

CITY OF BOSTON AND BOSTON PUBLIC LIBRARY PROFESSIONAL STAFF ASSOCIATION, MUP-4358
(5/12/82). DECISION ON APPEAL OF HEARING OFFICER'S DECISION

- (60 Prohibited Practices by Employer)
 - 67.64 refusal to sign contract
- (80 Commission Decisions and Remedial Orders)
 - 82.11 back pay
 - 82.111 interest
 - 82.12 other affirmative action
 - 82.122 expenses, counsel fees
- (90 Commission Practice and Procedure)
 - 92.51 appeals to full commission

Commissioners Participating:

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

Appearances:

Mark A. McCue, Esq.	- Representing the City of Boston
Eric Nadworny, Esq.	
 Joanne F. Goldstein, Esq.	 - Representing the Boston Public Library Professional Staff Association

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

Statement of the Case

On December 3, 1981 Hearing Officer Alan H. Shapiro issued his decision in the above-captioned matter.¹ The hearing officer concluded that the City of Boston (City) had violated Sections 10(a)(5) and (1) of G.L. c.150E (the Law) by failing to execute for nearly four months a fully negotiated collective bargaining agreement with the Boston Public Library Professional Staff Association (Association).

The City timely filed a Notice of Appeal of the hearing officer's remedy. The City and the Association timely filed supplementary statements which have been duly considered.

We affirm that portion of the hearing officer's remedy which awards attorney's fees to the Association but we reverse that portion of the remedy which awards the employees represented by the Association interest on their negotiated raises and their retroactive pay.

¹The full text of the hearing officer's decision is reported at 8 MLC 1667 (H.O. 1981).



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Findings of Fact

We summarize the facts of this case as follows.

The Association and the City concluded negotiations for a successor collective bargaining agreement at the end of February, 1981. The agreement covered the period from July 1, 1980 until June 30, 1982. By March 1, 1981 the president of the Association had signed the agreement and returned it to the City for appropriate signatures. By late April, the City's failure to execute the agreement led the Association's attorney to write to the City's Office of Labor Relations threatening legal action if the agreement was not signed by May 1.

The City failed to meet the May 1 deadline. On May 13, 1981 the Association filed a charge with the Labor Relations Commission (Commission) alleging that the City's failure to execute the agreement violated Sections 10(a)(5) and (1) of the Law. On June 12, 1981 the Commission conducted an investigation of the charge. On June 26 Mayor Kevin White signed the agreement. On July 7 the Commission issued its Complaint of Prohibited Practice alleging violations of Sections 10(a)(5) and (1) of the Law. A hearing was subsequently held on September 24, 1981.

The execution process by the City required that it be signed by City negotiator Eric Nadworny, the supervisor of labor relations, the corporation counsel, the president of the trustees of the Boston Public Library, and the Mayor.

The predecessor collective bargaining agreement between these parties was executed by the Association on February 21, 1979 and by Mayor White on March 1, 1979.

Opinion

The only issue before us on appeal is the appropriateness of the hearing officer's remedy. We conclude that the presence of extraordinary circumstances in the instant case warrants the award of attorney's fees to the Association. These circumstances include the City's lack of even a colorable defense and its conduct in other cases in a similar time period with respect to the identical issue -- that is, the failure to implement a duly negotiated collective bargaining agreement. See, City of Boston, 8 MLC 1113 (1981) and County of Suffolk,² 8 MLC 1573 (1981). In both of these cases the Commission awarded attorney's fees to the unions, and in the City of Boston case that award has been upheld by the Superior Court.³

Another fact present in this case is the unexplained 4-month delay in obtaining the appropriate City signatures on the collective bargaining agreement. The City offered

²The Mayor of Boston is the chief executive officer of the County of Suffolk.

³See Suffolk Superior Court Docket No. 49394 (March 12, 1982).



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no justification for the delay in 1981, considering that the previous agreement had been executed within a two-week period in 1979.

On the other hand, we reverse the hearing officer's award of interest since it is based on assumptions of when the retroactive pay and wage increase should have been received. These assumptions are too speculative to justify such an award. Although the Union could have provided more definite evidence on the issue of possible payment dates, it did not do so. This case is distinguishable from County of Suffolk, supra where, in awarding interest, the Commission relied on evidence of a sum certain and a definite period of time.

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 with the Boston Public Library Professional Staff Association.
2. Take the following affirmative action which will effectuate the policies of the Law:
 - a. Make the Association whole for all expenses it incurred, including attorney's fees, in the investigation and preparation of this prohibited practice charge at the Commission.
 - b. Post in conspicuous places where employees in these units regularly work and where notices are usually posted copies of the attached Notice. Copies of said Notice shall be signed by Mayor Kevin H. White and posted by the City immediately upon receipt thereof and shall be maintained by it for thirty (30) consecutive days thereafter.
 - c. Notify the Commission in writing, within ten (10) days of receipt of this decision and order, of what steps the City has taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman

JOAN G. DOLAN, Commissioner

GARY D. ALTMAN, Commissioner



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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 City of Boston committed violations of General Laws Chapter 150E by failing to timely sign a collective bargaining agreement with the Boston Public Library Professional Staff Association.

WE WILL NOT interfere with, restrain or coerce any employees in the exercise of their rights guaranteed under Chapter 150E.

WE WILL NOT fail to bargain collectively in good faith with the Boston Public Library Professional Staff Association.

WE WILL make the Boston Public Library Professional Staff Association whole for expenses, including attorneys' fees, it incurred in investigating, preparing and presenting Case No. MUP-4358 at the Massachusetts Labor Relations Commission.

KEVIN H. WHILE, MAYOR
City of Boston

