STATE OF CONNECTICUT
LATER DEPARTMENT
CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of
TOWN OF WATERTOWN (Police) ... Case No. CBP-2757

and

WATERTOWN POLICE UNION LOCAL #541,
COUNCIL #15, AFSCME, AFL-CIO

Decision No. 1381

Issued: March 18, 1976

APPEARANCES:
Charles D. Stauffacher, Esq.,
for the Town,

Frank J. Raccio, Esq.,
for the Union

DECISION and ORDER

On March 26, 1974, Watertown Police Union Local #541, Council #15, AFSCME, AFL-CIO, hereinafter the Union, filed with the Connecticut State Board of Labor Relations, hereinafter the Board, its complaint alleging that the Town of Watertown has engaged and is engaging in practices prohibited by the Municipal Employee Relations Act, hereinafter the Act, in that:

The Town of Watertown is in violation of Section 7-470 (a), item 4, in that: the Town has failed to bargain in good faith with the employee organization designated as the representative of the employees on matters of wages, hours, and other conditions of employment and is also in violation of Section 7-474 in that: the Town Council is rejecting items in the proposed Working Agreement as has been negotiate with the Chief Executive Officer and are items which are other than that which the Legislative Body may act upon as provided for in the M.E.R.A.

After the requisite preliminary steps had been taken the matter came before the Board for hearing in the Labor Department Building in Wethersfield on September 22, 1775, at which the parties appeared and were represented by counsel. Full opportunity was given to examine evidence, examine and cross-examine witnesses, and make argument. Both parties filed written briefs.

On the basis of the whole record before us we make the following findings of fact, conclusions of law, and order.

Findings of Fact

1. The Town of Watertown is a municipal employer within the meaning of the Act.

2. Local #541, Council #15, AFSCME, AFL-CIO, is an employee organization within the meaning of the Act.

3. At the April 1, 1973 Watertown Police Commission meeting, the Commission established the requirements for the position of policewoman which included a thorough knowledge of office procedure and practices, typing, filing, bookkeeping, and record keeping.
9. On May 4, 1973, Mr. Smith notified Mr. Wilson that Mr. Raymond Kennedy, a Town Councilman and Police Commissioner, was assigned as the Town's negotiator by Mr. Smith to work with Mr. Wilson and officials of the Local in arriving at terms for the new contract.

10. The Union submitted proposals concerning the wages, hours, and conditions of employment for the policewoman.

11. Mr. Wilson testified that the Town's response to the proposals concerning the policewoman was that the Board of Police Commissioners had rejected her salary and other conditions of employment and the Town was not going to deviate from them.

12. Mrs. Sabol was assigned to the Chief's office and took care of various details therein, acting as a secretary and performing other duties as called upon by the Chief. She wore a uniform, was issued a badge and successfully completed the Municipal Police Training Academy which is required of all patrolmen in the Town of Watertown. She was sworn in as a police officer of the Town.

13. On September 7, 1973, Mr. Smith notified Mr. Wilson that Mr. Raymond Kennedy, a Town Councilman and Police Commissioner, was assigned as the Town's negotiator by Mr. Smith to work with Mr. Wilson and officials of the Local in arriving at terms for the new contract.

14. In the fall of 1973, the Union filed an unfair labor practice charge regarding the designation of Mr. Kennedy as the Town's negotiator because of his positions within the Town. A decision was rendered regarding this charge at the end of January or early part of February according to testimony of Mr. Smith.

15. There is a discrepancy in the testimony as to whether negotiations were held in abeyance until the decision from the Board in early 1974 as Mr. Smith testified, or whether negotiations were started prior to the Board's decision as testified by Mr. Wilson.

16. Mr. Smith testified that after receiving this decision, "we began to negotiate and we had regular meetings, I would say monthly at least on through the spring and summer of 1974, discussing to the best of my recollection all aspects of the Union's proposals and the Town's counter-proposals."

17. During April or May 1974, a mediation session was held and a compromise was discussed and as a result a proposal was taken back to the Town Council who rejected it for financial reasons.
19. This offer was accepted by the local union and as a result the school was paid the increase.

20. Mr. Smith sent a second letter on July 7, 1974 to the local union regarding confirmation of a revision of article IV section 3 of the contract regarding patrol school's salary. See paragraph 18, supra.

21. Mr. Smith further testified that no member of the legislative council or board of police commissioners was in on the negotiations and that the current agreement for the town was negotiated entirely by himself. He did however testify he was basically to stay within the guidelines established by the police commission when the position was created and did not feel he could negotiate any revision in the wages, hours and conditions of employment of the policewoman on his own initiative.

22. An agreement was executed on August 15, 1974 after being ratified by the local union #511 and signed by Mr. Flett, President. The contract was not signed by any representative of council #5, AFL-CIO.

23. Mr. Smith considered the policewoman to be outside of the bargaining unit as far as pay and hours of work were concerned. Because of the decision by the council as the budget recommending authority.

24. Mr. Smith testified that there were other issues that were included in the negotiation process that were discussed, negotiated and resolved.

25. The union became the statutory bargaining representative by a recognition agreement voluntarily entered into by the town. There was no evidence to show whether this recognized the local union, or council #5, or both, as the representative.

26. There was no evidence to show any limitation on the local union's authority to execute contracts on its own behalf without the concurrence of council #5.

27. Section 707(d) of the town charter provides as follows:

(d) The several departments, commissions, officers and boards of the town shall not involve the town in any obligation to spend money for any purpose in excess of the amount appropriated therefor until the matter has been approved and voted by the council, and each order drawn upon the treasurer shall state the department, commission, board or officer or the appropriation against which it is to be charged. Then any department, commission, board or officer shall desire to secure a transfer of funds in its or his appropriation from funds set apart for one specific purpose to another, before incurring any expenditure thereof, such department, commission, board or officer shall make application to the council whose duty it shall be to examine into the matter, and, upon approval of the council, such transfer shall be made, but not otherwise.

28. The contract executed by the town and the local union sets forth the rates of pay in article IV. Section 1 lists the pay scale for patrolmen, detectives, sergeants and detective sergeants but not for the policewoman. Section 2 reads as follows:

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This is a confused an?cmnise:gn case but tovno thlnqnr, sta!l 1 out:ht::1 re,asousbl.e clarty. &w 13 klit?l, t:?e Tam Iklm~J2r, entorod IiOgO- tintnionn with too narro 71 a viw of his o.m pomrs an4 rcspccibilitio-. The other is Cat in the end an agreement was reach& betzecn the Twon and the local Ur.ion. Yo have consistently held that the Act vests in a munici- gatif's chief executive officer the Drinary aut?loritv an5 ras?mM.iltg for nccgotintng labor contracts for it: Towm. of Groton, Case No. TFP-155, Decision No. 306 (1960). To be sure the ultimate control over the purse strings is reserved for political resolution but under the statutory scherma this control is to be exercised after agreement has been reached between the negotiators. This means that the negotiators are not legally bound by any prior action taken by an appropriating or budget-making authority or by any such board, as the board of police commissioners.

We are satisfied in this case that Smith, in all good faith, entertained a much more restricted view of his powers and responsibilities when he entered into these negotiations and that this narrow view tended to hobble his freedom of movement in bargaining. 'We cannot, however, fin.1 that this had any material effect on the later course of bargaining for the Town's position did in fact move at Smith's urging and agreement was reached.

Another manifestation of Smith's appreciation of his own powers was his taking to the Town Council the single item of the policewoman's salary before total agreement was reached. Apparently he believed that
the Town charter required him to do this. Section 7-177(c), however, clearly contemplated nothing less than a request for an agreement necessary to implement the whole agreement as a package, and section 474(c) provided that "the procedure for the making of an agreement between the municipal employer and an employee organization must be the exclusive method for making a formal agreement." (Emphasis supplied.) Pecuniary substitution of items of an agreement in this manner constitute a violation of this section and a technical failure to bargain in good faith within the meaning of the Act.

A clear, though technical, violation of the Town's duty to bargain being shown, a cease and desist order must follow. Section 31-107(c). The Union also seeks an order "to order the Town to bargain with the Union concerning the wages, hours, and conditions of employment of the policemen during the term of Exhibit 2." (I.e., the period between September 1, 1973 and September 1, 1975). (U.D. p. 9). It is at this point that confusion enters the picture. The Town did bargain to final conclusion with the local Union, but Council 15 did not sign the agreement. The question whether the Town has fulfilled its obligation to bargain under these circumstances is therefore presented. This depends on a determination of who the statutory bargaining representative was. If it was only the local Union then the Town has already fully met its statutory duty and the Union's claim for further relief should be denied. If, on the other hand, the statutory representative was Council 15 (either alone or jointly with the Local) then the Town's duty to bargain has not been fully met. The Union's request for a Bargaining order would be appropriate. The record does not furnish a sufficient basis for coming to any conclusion on this matter. It appears that the Town entered into a voluntary recognition agreement in 1975 but it did not appear whether the recognition was of the Local, or of Council 15, or of both. Since the burden is on the complainant to prove that the Town has failed to fulfill its duty to bargain we must conclude on this state of the record that this burden has not been met.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Municipal Employees Relations Act, it is hereby

ORDERED that the Town of Waterford, in any future negotiations with the Union

I. Cease and desist from seeking to implement section 707(d) of the Town Charter to the extent that it is inconsistent with the Act, and

II. Take the following affirmative action which we find will effectuate the policies of the Act:

(a) Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous spot where the employees involved customarily assemble, a copy of this Decision and Order in its entirety;

(b) Notify the Connecticut State Board of Labor Relations at its office in the Labor Department building, 200 Folly Brook Boulevard, Middletown, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Town of Waterford to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By

[Signature]

Patrick F. Bosse, Jr., Chairman

[Signature]

Kenneth A. Stroble