
EVERETT HOUSING AUTHORITY AND IBEW, LOCAL 103, MUP-4650 (9/1/82). DECISION ON
APPEAL OF HEARING OFFICER'S DECISION.

(50 Duty to Bargain)

54.626 free gasoline

(60 Prohibited Practices by Employer)

67.8 unilateral change by employer

(90 Commission Practice and Procedure)

92.51 appeals to full commission

Commissioners participating:

Joan G. Dolan, Commissioner

Gary D. Altman, Commissioner

Appearances:

Joseph W. Nigro

- Representing the International Brother-
hood of Electrical Workers, Local 103

Sydney S. Rosen, Esq.

- Representing the Everett Housing
Authority

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On March 30, 1982, Hearing Officer Timothy J. Buckalew issued his decision in this case pursuant to the expedited hearing procedure established by Section 11 of G.L. c.150E (the Law).¹ The hearing officer concluded that the Everett Housing Authority (Authority or Employer) violated Sections 10(a)(5) and (1) of the Law by unilaterally changing its gas allotment policies with respect to members of the International Brotherhood of Electrical Workers, Local 103 (Union).

The Authority filed a timely notice of appeal of the hearing officer's decision pursuant to Commission Rules, 402 CMR 13.13. The Authority also filed a Supplementary Statement, which has been duly considered. As elaborated below, we affirm the hearing officer's decision and order.

Findings of Fact

In its supplementary statement, the Authority raises some questions concerning the hearing officer's findings of fact but fails to point with specificity to the findings challenged and to direct the Commission's attention to the evidence supporting its own proposed factual findings. See Commission Rules 402 CMR 13.13(5). Without such specific factual reference, the Commission limits its review to the hearing officer's conclusions of law. City of Holyoke Gas & Electric Dept., 8 MLR 1278, 1279 (1981). We therefore adopt the hearing officer's factual findings which we here summarize.

Since at least 1975, employees in the Union's bargaining unit who used their cars on Authority business received a twelve and one-half gallon weekly gasoline allotment. This allotment was embodied in an expired collective bargaining

¹ For the full text of the hearing officer's decision, see 8 MLR 2018 (H.O. 1982).

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agreement.² In practice, an employee who worked at least one day during a week and who used her or his car on Authority business received the full allotment; the allotment was never prorated. Employees who did not work at all during a week received no allotment for that week. On October 26, 1981, the Authority, over the Union's protests, began prorating the allotment such that employees received two and one-half gallons per day for each day worked. Despite the Union's continuing protest, the Authority refused to bargain over the change in allotment policy.

Opinion

The Authority contends, on appeal, that the hearing officer erred (1) in finding that the gasoline allotment constituted a form of wages and (2) in his remedy.

An employer commits a unilateral change violation by changing wages, hours, standards of productivity and performance, or any other terms and conditions of employment of its employees without first providing the exclusive representative of those employees an opportunity to bargain. Town of Randolph, 8 MLR 2044, 2051 (1982); Boston School Committee, 3 MLC 1603 (1977).

We conclude that the gasoline allotment here at issue falls squarely within the statutory category of "wages...and any other terms and conditions of employment" over which an employer must bargain under Section 6 of the Law. The gasoline allotment was an agreed upon benefit that had been conferred upon employees for at least five years. Like many other forms of employee remuneration, it constituted a mandatory subject of bargaining. See Gulf Refining and Marketing Co., 238 NLRB 129 (1978) (employee discounts); Radioear Corp., 199 NLRB 1161, 1164 (1972) (turkey bonus money). Therefore the hearing officer correctly found that the Authority's institution of a prorated gasoline allotment constituted a unilateral change in violation of the duty to bargain in good faith embodied in Section 10(a)(5) of the Law.

As a remedy, the hearing officer ordered the Employer to reinstitute the past practice of not prorating the allotment and to reimburse employees detrimentally affected by the unlawful change.³ The Order below is consistent with the Law and

²Paragraph D of Article X of the expired collective bargaining agreement between the Authority and the Everett Housing Association, the predecessor employee organization for the unit now represented by the Union, states as follows:

"1. Each employee of the Authority shall receive a transportation allowance equal to twelve and one-half (12-1/2) gallons of regular gasoline per week, for each employee who uses his car on authority business."

³The Authority's supplementary statement interprets the remedy below to order compensation to employees who would have been ineligible for gasoline allotments under the previous practice. We do not so interpret that Order. It clearly orders compensation only to those bargaining unit members who would have received it under the former practice of not prorating the gasoline allotment. Employees who never previously received any allotment would, of course, not be entitled to one under this remedy.

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Commission practice, and we affirm it in its entirety. See Section 11 of the Law; New Bedford School Committee, 8 MLR 1472, 1481 (Order restoring status quo and making affected employees whole for employer's unilateral change violation).⁴

Conclusion

On the basis of the foregoing, we affirm the decision of the hearing officer and conclude that the Authority has engaged in a prohibited practice within the meaning of Sections 10(a)(1) and (5) of the Law.

Order

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Everett Housing Authority shall:

1. Cease and desist from:
 - (a) Refusing to negotiate in good faith by unilaterally implementing the practice of paying the gas allotment benefit on a prorated basis without affording the Union notice and an opportunity to bargain over the change.
 - (b) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of their rights under the Law.
2. Take the following affirmative action which will effectuate the policies of the Law:
 - (a) Restore the practice of paying maintenance department employees otherwise eligible to receive the gas allotment 12-1/2 gallons of regular gas per week regardless of the actual days worked in a week.
 - (b) Make members of the bargaining unit represented by the Union whole for any lost earnings by paying affected members of the Association the cash equivalent of the gas allotment benefits withheld as a result of unlawful unilateral action.
 - (c) Preserve and upon request make available to the Commission or its agents all records necessary to analyze the amount of benefits due under this Order.

⁴The Employer has charged that the hearing officer's decision condones fraudulent practices within the Authority. We, of course, do not condone fraud and sympathize with the Employer's concerns. Nevertheless, what is at issue before us is a unilateral change in a term and condition of employment. Although an employer may be motivated by legitimate concerns, such concerns do not obviate the statutory obligation to bargain with employee representatives before effecting changes in terms or conditions of employment.

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- (d) Post signed copies of the attached Notice to Employees in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, and leave copies posted for a period of thirty (30) days thereafter.
- (e) Notify the Commission in writing, within ten (10) days of the service of the Decision and Order, of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JOAN G. DOLAN, Commissioner
GARY D. ALTMAN, Commissioner

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

After a hearing, the Massachusetts Labor Relations Commission has determined that the Everett Housing Authority has violated Sections 10(a)(5) and (1) of General Laws Chapter 150E by unilaterally changing the gas allotment benefit of employees in the Maintenance Department represented by the International Brotherhood of Electrical Workers, Local 103.

WE WILL restore the prior practice of giving employees who use their cars at least one day a week on Authority business the entire 12-1/2 gallon gas allotment per week regardless of the number of days actually worked in a week.

WE WILL make whole all members of the maintenance department represented by the International Brotherhood of Electrical Workers, Local 103 for all lost gas allotment benefits caused by the Authority's prorating policy.

WE WILL NOT make unilateral changes in wages, hours, or terms and conditions of employment without bargaining with the International Brotherhood of Electrical Workers, Local 103.

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

JOSEPH CURNANE
EXECUTIVE DIRECTOR

JOSEPH SPAYNE, CHAIRMAN
EVERETT HOUSING AUTHORITY

