

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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In the Matter of	*	
SPRINGFIELD HOUSING AUTHORITY	*	Case No.: MUP-10-5998
and	*	Date issued:
AFSCME COUNCIL 93, AFL-CIO	*	September 26, 2011

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Board Members Participating:  
  
Marjorie F. Wittner, Chair  
Elizabeth Neumeier, Board Member<sup>1</sup>

Appearances:  
  
John P. Talbot, Jr., Esq. - Representing the Springfield Housing Authority  
Joseph L. DeLorey, Esq. - Representing AFSCME Council 93, AFL-CIO

DECISION ON APPEAL OF HEARING OFFICER DECISION

1 On August 4, 2011, a Department of Labor Relations (Department) Hearing  
2 Officer issued a decision in the above-captioned matter. The Hearing Officer held that  
3 the Springfield Housing Authority (SHA or Employer) did not violate Section 10(a)(1) of  
4 the Law when, on May 20, 2010, in response to an employee query, it sent a letter  
5 explaining the union decertification process. The Hearing Officer further held, however,  
6 that the SHA did violate Section 10(a)(1) of the Law when, on June 24, 2010, it issued a  
7 verbal warning to the president of the AFSCME Council 93 (Union) local that was the

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<sup>1</sup> Board Member Freeman has recused himself from this decision.

1 subject of the decertification petition. The verbal warning concerned a telephone  
2 conversation the Union president had with one of the employees circulating the petition.

3 The Union and the SHA filed timely cross-appeals. The SHA also filed a reply to  
4 the Union's appeal. On appeal, the Union argues that the Hearing Officer erred by not  
5 considering the lawfulness of the May 20 letter in the context of the Union President's  
6 verbal warning. The issue raised by Employer's cross-appeal is whether the Union's  
7 agreement to settle the Union president's grievance estopped the Union from filing an  
8 unfair labor practice charge over that discipline and/or rendered the allegation moot.  
9 After considering the record and the parties' arguments on appeal, the Commonwealth  
10 Employment Relations Board (Board) affirms the Hearing Officer's decision.

#### 11 SHA Appeal

12 The Board finds no merit in the SHA's cross-appeal. The Hearing Officer  
13 correctly determined that the Union, by agreeing to a settlement that reduced the Union  
14 President's discipline from a verbal warning to a counseling letter, did not waive its right  
15 to file an unfair labor practice charge alleging that the discipline interfered with  
16 employees' Section 2 rights. The Board has held generally that the waiver of a statutory  
17 right is not to be lightly implied, but will be found only where the proof is "clear and  
18 unmistakable." Town of Andover, 4 MLC 1086, 1089 (1977). Here, there is no basis to  
19 disturb the Hearing Officer's conclusion that there was no evidence that the Employer  
20 secured in the settlement agreement a waiver of all rights. Nor is there any other

1 evidence that the Union clearly and unequivocally waived its right to file a prohibited  
2 practice charge arising out of the June 24, 2010 verbal warning.<sup>2</sup>

3 On appeal, the Employer does not contest that the Union did not explicitly waive  
4 its rights to file a prohibited practice charge. It argues however, the Hearing Officer  
5 should have considered whether the Union was nevertheless “estopped” from bringing  
6 this charge because the Union induced it to change its position on the discipline in  
7 reliance on its representation that the compromise would resolve the dispute.

8 This argument fails for several reasons. First, estoppel is an equitable doctrine  
9 and, generally, the Board does not award the parties relief in equity. Town of Hudson,  
10 25 MLC 143, 146, n. 21 (1999). However, even if we were to grant equitable relief, the  
11 facts of this case do not support the SHA's argument, because a key element of an  
12 estoppel claim is that the reliance of the party seeking the benefit of estoppel must have  
13 been reasonable. Higher Education Coordinating Council, 23 MLC 250, 252 (1997)  
14 (citing Turnpike Motors, Inc. v. Newbury Group, Inc., 413 Mass. 119, 123 (1992)).<sup>3</sup>  
15 Here, the Union had a right under Chapter 150E to bring the instant prohibited practice  
16 charge. Although the Employer may have believed that the Union had given up this  
17 right by settling the grievance, this belief was not reasonable given the “clear and  
18 unmistakable” waiver of statutory rights requirement described above. Thus, while the  
19 Union's grievance settlement may have estopped it from proceeding any further with the

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<sup>2</sup> The settlement agreement, to the extent it was ever reduced to writing, is not part of the hearing record.

<sup>3</sup> Notably, although the employer in Higher Education Coordinating Council argued that the union, by acquiescing to certain bargaining practices, was estopped from asserting that the employer had bargained in bad faith, it did not argue that the union was estopped from filing a Section 10(a)(5) charge in the first instance. 23 MLC at 252.

1 grievance under the contractual grievance/arbitration procedure, it was not reasonable  
2 for the Employer to believe that the Union was also barred from bringing other related  
3 claims, including an unfair labor practice charge, in the absence of a clear indication to  
4 the contrary. As such, while the Employer emphasizes the Union's failure to expressly  
5 reserve its rights to bring an unfair labor practice charge, the more reasonable course  
6 would have been for the Employer to insist that the Union execute a full release of all  
7 potential claims arising out of the discipline.

8 Finally, we disagree that the grievance settlement agreement renders this matter  
9 moot. As noted above, the settlement pertained only to the Union President's grievance  
10 and not the unfair labor practice. Moreover, other than entering into the settlement  
11 agreement, there is no evidence that it publicized its actions or renounced future similar  
12 actions. Thus, the fact that the Employer settled the Union President's grievance  
13 neither cures the prohibited practice nor renders it moot. See Salem School  
14 Committee, 35 MLC 199, 217 (2009) (citing Brockton Education Association, 12 MLC  
15 1497, 1507 (1986) (only a clear written repudiation of conduct by administration, posted  
16 in schools, coupled with expungement of letters from record could remedy harm)); see  
17 also Passavant Memorial Area Hospital, 237 NLRB 138, 138-139 (1978) (to cure or  
18 remedy prohibited practice, the employer's repudiation must be timely, unambiguous,  
19 specific in nature to the coercive conduct, free from other proscribed conduct,  
20 adequately publicized to the employees involved, not followed by other proscribed  
21 conduct, and accompanied by assurances to employees that the employer will not  
22 interfere with the exercise of their rights under Section 7 of the Act).

1 Union's Appeal

2           The Union's appeal raises the issue of whether the Hearing Officer erred by  
3 failing to consider the coercive impact of the May 20 letter in light of the later discipline  
4 the SHA imposed on the Union president. We agree with the Hearing Officer that the  
5 May 20 letter, standing alone, constituted mere ministerial aid that would not result in a  
6 finding that the SHA unlawfully encouraged or furthered the decertification efforts here.  
7 See Bridgestone/Firestone Inc., 335 NLRB 941, 942 (2010) (determining that employer  
8 provided only lawful ministerial aid in drafting a decertification petition where drafting  
9 took place in a context free of coercion).

10           The Union argues however that the letter was not issued in a coercion-free  
11 context – that the Union President's verbal warning, which the Hearing Officer found to  
12 be unlawfully coercive - rendered the May 20 letter unlawfully coercive as well. While  
13 we tend to agree that reasonable employees might view the May 20 letter in a different  
14 light once the Employer issued the verbal warning, we decline to hold that the June 24  
15 letter rendered the May 20 letter unlawful per se. The May 20 letter, though  
16 comprehensive, is devoid of coercive or threatening content. Compare Wire Products  
17 Manufacturing Corporation, 326 NLRB 625 (1998) (lawfulness of employer's letter  
18 disparaging union viewed in light of other contemporaneous unfair labor practices  
19 related to decertification campaign) to Lee Lumber, 306 NLRB 408 (1992) (lawfulness of  
20 employer's non-coercive initial statements regarding decertification not rendered  
21 unlawful by subsequent unfair labor practices). Moreover, because the Union's appeal,  
22 whether granted or not, would not alter the Hearing Officer's ultimate conclusion - that

1 the Employer provided unlawful assistance in the circulation of a July 9, 2010  
2 decertification petition - we do not reach the other issues raised by the Union's appeal.

3 Conclusion

4 For the foregoing reasons, we affirm the Hearing Officer's decision.

5 ORDER

6 WHEREFORE, based upon the foregoing, it is hereby ordered that the Springfield  
7 Housing Authority shall:

8 1. Cease and desist from:

9  
10 a) Providing assistance to employees in the circulation of a petition to  
11 remove the Union as their bargaining representative by disciplining  
12 employees, in particular David Thompson, for discussing intra-  
13 union affairs based upon unfounded allegations of misconduct  
14 connected with such discussions;

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

17  
18 2. Take the following affirmative action that will effectuate the purposes of the Law:

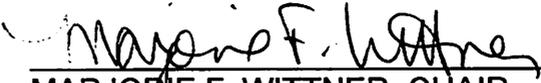
19  
20 a) Cease and desist from providing assistance to employees in the  
21 circulation of a petition by removing the June 24, 2010  
22 memorandum of Thompson's verbal warning and the August 12,  
23 2010 counseling memorandum from Thompson's personnel file.

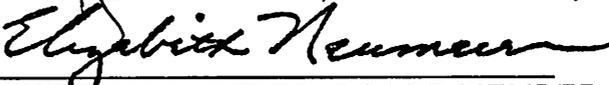
24  
25 b) Post immediately in all conspicuous places where members of the  
26 Union's bargaining unit usually congregate and where notices to  
27 these employees are usually posted, including electronically, if the  
28 Employer customarily communicates to its employees via intranet  
29 or email, and maintain for a period of thirty (30) consecutive days  
30 thereafter, signed copies of the attached Notice to Employees.  
31

- 1 c) Notify the Department in writing of the steps taken to comply with
- 2 this decision within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD

  
MARJORIE F. WITTNER, CHAIR

  
ELIZABETH NEUMEIER, BOARD MEMBER

**APPEAL RIGHTS**

Pursuant to M.G.L. c.150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD**

**AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

The Commonwealth Employment Relations Board (Board) has held that the Springfield Housing Authority has violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by issuing a June 24, 2010 verbal warning to Union President David Thompson that encouraged, promoted and provided assistance in the initiation, signing or filing of a July 9, 2010 decertification petition, thereby interfering with, restraining and coercing its employees in the exercise of their Section 2 rights.

The Springfield Housing Authority posts this Notice to Employees in compliance with the Board'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 unlawfully discipline employees, in particular David Thompson, for discussing intra-union affairs related to the decertification process based upon unfounded allegations of misconduct connected with such discussions thereby providing assistance to employees in the circulation of a petition to remove the Union as their bargaining representative.

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:

- Remove the June 24, 2010 memorandum of Thompson's verbal warning and the August 12, 2010 counseling memorandum from Thompson's personnel file.
- Cease and desist from providing assistance to employees in the circulation of a petition to remove the Union as their bargaining representative.

\_\_\_\_\_  
SPRINGFIELD HOUSING AUTHORITY

\_\_\_\_\_  
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, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).