

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE AND SEIU,
LOCAL 509, SUP-2617 (5/13/83). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

- (60 Prohibited Practices by Employer)
 - 67.15 union waiver of bargaining rights
 - 67.3 furnishing information
 - 67.31 charges for documents
 - 67.8 unilateral change by employer
- (90 Commission Practice and Procedure)
 - 92.51 appeals to full commission

Commissioners participating:

Paul T. Edgar, Chairman
Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

- | | |
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| Jonathan P. Hiatt, Esq. | - Representing Local 509, Service Employees International Union, AFL-CIO |
| Valerie J. Semensi, Esq. | - Representing the Commonwealth of Massachusetts, Commissioner of Administration and Finance |

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

Hearing Officer Amy L. Davidson issued her decision on October 27, 1982,¹ finding that the Commonwealth of Massachusetts, Commissioner of Administration and Finance (Commonwealth) violated Sections 10(a)(5) and (1) of G.L. c.150E (the Law) by unilaterally imposing upon Local 509, Service Employees International Union (Union) the costs of copying relevant information. The Commonwealth filed a timely notice of appeal and a supplementary statement, which has been fully considered.

Statement of the Facts

In August, 1981, the Union filed a grievance protesting certain personnel actions in the Department of Public Health. To aid its evaluation of the grievance, the Union requested certain budgetary information. When all the requested information was not provided, the Union filed a charge with the Labor Relations Commission (Commission) regarding the Commonwealth's failure to provide relevant and necessary information. At the Commission's investigation, the Commonwealth, through its Office of Employee Relations (OER), agreed to provide the requested information. In a letter dated January 20, 1982, Kevin Preston, Assistant Director of OER, wrote to Ann Bray, the Union business agent, that there would be a charge of \$.20 per page for the information. He explained that the Union's refusal to pay "a significant bill for previous

¹The full hearing officer decision is reported at 9 MLC 1387 (1982).



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copies to the Massachusetts Rehabilitation Commission" necessitated "that [the Union] pay for any further copies of documents immediately upon receipt of the information." A subsequent letter from John McKeon, Deputy Director of OER, on March 23, 1982, raised the charge to \$.25 per page. McKeon explained:

Under 801 CMR 2.02(6), the various state agencies shall require the payment of copying fees in accordance with the provisions or regulations of such agencies, not to exceed \$0.25 per page. Effective 25 September 1981, the Executive Office of Administration and Finance adopted such a regulation which requires the fee of \$0.25 per page for anything coming from this office.

The Union protested the fee's imposition, eventually paid under protest, and filed the charge in the instant case.

Prior to this incident, the Commonwealth had provided all such information to the Union free of charge with two exceptions.² In March, 1981, a class action grievance against the Department of Public Welfare caused the Union to request several hundred documents from the department. After the department informed Ann Bray, the Union representative, that the large number of documents requested would require imposition of a \$.10 per page fee, she received access to the documents and pared her request to 130 pages. After providing the 130 pages, the employer billed the Union \$13 and the Union paid the bill without protest. The other instance involved the "Parham" grievance in December, 1981, where a large number of documents was also involved. Again, the Union paid the copying fee without protest. These were the only such cases of the Union's being charged for copies of documents during the ten-year period prior to the instant case.

The applicable collective bargaining agreement contained two clauses regarding the providing of information. Article 24, Section 1, gave employees the right to copies of all evaluations in their personnel files. Under Article 5, Section 8, the Employer was required to periodically provide the Union with various updated lists of employees, broken down into specified categories. All of this information the Commonwealth has provided free of charge.

Opinion

We have reviewed the findings and conclusions of law of the hearing officer and find no error. We agree that the issue of the allocation of costs for copying information reasonably relevant to a union's bargaining agent role is a mandatory subject of bargaining. See General Motors Corp., 243 MLRB 186 (1979); Westinghouse Electric Corp., 239 NLRB 106, 113 (1978); Food Employer Council, Inc., 197 NLRB 651 (1972).

²Although four such incidents were referred to in the record, the hearing officer concluded that only two were sufficiently verified to be accepted into her factual findings. See 9 MLR 1387, 1389 n.3, 1390 n.4, 1395 n.6. The Commonwealth does not effectively challenge this finding. See 402 CMR 13.13(5).



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We further agree with the hearing officer's reasoning and conclusion that this case presents no waiver by the Union, either by contract, see Commonwealth of Massachusetts, 9 MLC 1355, 1361 (1982), or by inaction, see Commonwealth of Massachusetts, 7 MLC 2026, 2030 (1981), cf. Town of Watertown, 8 MLC 1376 (1981). Finally, we find nothing in G.L. c.66, Section 10 which would prevent the Commonwealth from bargaining with the Union over the allocation of copying costs.

Therefore, we affirm the decision and order of the hearing officer in its entirety.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Commonwealth of Massachusetts, Commissioner of Administration and Finance shall:

1. Cease and desist from:
 - a) Refusing to negotiate in good faith by unilaterally imposing photocopying charges on Local 509, Service Employees International Union, AFL-CIO for the provision of requested information which is necessary and reasonably relevant to grievance processing;
 - b) Refusing to negotiate in good faith by refusing to grant Local 509 access to information necessary and reasonably relevant to grievance processing prior to photocopying;
 - c) 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 providing grievance-related information to Local 509 free of charge;
 - b) Allow Local 509 access, upon request, to grievance-related information prior to photocopying;
 - c) Make Local 509 whole by reimbursing it the \$23.00 it paid on April 1, 1982 to obtain information related to a Department of Public Health layoff grievance and any sums paid for grievance-related information since that date;
 - d) Upon request, bargain collectively with Local 509 to resolution or impasse regarding the proposal to charge the Union for grievance-related information;
 - e) Post signed copies of the attached Notice to Employees in conspicuous



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places where employees represented by Local 509 usually congregate, or where notices are usually posted and leave copies posted for a period of thirty (30) days thereafter;

- f) Notify the Commission, in writing, 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

PAUL T. EDGAR, CHAIRMAN
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

The Massachusetts Labor Relations Commission has determined that the Commonwealth of Massachusetts, Commissioner of Administration and Finance has violated certain sections of General Laws, Chapter 150E (the State Public Employee Collective Bargaining Law). Under the Law, the Commonwealth must bargain with Local 509, Service Employees International Union, AFL-CIO, which is the exclusive representative of certain of its employees on all matters concerning wages, hours, and other terms and conditions of employment. The Commonwealth violated the Law by unilaterally instituting a policy of charging Local 509 for the provision of information requested in the course of grievance processing in certain departments of the Commonwealth without first bargaining with Local 509 and by refusing to grant Local 509 access to such information prior to photocopying.

WE WILL NOT refuse to bargain collectively with Local 509 by unilaterally changing our policies with respect to charging the Union for the provision of grievance-related information.

WE WILL NOT refuse to bargain collectively with Local 509 by refusing to grant it access to grievance-related information prior to photocopying.

WE WILL NOT otherwise interfere with, restrain, or coerce employees represented by Local 509 in the exercise of their rights under the Law.

WE WILL reinstate the practice of providing Local 509 with grievance-related information free of charge.

WE WILL, upon request, bargain with Local 509 regarding the proposal to charge it for grievance-related information.



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WE WILL, upon request, provide Local 509 with access to information related
to grievance processing prior to photocopying.

OFFICE OF EMPLOYEE RELATIONS

