

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

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
COMMISSIONER OF ADMINISTRATION

and

GLENNIS OGALDEZ

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Case Nos. SUP-12-2282
SUPL-12-2283

Date Issued: August 24, 2015

In the Matter of

MASSACHUSETTS CORRECTION
OFFICERS FEDERATED UNION

and

GLENNIS OGALDEZ

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Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, CERB Member
Harris Freeman, CERB Member

Appearances:

Earl Wilson, Esq.	-	Representing the Commonwealth of Massachusetts/Commissioner of Administration
Jason R. Powalisz, Esq.	-	Representing the Massachusetts Correction Officers Federated Union
Glennis Ogaldez	-	<u>Pro Se</u>

DECISION ON APPEAL OF HEARING OFFICER DECISION**SUMMARY**

This case involves consolidated prohibited practice charges that Glennis Ogaldez (Ogaldez) brought against her union and her employer on October 12, 2012. Ogaldez, a corrections officer (CO) at the Boston Pre-Release Center (BPRC), alleged in Case No. SUP-12-2282 that the Commonwealth of Massachusetts/Commissioner of Administration (Employer), acting through the Department of Correction (DOC), violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of M.G.L. c. 150E (the Law) by detaching Ogaldez with pay for engaging in protected concerted activity. In Case No. SUPL-12-2283, Ogaldez alleged that the Massachusetts Correction Officers Federated Union (MCOFU or Union) violated Section 10(b)(1) of the Law through statements that shop steward Stephenson King (King) made to her. On May 7, 2015, a Department of Labor Relations (DLR) hearing Officer (Hearing Officer) issued a decision dismissing the retaliation allegation but concluding that the Union had violated the Law as alleged.¹ Ogaldez and the Union appealed their respective losses.² After reviewing the record on appeal, we affirm for the reasons set forth below.

SUPL-12-2283

For all the reasons stated in the attached Hearing Officer's decision, the CERB agrees that two statements that King made to Ogaldez on May 8, 2012 that: 1) "We're tired of you girl and your whining," and 2) "[W]e can always send you back to Shattuck

¹ The decision is reported at 41 MLC 326 (2015) and attached to the slip opinion of this decision.

² The Employer filed a response to Ogaldez's appeal of the Section 10(a)(3) allegation. Ogaldez did not file a response to the Union's appeal.

1 where you came from" violated Section 10(b)(1) of the Law.

2 We reject the Union's arguments that the Hearing Officer erroneously credited
3 Ogaldez's version of events instead of King's.³ The CERB will not disturb a hearing
4 officer's credibility findings where they are supported by record evidence and expressed
5 in specific findings supported by legitimate rationale. Town of Weymouth, 19 MLC
6 1126, 1132, MUP-6839 (August 4, 1992) (citing Greater New Bedford Infant Toddler
7 Center, 13 MLC 1620, 1622, UP-2493 (1987)). See generally, United Water & Sewer
8 Workers, Local 1, 28 Mass App. Ct. 359 (1990) (hearing officer's credibility findings
9 granted "substantial deference"); Vinal v. Contributory Retirement Appeals Board, 13
10 Mass. App Ct. 85 (1982) (citing Selectmen of Dartmouth v. Third District Court of Bristol,
11 359 Mass. 400, 403 (1971) (findings based on oral testimony will not be reversed unless
12 plainly wrong)). The Union's credibility arguments on appeal are substantially the same
13 as those it made to the Hearing Officer in its post-hearing brief. The Hearing Officer
14 addressed those arguments and made detailed, clear and reasoned credibility
15 resolutions. None of the points the Union makes on appeal provide a basis to conclude
16 that her findings as to what transpired during the May 8th meeting were incorrect or
17 required a contrary finding. Based on the legal standards articulated above, we decline
18 to disturb them.

³ The Union admits that King made the first statement, but denies that it included the word "girl." King denied stating that "we're going to send you back to Shattuck." The Hearing Officer explained why she did not fully credit either Ogaldez's or King's version of events, but found their version of events more plausible when consolidated together. She specifically declined to credit King's testimony that Ogaldez's officer-in-charge Charlie Russell (Russell) was not present at this meeting when King made the disputed remarks. We find no basis to disturb any of these credibility findings.

1 The Union alternatively argues, as it did to the Hearing Officer, that even if King
2 made the statements attributed to him, they did not violate Section 10(b)(1) of the Law.
3 The Hearing Officer addressed these arguments at length and we find no error in her
4 application of the Law to the facts. In particular, we agree that King's meeting with
5 Ogaldez and Russell, who was then serving as Ogaldez's officer-in-charge, was
6 tantamount to a pre-grievance meeting to attempt to resolve an employee's concerns
7 before filing a formal grievance, and thus, that Ogaldez was engaged in activity
8 protected by Section 2 of the Law when she attended this meeting. See City of
9 Medford, 41 MLC 379, MUP-13-2687 (June 29, 2015) (union official's meeting to
10 attempt to resolve a potential grievance before filing it constitutes concerted, protected
11 activity under Section 2 of the Law). We further agree with the Hearing Officer's
12 characterization of King's statements as more than mere "name-calling" but, rather, as
13 statements that demeaned⁴ and, in particular, *threatened* Ogaldez with an involuntary
14 transfer for engaging in protected activity. She therefore properly found that such
15 statements would tend to interfere, restrain and coerce employees in the exercise of

⁴ In a footnote, the Union argues that even if King used the word "girl," (which it vehemently denies King did), that word did not have the demeaning quality the Hearing Officer attributed to it. However, the Hearing Officer did not parse each word in King's statements when she concluded that they were angry and demeaning. We agree with her that, when considering the tone of King's first statement as a whole, in which he admittedly stated that "we" were "tired of all her whining," the Hearing Office reasonably concluded that this was an angry, demeaning statement directed at Ogaldez's complaints.

1 their Section 2 rights in violation of Section 10(b)(1) of the Law.⁵ The fact that King or
2 the Union may not have had the authority to transfer unit members does not lead us to
3 conclude otherwise because, for the reasons stated in the decision, we agree that a
4 reasonable employee standing in Ogaldez's shoes could believe that the Union had the
5 Employer's ear and could influence employment decisions. For these reasons and all
6 those stated in the underlying decision, we agree that King's statements would tend to
7 chill and coerce employees in the exercise of protected rights and therefore affirm the
8 Hearing Officer's conclusion that the Union violated Section 10(b)(1) of the Law.

9 SUP-12-2282

10 Ogaldez alleged that the Employer violated Section 10(a)(3) by detaching her
11 with pay on September 11, 2012 in retaliation for assisting another correction officer,
12 Rigaubert Aime (Aime), during a meeting that stemmed from Aime's accusations that
13 another correction officer, Anderson Jemmott (Jemmott), was harassing him. In
14 considering whether Ogaldez had established a prima facie case of retaliation under
15 Section 10(a)(3), the Hearing Officer found that Ogaldez had met the first three parts of
16 the test, i.e., that she had been engaged in protected concerted activity when she
17 assisted Aime, that the Employer knew of this activity, and that she suffered an adverse

⁵ The Union argues that the facts of this case are distinguishable from prior CERB decisions addressing a union's actions under Section 10(b)(1) of the Law. However, in finding a violation here, the Hearing Officer appropriately cited cases arising under Section 10(a)(1), which, like Section 10(b)(1), makes it a prohibited practice to "interfere, restrain or coerce any employee in the exercise of any right guaranteed under [Chapter 150E]." We know of no authority and the Union cites none for the proposition that chilling statements made by a union representative are subject to different standards than those made by an employer.

1 action when she was detached with pay.⁶ Quincy School Committee, 27 MLC 83, 92,
2 MUP-1986 (December 29, 2000). The Hearing Officer further found, however, that
3 Ogaldez had not established the fourth element of the prima facie case, that the
4 employer took the adverse action to discourage the protected activity. Id. Specifically,
5 the Hearing Officer found that Ogaldez was placed on detachment with pay due to
6 allegations that she had refused direct orders to return to her post on September 4,
7 2012. In making this finding the Hearing Officer relied on the testimony of then-Acting
8 Deputy Commissioner for Administrator Services Paul DiPaolo who recommended
9 Ogaldez's detachment based on the "seriousness of the insubordination allegations"
10 and the paramilitary nature of the DOC, which compels COs to obey lawful orders. The
11 Hearing Officer found these reasons to be neither trivial, nor shifting and inconsistent,
12 and that Ogaldez had failed to demonstrate otherwise. The Hearing Officer alternatively
13 found that even if she were to infer animus, Ogaldez had failed to meet her burden of
14 proving that, but for her protected activity, she would not have been detached with pay.
15 Trustees of Forbes Library v. Labor Relations Commission, 384 Mass. 559 (1981);
16 Suffolk County Sheriff's Department, 27 MLC 155, 160, MUP-1498 (June 4, 2001).

17 Ogaldez's arguments on appeal consist mainly of her restating her version of
18 what happened on September 4, 2012 and why her version, and not the Employer's, as

⁶ When the Employer detaches employees, it removes them from active duty and orders them to stay away from the facility at which they previously worked while the employer conducts an investigation in possible misconduct. The Hearing Officer found that this was an adverse action because, among other things, it lasted six months, it prevented Ogaldez from reporting to work at a job that she had held for fourteen years and it became a part of her employment record.

1 set forth in various reports and hearing testimony, should be believed.⁷ Once again,
2 however, the Hearing Officer made detailed and reasoned credibility findings, which we
3 will not disturb on appeal. Further, even though Ogaldez may disagree with the
4 Employer's stated reasons for its actions, none of her assertions on appeal provide a
5 basis for us to disturb the Hearing Officer's findings or overturn her legal conclusion that
6 Ogaldez failed to meet her burden of demonstrating that the detachment was unlawfully
7 motivated.⁸

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⁷ In her supplementary statement, Ogaldez contends that she was not ordered to leave the first floor due to a "staff conflict" as stated in the disciplinary charges that DOC brought against her on December 7. Ogaldez made the same argument to the Hearing Officer, who found that Ogaldez was ordered to leave the first floor because Jemmott, with whom Ogaldez had admittedly been in a dispute the previous July, did not want to work with her. Based on this finding, which we find no basis to disturb, Ogaldez's claim that the charges against her had "no merit or substance" are not persuasive. Ogaldez also claims that "bias" was present in the decision to detach her because BPRC Superintendent Tanya Gray (Gray) prepared a report (Report # 14004) based on allegations made by Jemmott and Lt. Brian Foley (Foley), who issued the orders, but ignored earlier complaints that Ogaldez had made about Foley and Jemmott. However, the Hearing Officer made no findings regarding Gray's response to Ogaldez's earlier complaints and Ogaldez points to no part of the record supporting this contention. The CERB will therefore not consider it. Finally, Ogaldez points out that Report # 14004 referenced reports claiming that she had been combative and aggressive, but that she was never charged with being combative and aggressive. This argument ignores the fact that Report # 14004 also referenced reports stating that Ogaldez refused Foley's orders to return to her post, which is the infraction for which she was ultimately charged. Thus, assuming that Ogaldez makes this point to argue that the Employer's stated reasons for placing Ogaldez on detachment with pay were shifting or inconsistent, it is not persuasive.

⁸ In addition to providing a substantive response to Ogaldez's appeal, the Employer alternatively requested that we summarily dismiss the appeal because her supplementary statement did not comply with 456 CMR 13.15 (4). Because we reach the merits of the appeal, we deny this request.

1 Conclusion

2 For all the reasons stated in the Hearing Officer's decision, and those set forth
3 above, we affirm the Hearing Officer's decision in its entirety by dismissing Case No.
4 SUP-12-2282 and issuing the following Order in Case No. SUPL-12-2283.

5 ORDER

6 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that
7 MCOFU shall:

8 1. Cease and desist from:

9 a) Making statements that would tend to interfere with, restrain or
10 coerce employees in the exercise of their rights guaranteed under
11 the Law.

12
13 b) In any like or related manner interfering with, restraining or coercing
14 employees in the exercise of their rights guaranteed under the Law.

15
16 2. Take the following action that will effectuate the purposes of the Law:

17 a) Refrain from making statements that would tend to interfere with,
18 restrain and coerce employees in the exercise of their rights
19 guaranteed under the Law.

20
21 b) Immediately post signed copies of the attached Notice to
22 Employees in conspicuous places where notices to bargaining unit
23 members are customarily posted including electronic postings, if
24 MCOFU customarily communicates to members via intranet or
25 email. The Notice to Employees shall be signed by a responsible
26 elected Union Officer and shall be maintained for a period of at
27 least thirty (30) consecutive days thereafter. Reasonable steps
28 shall be taken by the Union to ensure that Notices are not altered,
29 defaced or covered by any other material. If MCOFU is unable to
30 post copies of the Notice in all places where notices to bargaining
31 unit members are customarily posted, MCOFU shall immediately
32 notify the Executive Secretary of the DLR in writing, so the DLR can
33 request that the Employer permit the posting.

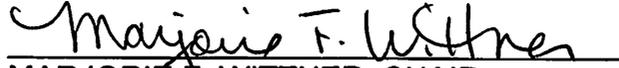
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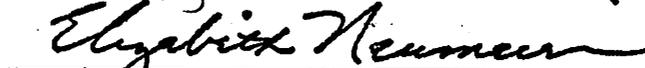
c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



ELIZABETH NEUMEIER, CERB MEMBER



HARRIS FREEMAN, CERB 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
BEFORE THE 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 has held that the Massachusetts Correction Officers Federated Union (MCOFU) violated Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it interfered, restrained and coerced bargaining unit member Glennis Ogaldez in the exercise of her rights under Section 2 of the Law.

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 make statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

Massachusetts Correction Officers
Federated Union

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).