

FALL RIVER HOUSING AUTHORITY AND AFSCME, COUNCIL 93, MUP-4543 and MUP-4544
(4/16/82).

- (50 Duty to Bargain)
 - 53.52 outside sources of funding
- (60 Prohibited Practices by Employer)
 - 67.681 refusal to implement -- failure of third party to approve

Commissioners participating:

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

Appearances:

- James Clarkin, Esq. - Representing the Fall River Housing Authority
- Jerome McManus, Esq. - Representing American Federation of State, County, and Municipal Employees, Council 93, AFL-CIO

DECISION

Statement of the Case

These cases involve allegations by the American Federation of State, County, and Municipal Employees, Council 93, AFL-CIO (Union) that the Fall River Housing Authority (Authority) has violated Sections 10(a)(5) and (1) of G.L. Chapter 150E (the Law) by insisting, over the Union's objection, on third-party approval of a collective bargaining agreement between the Authority and the Union.

After an investigation of the Union's charge, the Commission¹ issued Complaints of Prohibited Practice on October 5, 1981.² A formal hearing was held on December 3, 1981 before Eric Turner, a duly designated Commission hearing officer. Both parties were allowed the opportunity to present testimonial and documentary evidence. Subsequent to the hearing the parties submitted briefs.

For the reasons stated below, we find that the Authority has violated Sections 10(a)(5) and (1) of the Law.

Findings of Fact

The parties stipulated to the following facts:

¹The parties do not dispute the Commission's jurisdiction over this matter.

²Case Nos. MUP-4543 and MUP-4544 were consolidated for purposes of a hearing as they involve identical charges -- one relating to the clerical unit represented by the Union, and the other relating to the maintenance unit represented by the Union.



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1. The Fall River Housing Authority is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive representative for purposes of collective bargaining of certain employees of the Fall River Housing Authority, including employees in a clerical bargaining unit and employees in a maintenance bargaining unit.
4. The Authority and the Union are parties to collective bargaining agreements covering clerical personnel and maintenance personnel which expired on March 31, 1981.
5. In the spring and summer of 1981, the Union and the Authority met to negotiate the terms of successor agreements to the expired contracts. Those meetings were held on March 19, April 7, 14 and 23, 1981.
6. On April 23, 1981 the bargaining agent for the Authority agreed to recommend two contract packages, one for the clerical and one for maintenance to the Authority's Board of Commissioners. The Union's negotiating committee agreed to recommend the same to their respective membership.
7. On May 11, 1981 at a meeting of the Authority, members of the Authority voted to approve the terms of the proposed agreements with the Union, but included the clause requiring Department of Community Affairs (DCA) approval. Thereafter, counsel for the Authority prepared a memorandum of agreement which was submitted to both the Union and the Authority.
8. On May 21, 1981 the Union ratified the terms of the proposed agreements as approved by the Authority, minus the clause requiring DCA approval.
9. Throughout negotiations for the successor agreements and up to the present, the Authority has taken the position that it will not execute successor agreements for the clerical or maintenance bargaining units, absent clauses providing for DCA approval.
10. The Authority was aware at the time of negotiating the successor agreements that the Union disagreed with the necessity of DCA approval of collective bargaining agreements by virtue of MUP-4056.³

³Case No. MUP-4056 refers to a case involving the same parties and the identical issue. A hearing officer issued a decision in Fall River Housing Authority, 7 MLC 2078 (1981) dismissing the complaint of prohibited practice on the basis that the Authority had not violated the Law because the Union had consented to conditioning the approval of the collective bargaining agreement in that case upon the approval of DCA.



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The Authority raises 25% of its funds from rents. The remainder comes from the federal government (HUD) and the state government (DCA). In the past all collective bargaining agreements have been submitted to DCA for approval, and DCA has established guidelines for approval.

Furthermore, there exists a contract between the Authority and DCA which states the following:

12. Approval by the Department of Contracts and Payments. The Authority agrees that all contracts, express or implied with respect to the Project, any agreement for judgement [sic], all payments on account of any contracts for property, materials or services acquired, furnished or used in connection with the Project, whether for its development or administration, shall be subject to the approval of the Department, and that it will make no payment on account of any such contract or for any such property, materials or services except with the prior written approval of the Department or by its order or by authority of an existing written rule or regulation of the Department or by provision of a budget approved by the Department.

During negotiations for the last three contracts no representative of DCA or the Commonwealth has participated in the negotiations.

Opinion

We note at the outset that although there have been hearing officer decisions which have addressed the issue of third-party approval of collective bargaining agreements, this is the first case which has reached the level of the full Commission.⁴

G.L. chapter 121B, Section 29 states in relevant part:

A Housing Authority shall bargain collectively with labor organizations representing its employees and may enter agreements with such organizations.

Notwithstanding any provision of the Law to the contrary, the provisions of Sections 4, 10 and 11 of Chapter 150E shall apply to said authorities and their employees.

By implication, the statute defines the Authority as the public employer as it places on the Authority the same lawful obligations to bargain with labor

⁴See Springfield Housing Authority, 7 MLC 1429 (H.O. 1980); Fall River Housing Authority, 7 MLC 2078 (H.O. 1981). These decisions were not appealed to the full Commission.



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organizations as other public employers have under Chapter 150E, Section 6.⁵ Section 6 requires that:

The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to a proposal or make a concession.

In the instant case the parties held several negotiation sessions which resulted in a new contract. Except for the issue of the addition of DCA as a signatory to that agreement, the parties have reached a complete settlement on all issues.

In NLRB v. Worcester Division of Borg-Warner, 356 U.S. 342, 42 LRRM 2034 (1958), the Supreme Court held that the National Labor Relations Act (NLRA) does not prohibit the voluntary addition of a party to a collective bargaining agreement. The National Labor Relations Board (NLRB) has consistently held that an employer and a union may voluntarily agree to the addition of a party as a condition precedent to a collective bargaining agreement. Nonetheless, it is equally well established that neither party can insist on the inclusion of such a condition over the objections of the other. Southern Michigan Gas Company, 206 NLRB 60 (1973); C & W Lektra Bat Co., 209 NLRB 1038 (1974); Cheese Barn, Inc., 22 NLRB 418 (1976). The addition of a third party, which is a permissive subject of bargaining, and the insistence by one party on such a condition precedent as the sole issue preventing full and final agreement constitutes a violation of the NLRA. Cheese Barn, Inc., supra.

We see no reason why our conclusion in the instant case should differ from NLRB precedent. The Authority as the public employer bargained with the Union and reached agreement on all issues except the addition of DCA as a signatory to the agreement. Such an issue is a permissive subject of bargaining and the Authority cannot insist on the inclusion of DCA without violating the law. Although we are aware of the financial constraints placed on the Authority by its funding agencies, those constraints should be thoroughly explored prior to the completion of an agreement so that both parties are aware of any financial barriers to the successful conclusion of their negotiations. However, once an agreement is reached the

⁵ Although the Authority argues that Section 6 of the Law does not apply to housing authorities, we disagree. Chapter 121B, Section 29 mandates that Chapter 150E, Section 10 shall apply to housing authorities, and Section 10(a)(5) incorporates by reference Section 6 of the Law:

Section 10

(a) It shall be a prohibited practice for a public employer or its designated representative to:

...

(5) Refuse to bargain collectively in good faith with the exclusive representative as required by section six;...

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Authority cannot refuse to execute the agreement pending the approval of a third party who is not the statutory employer. The insistence by the Authority on DCA's approval as a condition precedent to the execution and implementation of the collective bargaining agreement constitutes a violation of Sections 10(a)(5) and (1) of the Law.⁶

ORDER

WHEREFORE, on the basis of the foregoing, and pursuant to Section 11 of the Law, IT IS HEREBY ORDERED that the Fall River Housing Authority shall:

1. Cease and desist from refusing to execute and implement the collective bargaining agreements for Unit A and Unit B.
2. Take the following affirmative action which shall effectuate the policies of the Law:
 - a. The Authority shall execute and implement the collective bargaining agreements for Unit A and Unit B;
 - b. Post in conspicuous places, where employees of the Authority congregate, the attached Notice to Employees which shall remain posted for a period of thirty (30) days;
 - c. Notify the Commission within ten (10) days of the service of this decision and order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman

JOAN G. DOLAN, Commissioner

GARY D. ALTMAN, Commissioner

⁶We distinguish this case from a previous case involving the same parties, Fall River Housing Authority, 7 MLC 2078 (H.O. 1981), where the hearing officer found that the Authority had not violated the Law when it refused to execute and implement the collective bargaining agreement because the Union had consented to the conditioning of the agreement upon DCA approval. In the instant case, the Union did not give its consent.

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

The Massachusetts Labor Relations Commission has ruled that the Fall River Housing Authority has violated Sections 10(a)(5) and (1) of General Laws Chapter 150E by refusing to execute and implement the collective bargaining agreements of Unit A and Unit B which were duly negotiated with the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, the exclusive bargaining representative for Unit A and Unit B.

Chapter 150E of the General Laws gives public employees the following rights:

- To engage in self-organization;
- To form, join or assist any employee organization;
- To bargain collectively through representatives of their own choosing;
- To act together for the purpose of collective bargaining or other mutual aid or protection;
- To refrain from all of the above.

WE WILL NOT interfere with these rights. More specifically,

WE WILL execute and implement the Unit A and Unit B collective bargaining agreements.

EXECUTIVE DIRECTOR
FALL RIVER HOUSING AUTHORITY

