

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF NORTH ATTLEBOROUGH

and

NORTH ATTLEBOROUGH FIRE FIGHTERS
UNION, LOCAL 1992, I.A.F.F.

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Case No.: MUP-10-5754

Date Issued: January 23, 2012

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Paul V. Mulkern, Jr., Esq. -

Representing the Town of North
Attleborough

Paul T. Hynes, Esq. -

Representing the North Attleborough
Fire Fighters Union, Local 1992, I.A.F.F.

HEARING OFFICER'S DECISION

Summary

The issue in this case is whether the Town of North Attleborough (Town) retaliated against Michael Bristol (Bristol), Curt Chretien (Chretien), Peter Cullen (Cullen), Ronald Meyer (R. Meyer) and Scott Meyer (S. Meyer) for engaging in concerted, protected activity. Based upon the Town's amended answer in which it admitted the allegations in the complaint, I conclude that the Town violated Section 10(a)(3), and, derivatively, Section 10(a)(1) of the Law.

Statement of the Case

On January 11, 2010, the North Attleborough Fire Fighters Union, Local 1992, I.A.F.F. (Union) filed a charge with the Department of Labor Relations (DLR)¹ alleging that the Town had violated Sections 10(a)(5) and (1) of the Law. A DLR investigator conducted an investigation on April 6, 2010, and at that time, the Union orally amended its charge to allege a violation of Section 10(a)(3) of the Law, instead of Section 10(a)(5) of the Law. On July 14, 2010, the investigator issued a complaint of prohibited practice. The Town filed an answer in which it denied certain allegations in the complaint, including allegations that the Town violated the Law. The DLR scheduled the case for a hearing on May 19 and May 24, 2011.

On May 16, 2011, the Town filed an assented to motion to amend its answer, which I subsequently allowed. In its amended answer, the Town admitted all of the allegations in the complaint.² Because the Town admitted to the allegations in the complaint, there was no need for a hearing. The allegations of the complaint now admitted as true constitute the facts and legal conclusions upon which I base my order, and they are as follows:

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for all permanent full-time members of the North Attleborough Fire Department employed by the

¹ Pursuant to Chapter 145 of the Acts of 2011, the Division of Labor Relations is now the Department of Labor Relations.

² The Town and the Union also agreed to certain amendments to the complaint to correct the transposition of names and to properly reflect the time periods when certain events took place.

Town, including fire dispatchers, but excluding the Chief, Clerical, and Intermittent or call men.

4. The Town and the Union are parties to a collective bargaining agreement (Agreement), effective from July 1, 2007 to June 30, 2010.
5. Peter Lamb (Lamb) is the Chief of the Department.
6. Valerie A. Hickey (Hickey) was the Chair of the Town Board of Fire Commissioners (Commissioners). Chris LeBlanc (LeBlanc) and Michael Coyle (Coyle) were members/Commissioners between June 1, 2009 and November 20, 2009.
7. Mark C. Fisher (Fisher) is the Town Administrator.
8. Paul J. Belham, Sr. (Belham) was the Chair of the Town Board of Selectmen (Board) and Mike Thompson (Thompson) and Mark Williamson (Williamson) were members of the Board between June 1, 2009 and April 1, 2010.
9. Mark Renker (Renker) is the Union President and a member of the bargaining unit described in paragraph 3, above.
10. Michael Bristol (Bristol), Curt Chretien (Chretien), Peter Cullen (Cullen), Ronald Meyer (R. Meyer) and Scott Meyer (S. Meyer) are members of the bargaining unit described in paragraph 3, above.
11. On June 8, 11, and 12, 2009, the Board received letters from R. Meyer, Chretien and Cullen concerning issues over safety and leadership of Chief Lamb.³ These letters are collectively referred to as the "June letters".
12. On June 11, 2009, Bristol forwarded to the Commissioners a May 13, 2009 letter addressed by Bristol to the Union regarding his concerns over current: "Staffing of Rescue 2 and Engine 1; Potential of minimum Fire Fighters at emergency; Second officer assignment; Senior men unjust limitations; and Leadership and Fire scene management."
13. On June 16 and 23, 2009, the Commissioners interviewed Bristol, Chretien, Cullen, R. Meyer, S. Meyer, and Chief Lamb to investigate the claims made in the June Letters.

³ At the investigation, the Union submitted a letter from S. Meyer to Board Chair Belham, regarding S. Meyer's lack of confidence in Chief Lamb. The letter is signed by S. Meyer but it is not dated and does not indicate if or when the Board received it.

14. On July 6, 2009, the Board received a letter from Bristol requesting that the Town investigate the June Letters and the Commissioners' June investigations. On July 7, 2009, the Board received a letter from S. Meyer requesting the same.
15. On July 30, 2009, Renker sent a letter to Commissioner Chair Hickey expressing his concern that the Commissioners' investigations were "tainted by bias and predisposition". On August 6, 2009, Renker sent a letter to Board members Thompson and Williamson expressing the same concern.
16. On August 6, 2009, the Board voted to permit a "Review Team" to conduct fact-finding into the allegations made in the June Letters. The Board also permitted the Review Team to conduct fact-finding into the Commissioners' June investigations.
17. On September 3, 15, 28, 2009 and October 6, 2009, the Review Team interviewed the following individuals: Bristol, Chretien, Cullen, R. Meyer, S. Meyer, Board Chair Belham, Town Administrator Fisher, Commissioner Chair Hickey, Commissioners LeBlanc and Coyle, and Chief Lamb.
18. On September 8, 2009, Chief Lamb sent letters to Bristol, Chretien,⁴ Cullen, R. Meyer and S. Meyer, which stated in part:

This letter will serve as documentation that your recent letter dated July 9, 2009 to the Board of Fire Commissioners...was clearly outside of the boundaries of the long established chain of command of this fire department.

In addition this letter also circumvented the collective bargaining agreement as well.

Also, your letter that described the concerns, the activities, policy or practice in violation, of a law, or a rule or regulation promulgated pursuant to law, or which the employee (you) reasonably believed posed a risk to public health, safety or the environment, to the attention of a supervisor of the employee (Board of Fire Commissioners) by written notice did not afford the employer (Board of Fire Commissioners) any reasonable opportunity to correct the activity, policy or practice, before it was escalated to Town Hall.

⁴ Attached to Chretien's letter, Chief Lamb included a copy of Article I, Section 1: Recognition [Clause of the Agreement]. By Chief Lamb's signature dated September 29, 2009, he informed Chretien that the June Letters violated this part of the Agreement.

In the future we will require you to adhere to the department chain of command and collective bargaining agreement, and as an officer you will require that same behavior of your subordinates as well. It is my expectation that in the future, proper discussion can avoid situations like this from occurring again.

19. On September 8, 2009, Chief Lamb sent two additional letters to R. Meyer and S. Meyer. Chief Lamb's letter to R. Meyer states, in part:

I am writing this letter to document my deep concern for your recent on the job behavior....

Your behavior and actions as a Captain in this department are beginning to call into question whether or not you can effectively serve in this position....

Your subversive, deceitful, confrontational action of the morning of June 9, 2009 was another example of behavior that is unacceptable as a Captain....You called me in a very cheerful mood from the Captain's office, offered pleasantries and asked if I had a couple of minutes. Within minutes you arrive at my office with two off duty members and the union president. You had clearly planned this meeting in advance and chose to "ambush" me and confront me. This action is clearly over the top and unacceptable behavior and it will not be tolerated....

For the past several months you no longer report to my office after shift change in the morning, you send the lieutenant. From this point on you will report to my office as the other captains do, either before the start of the shift or after radio check is completed....Your deliberate avoidance will no longer be tolerated.

Because of these recent changes in your behavior I am suggesting in the strongest possible terms that you consider using the Town's Employee assistance program....This confidential program could help you with any issues that have brought about this negative, radical change in your behavior. They deal with all sorts of issues including anger management....

It is my hope that you will review your recent behavior and its negative effect upon you, your shift, and the department in general. It is my sincere hope that you will once again

become a positive productive member of this department again, before your negative actions, attitude, and behavior put you in a further untenable position.

Chief Lamb's letter to S. Meyer states, in part:

We are both aware that prior to late August of last year you portrayed yourself and behaved in a manner that appeared that you were supportive of this department, me specifically and the department administration.

Somewhere after this time your behavior has taken a 180 degree turn and in fact you became a significant negative force in this department and directly undermining my authority....

This negative subversive behavior which is not acceptable conduct for a command officer. It is also completely outside of what had been your normal behavior during my tenure here....

For the past several months you no longer report to my office after shift change in the morning, you send the lieutenant. From this point on you will report to my office as the other captains do, either before the start of the shift or after radio check is completed....Your deliberate avoidance will no longer be tolerated.

Because of these recent changes in your behavior I am suggesting in the strongest possible terms that you consider using the Town's Employee assistance program....This confidential program could help you with any issues that have brought about this negative, radical change in your behavior. They deal with all sorts of issues including anger management....

It is my hope that you will review your recent behavior and its negative effect upon you, your shift, and the department in general. It is my sincere hope that you will once again become a positive productive member of this department again, before your negative actions, attitude, and behavior put you in a further untenable position.

20. On October 27, 2009, the Board produced a report summarizing the result of the Review Team's findings.

21. On November 24 and 30, 2009, the Union sent letters to Chief Lamb demanding that he immediately rescind the September 8, 2009 letters.
22. On November 30, 2009, Chief Lamb sent letters to Bristol, Chretien, Cullen, R. Meyer and S. Meyer, rescinding the September 8, 2009 letters.
23. The activities described in paragraphs 11, 12, 14, and 15 constitute concerted, protected activity within the meaning of Section 2 of the Law.
24. The Town knew of the concerted, protected activities described in paragraphs 11, 12, 14, and 15.
25. The Town took the action referred to in paragraphs 18 and 19, in retaliation for the concerted, protected activity described in paragraphs 11, 12, 14, and 15.
26. By the conduct described in paragraphs 18, 19, 24 and 25 the Town has retaliated against Bristol, Chretien, Cullen, R. Meyer, [and] S. Meyer for engaging in concerted, protected activity in violation of Section 10(a)(3) of the Law.
27. By the conduct described in paragraphs 18, 19, 24 and 25, the Town has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Opinion

A public employer that retaliates or discriminates against an employee for engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the Law. Southern Worcester Reg. Voc. School District v. Labor Relations Commission, 386 Mass. 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996). A charging party may proffer direct or indirect evidence of discrimination in support of its claim. See, Town of Brookfield, 28 MLC 320, 327-328 (2002), aff'd sub nom., Town of Brookfield v. Brookfield Labor Relations Commission, 443 Mass. 315 (2005). Here, the Town has admitted to all facts alleged in the complaint. The facts as alleged constitute a violation of Section 10(a)(3) and,

derivatively, Section 10(a)(1) of the Law. Therefore, I enter the order below. I note that because Chief Lamb rescinded the September 8, 2009 letters on November 30, 2009, there is no need for the order to direct a repeal of those letters.

ORDER

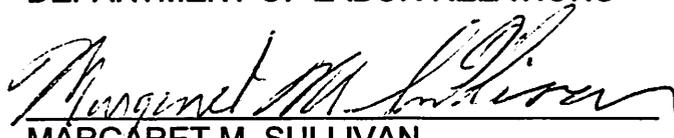
WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town shall:

- 1. Cease and desist from:
 - a) Retaliating against Bristol, Chretien, Cullen, R.Meyer and S. Meyer.
 - b) In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

- 2. Take the following action that will effectuate the purposes of the Law.
 - a) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Town customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - b) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, 456 CMR 13.02(1)(j), and 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 ten days, the 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 Town of North Attleborough (Town) has violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by retaliating against Michael Bristol (Bristol), Curt Chretien (Chretien), Peter Cullen (Cullen), Ronald Meyer (R. Meyer) and Scott Meyer (S. Meyer) for engaging in concerted activities protected by Section 2 of the Law.

Section 2 of the 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 retaliate against Bristol, Chretien, Cullen, R. Meyer and S. Meyer for engaging in concerted activities protected under Section 2 of the Law.

WE WILL NOT in any similar manner interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law.

Town of North Attleborough

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).