findings

1. The City of Boston is a municipal corporation in the County of Suffolk in the Commonwealth of Massachusetts and is a public employer within the meaning of Section 1 of the Law.
2. Kevin H. White is the chief executive officer of the City within the meaning of Section 1 of the Law.
3. The Association is an employee organization within the meaning of Section 1 of the Law.
4. The Association is the exclusive representative for the purpose



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of collective bargaining of certain employees of the City.

Findings of Fact

The Association and the City entered into their first collective bargaining agreement in January, 1968.¹ Thereafter, the parties appended to the initial contract all supplemental memoranda of agreement or last best offer awards. By 1979, the contract between the Association and the City consisted of the original agreement and eight amending appendices.

Both parties indicated by their testimony that the form of the parties' contract was unworkable. Richard Meyer, formerly chief negotiator for the City, made the following comment in his testimony:

- Q. You stated that conceptually (the consolidation of the contract) was a good idea. Can you elaborate on why it was a good idea?
- A. It was a good idea for both sides in my opinion, because of the unworkability of the document, one, and number two, in the past there had been some dispute as to who had the correct document. The City had a document which had been prepared by its secretary, and in arbitrations there was some discussion as to who had the correct document. So that was a reason why I thought it was a good idea to resolve those outstanding issues.

The most recent series of negotiations began in April, 1979. Richard Meyer was the chief spokesman for the City. Dennis Austin and one or two other representatives for the City also attended these sessions regularly. Alan McDonald was the chief spokesman for the Association. Certain Association officers also regularly attended these sessions including Chester Broderick, John Bilodeau, and Paul Baker.

In September, the parties executed a memorandum of agreement covering the period July 1, 1979 through March 1, 1981. Notwithstanding this agreement, certain negotiations continued and on February 21, 1980 a further supplemental memorandum was executed. Richard Meyer left the City in November, 1979 and was initially replaced as chief spokesman by Robert Holland. Austin continued to be present at all negotiations and is one of the signatories to the supplemental agreement executed in February.²

Early on in these negotiations McDonald proposed that the initial agreement and its eight amending memoranda be condensed and consolidated into one master contract which would be more workable. The extent of the agreement on this issue is at the heart of this dispute. The following testimony from the hearing is pertinent to the resolution of that issue:

¹The first agreement was thirty-five pages in length.

²In March, 1980 Austin was appointed to be the City's labor relations supervisor and chief negotiator. This was the position formerly held by Meyer.



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Testimony of Richard Meyer:

- Q. Do you recollect agreeing on behalf of the City, that Mr. McDonald should proceed...[to consolidate the agreement]?
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- A. I don't have any specific recollection. My recollection was that the issue was discussed as a conceptual issue, not as an agenda item,³ in that both Mr. McDonald and myself agreed it would be a good idea to have a consolidated agreement. And I certainly saw no reason why we shouldn't go ahead and attempt to come up with that agreement. I don't recall we did anything beyond that.
- Q. There is no question is there that at some point during one of the summer bargaining sessions that I [Alan McDonald] brought up the topic of a consolidated agreement?
- A. To the best of my recollection it was brought up. Either you brought it up or Chester Broderick, or it may have been someone else.... Yes, it was discussed at the table.
- Q. And do you recall that I suggested consolidating the agreement; that it appeared to me as a newcomer to be entirely unworkable?
- A. Yes.
- Q. Do you recall that you agreed it was unworkable and that the parties should think about doing something about it?
- A. Yes.
- Q. And do you agree that I suggested that I would go forward and attempt after we resolved the other items in the dispute to put a consolidated agreement together to run by you for your review?
- A. I don't have a specific recollection of that fact, but if you say that happened I would not argue with you; it sounds reasonable.
- Q. There then is no question in your mind--at least to the extent that you were involved that it was the intention of the parties there at the bargaining table to put together a document for future use that consolidated the old agreements and that was acceptable to both parties in terms of its accuracy?
- A. That's a long question. In answering it I would say, yes, at some future time.

³ Both parties agreed that by agenda item they were referring to the initial written proposals that were exchanged between both sides.



City of Boston and Boston Police Patrolmen's Association, 8 MLC 1001Testimony of Paul F. Baker:

(In reference to the meeting at which the February, 1980 supplemental agreement was executed.)

- Q. At any time during that meeting did I [Alan McDonald] introduce into the discussion the consolidated agreement...?
- A. You did.
- Q. As best you recall what did I say with respect to that agreement?
- A. You had mentioned the bulk of the contract with Dick Meyer and you had agreed to have it condensed, and Dennis Austin's response to that was, that he had no problem with it as long as the language didn't change.
- Q. And did I make any further response after Dennis Austin said he had no problem with it provided there was no substantive language change?
- A. You did. You said that you were going to consolidate it, and I believe that Chester Broderick had mentioned about making it in small booklet form and so pages could be inserted and extracted for future changes.

Testimony of Dennis G. Austin:

- Q. And you knew as a result of the first set of negotiations that Mr. Meyer was spokesman for, that I [McDonald] was in the process of preparing a draft of the consolidated agreement?
- A. Or in the process to do it, yes, sir.
- Q. Do you remember me saying at the close of that meeting that as a final matter there was an agreement between Dick Meyer and I to work out a consolidated agreement incorporating prior agreements, and that I wanted to make sure since the cast of characters for the City was changing that the City was going to continue to work on that process with me?
- A. No sir, I don't remember that.
- Q. Is it possible I could have said it, you just don't remember it?
- A. You could have said that Alan, yes.
- Q. Did you or Mr. Holland indicate at any time that you were not going to go along with that process?
- A. No, sir.



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On May 2, 1980 McDonald sent Austin the following letter:

Dennis Austin, Supervisor
Department of Labor Relations
City of Boston
City Hall
Boston, MA 02201

Re: Consolidated Contract

Dear Dennis:

As per discussions during the negotiation process, I have prepared a draft of a consolidated contract incorporating all prior collective bargaining agreements between the Boston Police Patrolmen's Association, Inc. and the City of Boston, two copies of which are enclosed for your review. Please notify me at your earliest opportunity as to your observations.

It is my hope that we can have a single document executed at an early date. If you have any questions, feel free to contact me.

Thank you for your cooperation.

Austin returned the consolidated agreement with the following suggestions.

May 7, 1980

Dear Alan:

Having examined the collective bargaining Agreement that you have sent me for the years 1979-1981 the Articles and provisions are correct with the exception of Article XVI, Section 6 and Article XVII, Section 8.

Those two Articles refer to cases between Henry Wise and the City of Boston. The City of Boston has litigated those cases and the Court has dismissed Cases #87475 and #87555. The 1972 Ordinance of the City Council calling for certain minimum annual salaries was dismissed by the court. Enclosed herein you will find copies of those cases. Therefore, there is no need for those provisions to be contained in the collective bargaining Agreement.

I am sending back to you pages 38 through 44 so that you could delete Section 6 and renumber the remaining sections. Also pages 48 and 49 so that Section 8 would be deleted and Section 9 would be renumbered Section 8.

Sincerely,

Dennis G. Austin
Supervisor of Labor Relations



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June 26, 1980

Dear Dennis:

I have made the corrections in the draft of the consolidated contract as per your letter to me dated May 7, 1980. Accordingly, it appears that the draft is finally in order for signatures. I have enclosed an original and three copies. Please arrange for the signatures of the appropriate City officials and return to me for signatures by our side. I will return two full executed copies to you and retain two for our records.

If you have any questions, please do not hesitate to contact me.

Thank you for your cooperation.

Very truly yours,

Alan J. McDonald

After receiving no response McDonald telephoned Austin. Austin told him that the Mayor would not sign the agreement unless the Union signed it first. Austin executed the consolidated agreement and returned it to McDonald for the Union's signatures.

On October 2, 1980 McDonald sent Austin the following letter:

Dear Dennis:

I am enclosing the original and two copies of the Consolidated Collective Bargaining Agreement between the City of Boston and the Boston Police Patrolmen's Association, Inc. All documents have been executed by the Association officers and me on behalf of the BPPA. Would you kindly have Mayor White and the Corporation Counsel execute the Agreements at their earliest convenience and return the original to me, keeping the two copies for your records.

Thank you for your cooperation.

Very truly yours,
Alan J. McDonald

Austin testified that he forwarded the consolidated agreement to the Vice Mayor. "My recommendations were that it would be the consolidated agreement and we could use it as an operating document."

To date, the consolidated agreement has not been executed by the Mayor.

Opinion

I conclude that the parties' testimony and their course of conduct are evidence



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that an understanding was reached by the City and the Association that Alan McDonald's office would consolidate the agreement subject to the City's right to insure that the parties' rights and obligations remained the same.

The May 7 letter from Supervisor of Labor Relations Austin to Counsel for the Association McDonald, wherein certain revisions to the draft consolidated agreement are proposed, cannot be reconciled with any conclusion other than the parties' understanding to enter a consolidated agreement.⁴

A failure to effectuate the parties' agreement violates the principles of good faith bargaining. Berlin-Boylston Regional School Committee, 3 MLC 1700 (H.O. 1977); King Philip Regional School Committee, 2 MLC 1393 (1976); Compare, City of Woburn, 4 MLC 1961 (H.O. 1978), aff'd. 5 MLC 1418 (1978); Belmont School Committee, 4 MLC 1189 (H.O. 1979), aff'd. 4 MLC 1707 (1978).⁵ Based on the statements of the City's negotiations team, the Association's counsel undertook the difficult and time-consuming task of preparing a draft consolidated agreement to reflect the 1968 contract and its supplemental memoranda. Minor problems with the draft were then resolved by the parties and a final draft prepared for execution.

Notwithstanding the creative defenses⁶ advanced by the City in its brief, I conclude that the failure to execute constitutes a violation of the principles of good faith bargaining.

Remedy

In addition to an order that the Mayor forthwith execute the consolidated agreement, the Association requests that it be reimbursed for its costs in bringing the instant action. The reimbursement of litigation expenses has been ordered by the Commission in at least two cases. City of Quincy, 7 MLC 1081 (H.O. 1980), aff'd. 7 MLC 1391 (1980); Framingham School Committee, 4 MLC 1809 (1978). In both of those cases, however, the respondent either failed to call witnesses and/or

⁴In Austin's May 7 letter he refers to the consolidated draft as the "collective bargaining agreement...for the years 1979-81."

⁵If unexecuted, the consolidated agreement will be as unworkable as the current agreement inasmuch as it will be subject to the same disputes of authenticity. The project of consolidation was undertaken to alleviate just that problem.

⁶The City's major defense is that final agreement was never reached on the issue of a consolidated contract. As I have found above, the testimony and the parties' course of conduct belie that defense. The City further argued that an agreement to consolidate is not an agreement to execute. I find that an agreement to execute is implicit in the agreement to consolidate. An unexecuted agreement would serve no useful purpose. In addition to these and further arguments, the City contended that if such an agreement was reached it should have been reduced to writing and made part of the memoranda of agreement. In the City's view, evidence of this unwritten agreement violated the parole evidence rule. During the hearing, however, a parole evidence objection was not raised. In any event, that rule is only applicable where the proffered evidence would contradict or modify the written terms of the agreement.



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assert defenses, or its defenses were patently frivolous.

In this case, the City called witnesses in its own defense and raised several legal defenses in its brief. Its defenses are not "frivolous" and do not justify the imposition of the requested remedy.

ORDER

WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED, pursuant to Section 11 of the Law, that the City of Boston shall:

1. Cease and desist from refusing to bargain in good faith by failing to execute the formerly agreed-upon consolidated agreement with the Boston Police Patrolmen's Association.
2. Take the following affirmative action which will effectuate the policies of the Law:
 - a. The Mayor shall forthwith, as the representative of the City, execute the consolidated contract that has previously been agreed upon and approved by the parties;
 - b. The City shall post the attached Notice to Employees in conspicuous places where employees assemble and shall leave the same posted for a period of thirty (30) days.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

SHARON HENDERSON ELLIS,
Hearing Officer



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

In a Decision issued on May 20, 1981 by a hearing officer of the Labor Relations Commission, it was held that the City failed to bargain in good faith by refusing to execute a previously agreed-upon consolidated contract with the Boston Police Patrolmen's Association.

The City will hereafter refrain from such practices. The undersigned has executed the consolidated agreement pursuant to the Decision and Order of the Labor Relations Commission

KEVIN H. WHITE, MAYOR
CITY OF BOSTON

