COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
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WOBURN SCHOOL COMMITTEE	*	
	*	Case No. MUP-15-4575
	*	
and	*	Date Issued: September 8, 2016
	*	
WOBURN TEACHERS ASSOCIATION	*	
	*	

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

Jean E. Zeiler, Esq.:	Representing the Woburn School Committee
Jonathan Conti, Esq.:	Representing the Woburn Teachers Association

HEARING OFFICER'S DECISION

Summary

The issues in this case are whether the Woburn School Committee (School Committee) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by 1) repudiating the ground rules for negotiations with the Woburn Teachers Association (Association) and 2) imposing a condition on the negotiation of a successor contract. Based on the record and for the reasons explained below, I conclude that the School Committee repudiated the parties' ground rules in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

I also find that the School Committee did not unlawfully impose a condition on the negotiation of a successor contract and dismiss this allegation.

Statement of the Case

On May 18, 2015, the Association filed a Charge of Prohibited Practice with the Department of Labor Relations (DLR) alleging that the School Committee had engaged in prohibited practices within the meaning of Sections 10(a)(1) and 10(a)(2) of the Law. The DLR docketed the charge as MUP-15-4575. On May 18, 2015, the Association filed an Amended Charge of Prohibited Practice, alleging that the School Committee had engaged in prohibited practices within the meaning of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law. On August 28, 2015, a DLR investigator issued a Complaint of Prohibited Practice. The School Committee filed its answer to the complaint on October 1, 2015.

I conducted a hearing on March 30, 2016. The parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Following the close of hearing, the Association and School Committee each timely filed post-hearing briefs.

Ruling on Show Cause

On October 6, 2015, the Association filed a Petition for Mediation and Fact-Finding (Petition) with the DLR, contending that the parties were at impasse on the issues of "compensation package and health care premium contribution split." After DLR

mediation, the parties settled their dispute and agreed to a contract on or about May 26, 2016.[1]

On June 13, 2016, I issued the parties a Show Cause Notice, requesting that they show cause why I should not dismiss the complaint as moot based on the fact that they had entered into a successor contract. Both the Association and School Committee timely filed responses. After considering the parties' arguments, I have decided not to dismiss the complaint as moot, as there is a possibility that the challenged conduct will recur in substantially the same form, especially since the School Committee has not acknowledged that its actions, through the Mayor, were in violation of the Law. See, City of Boston, 41 MLC 119, 129, MUP-13-3771 (November 7, 2014).

Therefore, on the entire record, including my observation of the demeanor of witnesses, I make the following findings:

Stipulations of Fact

1. The City of Woburn (City) is a public employer within the meaning of Section 1 of the Law.

2. The [School Committee] is the collective bargaining representative of the City for the purpose of dealing with school employees.

3. The Association is an employee organization within the meaning of Section 1 of the Law.

4. The Association is the exclusive collective bargaining representative for certain teachers employed in the Woburn public schools.

5. The School Committee and the Association are parties to a collective bargaining agreement that expired on August 31, 2014.

[1] I take administrative notice of these facts.

6. In or around January 2014, the School Committee and the Association began negotiations for a successor collective bargaining agreement.

7. On or about February 11, 2014, the School Committee and the Association agreed to ground rules governing their negotiations for a successor collective bargaining agreement.

8. The ground rules governing the parties' negotiations for a successor collective bargaining agreement include the following provision:

> Negotiations shall not be conducted in the media; no media releases shall be issued except by mutual consent or by providing 24 hours' notice of a media release.

9. At all relevant times, Mayor Scott Galvin (Mayor) was a member of the School Committee's negotiating team for a successor collective bargaining agreement.

10. On January 6, 2015, the Mayor delivered the state of the city address in which he made the following statement:

> All City labor contracts have expired and are at different stages of negotiation. As always, it is the City's goal to treat our employees fairly, and with respect. As part of our negotiations, we have already offered an extremely fair package to some of the City's unions. However, every long-term contract I sign must include concessions on health insurance.

Findings of Fact

On January 9, 2015, the Daily Times Chronicle, a local newspaper, ran an article about the Mayor's state of the city address, noting that Association representatives staged an informational picket outside City Hall prior to the state of the city address holding signs

that read "Woburn Unions Deserve a Fair Contract."[2] The article also quoted the portion of the Mayor's speech referenced in Stipulation 10.[3]

Following the Mayor's address, the parties met for successor bargaining on March 3, April 7, June 23, August 31, and September 24, 2015. Prior to the March 3 meeting, the School Committee had proposed on February 4, 2015, the following salary percentage increase and employee insurance percentage contribution increase:

Year	Salary	Insurance
2014 – 2015	2.0	0
2015 – 2016	2.5	2
2016 – 2017	2.5	3
2017 – 2018	2.0	0
Total:	9.0	5[4]

On April 7, 2015, the School Committee proposed the following increases:

Year	Salary	Insurance
2014 – 2015	2	0
2015 – 2016	2	2

[2] Based on the article in the Daily Times Chronicle, I conclude that at least that media outlet was in attendance at the address.

[3] Prior to the Mayor's address, neither he nor the School Committee obtained the Association's consent to make the statements, nor did either provide the Association with 24 hours' notice.

[4] Although the Association contends that this proposal included a 5% premium increase split as 2.5% and 2.5% over two years, the relevant exhibit shows it was a proposed 2% and 3% split.

2016 – 2017	2.5	2
2017 – 2018	2.5/.5	1
Total:	9.5	5

On April 27, 2015, the Mayor wrote a letter to the editor of a newspaper,[5] in which he outlined his view on the state of contract negotiations.[6] In it, he stated:

> On the table for teachers is an offer of a 9.5 percent salary increase over four years... At the same time, we are requiring over the course of the four-year period, the teacher contribution for the cost of health insurance to gradually increase to 25 percent, with the City paying the other 75 percent. The teachers currently pay 20 percent.
>
> The renewal cost for the City's health insurance as of July 1, 2015, will increase by more than $1 million. Because of the continued upward cost pressure on medical services and prescription drugs, and its impact on the City budget, an increase in all employees' contribution to the rising cost of health insurance is a necessity.

On June 23, 2015, the School Committee proposed the following increases:

Year	Salary	Insurance
1	2.0	0
2	2.0	2.5
3	2.5	0
Total	6.5	2.5

At this meeting, the School Committee also proposed increasing the insurance contribution percentage for new hires from 20% to 30%.

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[5] The newspaper is not identified.

[6] The Association does not allege that this letter violated the parties' ground rules as it received notification prior to publication.

On August 31, 2015, the School Committee proposed the following:

Year	Salary	Insurance
2014 – 2015	2.0	0
2015 – 2016	2.0	2.5
2016 – 2017 (day 1)	1.5	1.25
2016 – 2017 (day 90)	1.5	0
2017 – 2018 (day 1)	1.75	.75
2017 – 2018 (day 90)	1.75	.5
Total	10.5	5

On September 24, 2015, the School Committee proposed the following:

Year	Salary	Insurance
1	2	0
2	2	2.5
3	3	1.25
4	1.75/1/75	.75/.5
Total	10.5	5

At this session, the School Committee also proposed allowing Association members to receive a payment if they opted out of the health insurance plan.

After the Association filed the Petition, and prior to this hearing, the parties engaged in eight DLR mediation sessions. All of the School Committee's proposals at

mediation included a 5% increase to employees' health insurance premium contribution.[7] After DLR mediation, the parties settled their dispute and agreed to a contract on or about May 26, 2016.

At no time during negotiations did the School Committee propose health insurance plan design or co-pay changes.

Opinion

Repudiation of Ground Rules

The Association alleges that the School Committee repudiated the agreed-upon ground rules for successor negotiations by the Mayor's statement during his state of the city address regarding the health insurance concessions described above. Section 6 of the Law requires a public employer to meet with the exclusive representative and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. Where an employer violates the parties' agreed-upon ground rules for contract negotiations, the Commonwealth Employment Relations Board (Board) holds that such conduct constitutes a refusal to bargain in good faith in violation of Section 10(a)(5) of the Law. Bristol County Sheriff's Department, 31 MLC 6, 21, MUP-2872 (July 15, 2004); North Middlesex School Committee, 28 MLC 160, 162, MUPL-4153 (October 23, 2001).

Here, the parties agreed to the following language in their ground rules:

[7] The parties did not provide the specifics of the School Committee's proposals during mediation.

> Negotiations shall not be conducted in the media; no media releases shall be issued except by mutual consent or by providing 24 hours notice of a media release.

However, without providing 24 hours' notice to the Association or obtaining its prior consent, the Mayor included statements in his state of the city address, which was attended by the media, pertaining to the parties' contract negotiations, specifically, that a contract must include concessions on health insurance.

The School Committee argues that the Mayor's statement did not violate the ground rules because he did not make it at a press conference or directly to a media outlet. According to the School Committee, the fact that the media may have been present at the open meeting does not mean the speech was directed to the media. The School Committee makes this contention in an attempt to distinguish Town of Dartmouth, which involves a ground rule prohibiting press releases, by noting that the Chairman of the Board of Selectmen in that case made statements regarding contract negotiations in radio and newspaper interviews. 38 MLC 64, MUP-10-5831 (H.O. August 29, 2011), aff'd. 38 MLC 169 (January 30, 2012). However, the finding of a violation in Town of Dartmouth is not about the specific forum in which the selectman made his comments to the media, but rather that they "unnecessarily disclosed the substance of negotiations and breached the parties' ground rules. The [Board] has held that the least possible disclosure should be made during the course of negotiations because when either side makes public pronouncements of its position then it must answer to its constituents for any deviation from the stated position...[which] prolongs negotiations and defeats the normal process

of compromise inherent in negotiations." Here, the fact that the Mayor did not issue a press release, or specifically direct his comments to the media, is irrelevant to the fact that he provided information pertaining to the parties' negotiations during his state of the city address, which was covered by the media.

The School Committee further contends that the Mayor was informing public officials of the budgetary issues facing the City and therefore he was not negotiating "in the media." However, the Mayor's statement that "every long-term contract I sign must include concessions on health insurance" does not simply provide information on the budget. Rather, he is discussing a negotiating position in a public address that the media covered.[8] Further, although the School Committee argues that the Mayor's statement did not constrain the employer or harden bargaining positions, the effect of such disclosure is irrelevant to the question of whether it was a violation of the parties' ground rules.

For the reasons set forth above, I find that the School Committee violated the Law as alleged in Count I of the Complaint.

Preconditioning Bargaining

The Association argues that the Mayor's comments at the state of the city address unlawfully preconditioned the negotiation of a successor agreement on the Association's

[8] The School Committee also notes that the Association permitted its members to publicly protest the contractual terms under negotiation, which was intended to draw media coverage. This point is also irrelevant, as the parties' ground rules do not allow the School Committee to make statements to the media even if the Association's actions had drawn the media to the event. In addition, there is no evidence that the media only covered the address because of the Association's public protest.

acceptance of health insurance concessions. Good faith bargaining requires parties to negotiate with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. King Philip Regional School Committee, 2 MLC 1393, MUP-2125 (February 18, 1976). Each party must acknowledge and treat the other as a full partner in determining the employees' conditions of employment, and it is a prohibited practice for an employer or union to bargain with any lesser degree of commitment. Town of Hudson, 25 MLC 143, MUP-1714 (April 1, 1999). It is well-settled, and the School Committee does not dispute, that the cost of health insurance is a mandatory subject of bargaining. Town of Watertown, 32 MLC 54, MUP-01-3275 (June 29, 2005).

The Association cites to Town of Greenfield in support of its position. 36 MLC 54, MUP-07-5091 (October 2, 2009).[9] In that case, the school committee was found to have violated the Law when the mayor provided the school committee with a model contractual health insurance provision with the message that "the language that will be acceptable is the language attached hereto." The model provision specified the town's percentage contribution rate and employee co-payment rates for office visits, hospital inpatient admissions, and outpatient surgical and emergency room visits. The mayor also stated that no new agreement would be legally enforceable unless the health insurance language had been agreed to by the mayor's office. The Hearing Officer reasoned that

[9] The case is an unappealed hearing officer decision, which is considered binding precedent only on the parties involved in that case.

"by dictating the terms of the agreement prior to the commencement of the negotiations, prohibiting the School Committee from negotiating or deviating therefrom without express permission from the Town, and conditioning a new or extended agreement on the adoption of the Town's health insurance provision, the Town has imposed acceptance of its health insurance provision as a precondition to the parties successor contract negotiations."

The Mayor's statement here is far less specific than what was at issue in Town of Greenfield. Unlike the Greenfield mayor, the Mayor did not provide the School Committee with required language or percentage contribution rates for a contract. Rather, he only stated that a contract must contain health insurance concessions. Finding this statement to be a violation of the Law would needlessly constrain bargaining as it is difficult to imagine contract negotiations where neither party would be permitted to state that the opposing party must make concessions on a particular subject in order to reach agreement.[10]

The Association seeks to strengthen its position by arguing that the School Committee in fact remained firm in its position that the Association would have to agree to a 5% increase in employee health insurance contributions, as every School Committee proposal but one included this increase. However, the Mayor never stated that the

[10] The fact that the Mayor made the statement in public at the state of the city address is not at issue here, as I have already found that to be a violation of the parties' ground rules. Instead, I consider the statement standing alone, and not the setting at which it was made.

Association would specifically have to accept a 5% increase; he simply articulated that the Association would have to make concessions in order to reach a contract. As well-recognized by the Board, neither party is required to make concessions in bargaining or compromise a strongly-felt position. Town of Braintree, 8 MLC 1193, 1197, MUPL-2363 (July 1, 1981). It logically follows that neither party must be prohibited from verbalizing its strongly-felt position.

Moreover, in addition to attempting to spread the 5% increase in a variety of ways through its assorted proposals, and making a proposal that did not include a 5% increase, the School Committee also continued to increase its wage proposals, from an initial 9% total increase to a 10.5% total increase. Thus, although it did not retreat from its position that the Association must make healthcare concessions, it also continued to meet with the Association for bargaining on this issue, and made its own concessions with regard to wages, demonstrating a lack of bad faith. Cf. Vanguard Fire & Supply Co., Inc. d/b/a Vanguard Fire & Security Systems and Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, 345 NLRB 1016 (2005) (employer unlawfully preconditioned additional bargaining meetings on the union's submission of a detailed bargaining agenda, which is a non-mandatory subject of bargaining); Sheet Metal Workers International Association, Local Union No. 38 and Elmsford Sheet Metal Works, Inc., 231 NLRB 699 (union unlawfully insisted on the inclusion of provisions for interest

arbitration and industry funds, which are non-mandatory subjects of bargaining, in the collective bargaining agreement as a precondition for signing the agreement).[11]

For these reasons, I conclude that the School Committee did not violate the Law as alleged in Count II of the complaint and dismiss this allegation.

Conclusion

Based on the record and for the reasons explained above, I find that the School Committee repudiated the parties' ground rules in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. I also find that the School Committee did not unlawfully impose a condition on the negotiation of a successor contract and dismiss this allegation.

Order

WHEREFORE, based upon the foregoing, it is hereby ordered that the Woburn School Committee shall:

1. Cease and desist from:

   a) Failing to bargain in good faith by breaching the ground rules for negotiations; and

   b) Otherwise interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.

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[11] In its brief, the Association also argues that the Mayor's April 27, 2015 letter to the editor, in which he stated that "we are requiring over the course of a four year period, the teacher contribution for the cost of health insurance to gradually increase to 25 percent, with the city paying the other 75 percent" reiterated his inflexible position that the employee contribution must increase by 5%. However, a further reading of the article reveals that the Mayor was describing the School Committee's most recent proposal at that time, and not its overall bargaining position. Moreover, the complaint does not allege that any comments in this article were in violation of the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

   a) Bargain in good faith by adhering to the ground rules for negotiations;

   b) Post immediately in all conspicuous places where members of the Association's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the School Committee customarily communicates to its employees via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and

   c) Notify the DLR in writing of the steps taken to comply with this decision within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

Kerry Bonner

KERRY BONNER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Woburn School Committee has violated Section 10(a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by breaching the ground rules for negotiations with the Woburn Teachers Association.

The Woburn School Committee posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:
to engage in self-organization; to form, join or assist any union;
to bargain collectively through representatives of their own choosing;
to act together for the purpose of collective bargaining or other mutual aid or protection; and
to refrain from all of the above.

WE WILL NOT fail to bargain in good faith by breaching the ground rules for negotiations.

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

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Bargain in good faith by adhering to the ground rules for negotiations.

_____ _____
WOBURN SCHOOL COMMITTEE DATE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).