

SPRINGFIELD HOUSING AUTHORITY AND AFSCME, COUNCIL 93, MUP-4769, 4770 (6/15/82).

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

Commissioners Participating:

Phillips Axten, Chairman
 Gary D. Altman, Commissioner

Appearances:

- Joseph Lettiere, Esq. - Counsel for the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO
- Mary Z. Stuart, Esq. - Counsel for Springfield Housing Authority

DECISION AND ORDER

Statement of the Case

On March 4, 1982, the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (Union) filed two charges with the Labor Relations Commission alleging that the Springfield Housing Authority (Authority) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of G.L. Chapter 150E (the Law).

Pursuant to Section 11 of the Law, the Commission conducted an investigation of the charges and issued a complaint on April 16, 1982 alleging that the Authority had violated Sections 10(a)(5) and (1) of the Law by failing to execute two collective bargaining agreements it reached with the Union. A formal hearing on the complaint was conducted on April 30, 1982 by Amy L. Davidson, a duly designated hearing officer of the Commission. In lieu of producing witnesses and testimony in this matter, the parties submitted the case based on stipulated facts and exhibits.¹ The Union made a closing argument on the record which has been duly considered. In addition, the Authority filed a written request for rulings of law on various issues.²

¹ Neither party contests the jurisdiction of the Commission to adjudicate this matter.

² Specifically, the Authority requested rulings from the Commission on the following matters:

1. With regard to the Contract for Financial Assistance (667; Sec. 12, 200-C: Sec. 11a):
 - a. Whether a collective bargaining agreement is a contract within the purview of the Contract for Financial Assistance (DFA)?

(continued)



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Findings of Fact

The parties agreed to the following as a stipulation of the facts in this case:

On August 6, 1981 the Union and the Authority entered into negotiations for a collective bargaining agreement for Unit A employees. The Union and the Authority met three times and reached agreement on the terms of a collective bargaining agreement on September 2, 1981.

On August 2, 1981, the Union and the Authority entered into negotiations for a collective bargaining agreement for Unit B employees. The Union and the Authority met two times and reached agreement on the terms of a collective bargaining agreement on August 28, 1981.

Subsequently, in the fall of 1981, sometime between September 2 and November 23, 1981 the Union ratified the collective bargaining agreements for Unit A and Unit B employees.

On or about November 23, 1981, the Housing Authority Board of Commissioners unanimously voted to approve the collective bargaining agreements for Unit A and Unit B subject to approval from the Executive Office of Communities and Development (EOCD).

2 (continued)

- b. Whether this contractual relationship between the Executive Office of Communities and Development (EOCD) and Springfield Housing Authority (SHA) precludes SHA from both executing a collective bargaining agreement and implementing a collective bargaining agreement without prior approval of EOCD?
 - c. Whether a regulation of EOCD which reserves the right to disapprove a collective bargaining agreement between a housing authority and its employees violates M.G.L. c.150E and M.C.L. c.121B?
2. With regard to Regulations to Housing Authorities Governing Collective Bargaining (760 CMR 28.00):
- a. Whether the regulations conflict with the law, M.G.L. c.150E?
 - b. Whether a regulation pertaining specifically to collective bargaining exceeds the regulatory ability of EOCD and is more properly a function of Labor & Industries?
 - c. Whether a regulation of EOCD which reserves the right to disapprove a collective bargaining agreement between a housing authority and its employees violates M.G.L. c.150E and M.G.L. c.121B?
- (continued)



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At no time did the Union agree that EOCD approval constituted a condition precedent to the execution of the collective bargaining agreements for Unit A and Unit B.

By letters dated December 28, 1981, Mr. Albert B. Gravelle, Director of the Bureau of Housing Management of EOCD disapproved the collective bargaining agreements for Unit A and Unit B.

By letter dated January 12, 1982, Raymond Asselin, Executive Director of the Authority notified Kenneth Dietrich, a Staff Representative for the Union that the Authority was unable to execute the collective bargaining agreements because of EOCD guidelines.

Since January 12, 1982, the Housing Authority has failed and refused to sign the collective bargaining agreements for Unit A and Unit B employees.

Opinion

The parties in this case held several negotiation sessions which resulted in two collective bargaining agreements. In addition, both the Union and the Authority voted to approve the terms of the agreements. Except for disapproval of the agreements by the EOCD the parties had completely settled all issues.

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

A Housing Authority shall bargain collectively with the 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 necessary implication, the statute defines the Authority as the public employer. Specifically, the Authority is legally required to bargain with labor organizations to the same extent as other public employers under Chapter 150E. Section 6 of Chapter 150E requires that:

The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making

2 (continued)

The Commission's decision and order below set forth all findings of fact and rulings of law necessary to dispose of allegations contained in the complaint. Moreover, the Authority's questions essentially amount to a request for advisory rulings, which we deem inappropriate under our regulations. See 402 CMR 16.06.



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process, and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, but such obligation shall not compel either party to agree to a proposal or make a concession.

Failure to execute an agreed upon collective bargaining agreement is a per se violation of Section 10(a)(5) of the Law. Belmont School Committee, 4 MLC 1707 (1978); Springfield Housing Authority, 7 MLC 1429 (H.O., 1980); Watertown Housing Authority, 8 MLC 1720 (H.O., 1981). Even though the Authority made an attempt to seek approval of the agreements by the EOCD, the absence of such approval does not justify the refusal of the Authority to execute the collective bargaining agreements. See Cheese Barn Inc., 222 NLRB 418 (1976); Fall River Housing Authority, MLC (Case No. MUP-4543, 4/16/82). The present case is legally indistinguishable from Fall River, in which we stated:

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 Authority cannot refuse to execute the agreement pending the approval of a third party who is not the statutory employer.

Therefore, the refusal of the Authority to execute the collective bargaining agreements it reached with the Union based upon the rejection of the agreements by a third party who is not the statutory employer constitutes a violation of Sections 10(a)(5) and (1) of the Law.³

Order

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

1. Cease and desist from failing to bargain in good faith in violation of Sections 10(a)(5) and (1) of the Law by refusing to execute the collective bargaining agreements for Unit A and Unit B.
2. Take the following affirmative action which shall effectuate the policies of the Law:

³We distinguish this case from a previous case, Fall River Housing Authority, 7 MLC 2078 (H.O. 1978), 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 conditioning the agreement upon DCA approval. In the instant case, the Union did not give such consent.



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- a. The Authority shall execute 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

GARY D. ALTMAN, Commissioner

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 held that the Springfield Housing Authority has violated Sections 10(a)(5) and (1) of General Laws Chapter 150E by refusing to execute 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 the Unit A and Unit B collective bargaining agreements.

EXECUTIVE DIRECTOR
SPRINGFIELD HOUSING AUTHORITY

