HOUSE . . . . . No. 160

The Commonwealth of Massachusetts

LABOR RELATIONS COMMISSION
100 CAMBRIDGE STREET
BOSTON, MASSACHUSETTS 02202, NOVEMBER 4, 1987.

The Honorable Michael J. Connolly, *Secretary of State*
State House, Boston, Massachusetts 02133

Dear Secretary of State Connolly:

Please find enclosed two recommended amendments by the Labor Relations Commission to G.L.c.150E, the Public Employee Collective Bargaining Law, and an explanation for the amendments.

Very truly yours,

PAUL T. EDGAR,
Chairman.

MARIA C. WALSH,
Commissioner.

ELIZABETH K. BOYER,
Commissioner.

LEGISLATIVE RECOMMENDATIONS OF THE LABOR RELATIONS COMMISSION

1. JUSTIFICATION FOR RECOMMENDING THAT G.L.c.150E BE AMENDED TO CLARIFY THE AUTHORITY OF THE LABOR RELATIONS COMMISSION TO DECIDE CASES BASED ON AN ADMINISTRATIVE RECORD DEVELOPED BY AN INDIVIDUAL MEMBER OR DESIGNATED AGENT OF THE COMMISSION.

For at least the last ten years, the Commission, consistent with its rules and regulations, 456 CMR 13.02, has conducted hearings in prohibited practice and representation cases in either one of two ways: (1) a Commission designates one of its staff attorneys to preside over the hearing officer and to issue a decision and order that is then reviewable by the full Commission; or (2) the Commission issues a decision and order in the first instance, after review of the record developed in a hearing presided over by a designated hearing officer. In *Town of Stow v. Labor Relations Commission,* 21 Mass. App. Ct. 935 (1985), the Commission's use of hearing officers to develop a record only was attacked on appeal by the party who did not prevail before the Commission as being inconsistent with G.L.c. 150E, Section 11 and the requirements of the Administrative Procedure Act of G.L.c.30A.

As presently written, G.L.c.150E, Section 11 does not make it clear that the Commission may delegate to an agent the administrative function of presiding over a hearing and supervising the formation of the record while retaining the authority to issue findings and orders in the first instance based upon the entire record. The Commission agrued to the Appeals Court that the Commission regulation providing for this procedure reasonably effectuates the Commission's authority, established in 1938 "to prosecute any inquiry necessary to its functions in any part of the Commonwealth" through "one or more of its members or by such agents or agencies as it may designate." G.L.c.23, Section 9Q, inserted by St. 1938, Section 1.

The Appeals Court upheld the Commission's decision and order in the *Town of Stow* case because the Town had failed to raise its objection to the procedure before either the hearing officer of the Commission and the Court thus deemed the objection waived. However, the Court also said ". . . there is doubt whether the formal procedure is authorized by the statute . . ."

The present proposed draft of changes to the third and fourth paragraphs of Section 11 of G.L.c.150E are designed to eliminate the doubt that the Commission practice of deciding some cases in the first instance upon a record developed by a hearing officer is specifically authorized. The changes will insure that the Commission retains the flexibility to deal with its caseload without the necessity of either an initial decision by a hearing officer and subsequent full review by the Commission, or the requirement that the full Commission be present at a hearing.

2. JUSTIFICATION FOR RECOMMENDING THAT G.L.c.150E BE AMENDED TO LIMIT JUDICIAL REVIEW OF COMMISSION DISMISSALS OF PROHIBITED PRACTICE COMPLAINTS WITHOUT A HEARING.

Section 11 of G.L.c.150E provides that the Commission may dismiss a Complaint of Prohibited Practice without a hearing if it finds no probable cause to believe that a violation has occurred or if it otherwise determines that further proceedings would not effectuate the purposes of the Law. In *Quincy City Hospital v. Labor Relations Commission,* 400 Mass. 745 (1987), the Supreme Judicial Court held that Commission determinations to dismiss prohibited labor practice complaints without a hearing are judicially reviewable. The Court reserved opinion on the standard to be applied by the reviewing court for these cases. The proposed change to the first paragraph of Section 11 of G.L.c.150E would eliminate judicial review of pre-hearing dismissals of cases. This change is necessary because the efficient handling of charges filed with the Commission is a basic requirement to the Commission's ability effectively to administer that statute, to use its limited resources judiciously, and to fulfill its responsibility to issue decisions and orders.

The Commission's regulations provide for both an investigation of complaints filed pursuant to G.L.c.150E as well as a process for reconsideration of the dismissals of those complaints after investigation. A complaining party is provided every opportunity, both in person or through counsel before a Commission agent, and in a subsequent written submission, to demonstrate that the complaint filed warrants a full adjudicatory hearing. The Commission provides reasoned written responses to parties whose complaints have been dismissed prior to hearing and responds again if the complaining party seeks reconsideration of that determination. Judicial review of the

Commission's action requires the Commission to write and file an appellate brief, demonstrating to the court that the dismissal of the complaint was correct. The resources diverted from other functions to respond to these cases inevitably means that those resources cannot be used for cases that have proceeded to full hearing or that are awaiting investigation.