SWAMPSCOTT FIRE F IGHTERS, LOCAL 1459, IAFF AND TOWN OF SWAMPSCOTT, RBA-74, RBA-75 (10/5/81).

        (90 Commission Practice and Procedure)
            94. Arbitration Under Chapter 150E, Section 8

                        NOTICE TO THE PARTIES

     Pursuant to Section 8 of General Laws Chapter 150E (the Law), the Swampscott Fire Fighters, Local 1459, I.A.F.F. (Union) filed two requests for binding arbitration. The Town filed a statement in opposition to the Union's requests. The Commission, on August 26, 1981, denied the requests for binding arbitration, stating:

            As to the pay grievance (Case No. RBA-74), the investigation reveals
            that the parties' agreement contains a provision for arbitration
            and this pay dispute can be resolved under the arbitration
            clause. As to the reduction in force grievance (Case No. RBA-75),
            the parties' agreement reflects their contractual election of Civil
            Service procedures as the route for resolving disputes of this
            type. Therefore the case is inappropriate for an RBA Order.

     On September 1, 1981, the Union requested the Commission to reconsider its decision not to order arbitration. Specifically, the Union questioned the reasoning of the Commission's dismissal letter.

     The Union and Town are parties to a collective bargaining agreement. The effective dates are July 1, 1978 through June 30, 1980. The agreement continues in full force in effect until the signing and implementation of a new collective bar- gaining agreement. The agreement also contains a provision for final and binding arbitration, Article 7.

     In RBA-75, the Association filed two grievances pursuant to Article 5, Section 4 of the parties' contract. The first grievance alleged the Town violated Article 13, Section 1 of the contract because the Town did not maintain an agreed upon manning level. The second grievance alleged that the Town violated Article 13, Section 2 by not filling shift vacancies with overtime work for bargaining unit personnel. The Town stated that the issues raised by the Union "are not subject to provisions within the contract for arbitration." RBA-74 also involved two grievances filed pursuant to Article 5, Section 4 of the grievance procedure. These two grievances involved alleged violations of Article 25, Section 6, the provision for weekend duty differential pay, and Article 25, Section 7 the pro- vision for night duty differential pay. Again, the Town responded that the matters were "not subject to provisions within the contract for arbitration." The requests to the Commission for binding arbitration then followed.

     Section 8 of the Law provides:

            The parties may include in any written agreement a grievance
            procedure culminating in final and binding arbitration to be
            invoked in the event of any dispute concerning the interpretation
            or application of such an agreement. In the absence of such
            grievance procedure, binding arbitration may be ordered by the

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Commission upon the request of either party;...."

The law is clear. A Section 8 order is inappropriate where a grievance procedure that culminates in final and binding arbitration exists in a collective bargaining agreement. Town of East Longmeadow and AFSCME, Local 1364, 3 MLC 1046 (1976). "If an arbitration clause was in effect on the date in which the grievance arose, and the Town refuses to process that grievance, the Union's proper recourse would be file an action pursuant to G.L. c.150C rather than Section 8 of c. 150E." Framingham Fire Fighters, Local 1652 (RBA-76), (9/30/81).[1]

WHEREFORE, the Commission reaffirms its prior denial of the requests for binding arbitration and the cases are hereby dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

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

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[1]The Union in its letter of reconsideration, requested that the Commission convert these RBA's into unfair labor practice charges. This we refuse to do. If the Union wishes to file a prohibited practice charge it may do so by filing appropriate charges.