

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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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: May 7, 2015

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In the Matter of

MASSACHUSETTS CORRECTION  
OFFICERS FEDERATED UNION

and

GLENNIS OGALDEZ

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Hearing Officer:

Margaret M. Sullivan, Esq.

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 - Pro Se

HEARING OFFICER'S DECISION



1 2012.<sup>1</sup> On the same date, the investigator also issued a complaint in Case No. SUPL-  
2 12-2283, alleging that MCOFU violated Section 10(b)(1) by certain comments that  
3 MCOFU chief steward Stephenson King (King) made on May 8, 2012.<sup>2</sup> The DLR  
4 subsequently consolidated Case No. SUP-12-2882 with Case No. SUPL-12-2283 for  
5 hearing. The Commonwealth and MCOFU filed answers to their complaints on January  
6 18, 2013 and January 24, 2013 respectively.

7 I conducted hearings on January 10, January 16 and January 17, 2014.<sup>3</sup> All  
8 parties had an opportunity to be heard, to examine witnesses<sup>4</sup> and to introduce  
9 evidence.<sup>5</sup> The parties submitted their post-hearing briefs postmarked on March 31,  
10 2015. Upon review of the entire record, including my observation of the demeanor of  
11 the witnesses, I make the following findings of fact and render the following decision.

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<sup>1</sup> The investigator dismissed allegations that the Commonwealth independently violated Section 10(a)(1) and Section 10(a)(3) of the Law on numerous occasions in the period from May through December 2012. Ogaldez did not file a request for review pursuant to 456 CMR 15.04(3) of the portions of the charge that the investigator dismissed.

<sup>2</sup> The investigator dismissed allegations that MCOFU violated Section 10(b)(1) of the Law on multiple instances in the period from July through December 2012. Ogaldez did not file a request for review pursuant to 456 CMR 15.04(3) of the portions of the charge that the investigator dismissed.

<sup>3</sup> The parties introduced witnesses and/or documentary evidence about Case No. SUPL-12-2283 on January 10, 2014 and about Case No. SUP-12-2282 on January 16 and 17, 2014.

<sup>4</sup> Ogaldez designated Samantha Grimsley to ask her questions while Ogaldez testified on her own behalf in both cases.

<sup>5</sup> MCOFU waived in writing its right to be present for the portion of the hearing concerning Case No. SUP-12-2282.

FINDINGS OF FACT<sup>6</sup>1 Background

2 MCOFU is the exclusive bargaining representative for Department of Correction  
3 (DOC) employees in statewide bargaining unit 4, which includes correction officers  
4 (COs) below the rank of captain. MCOFU unit members work at various DOC facilities,  
5 including the Boston Pre-Release Center (BPRC) in Roslindale. BPRC is a secure,  
6 two-story facility that houses up to 200 inmates, including 150 pre-release inmates and  
7 50 minimum security inmates. Pre-release inmates leave the facility for work,  
8 educational or counseling programs, while the minimum security inmates participate in  
9 community work crews outside of the facility. COs at BPRC work one of three shifts, 7  
10 AM to 3 PM, 3 PM to 11 PM, or 11 PM to 7 AM. Oaldez began to work as a CO 1 at  
11 BPRC in July 2011 on the 11 PM to 7 AM shift with Fridays and Saturdays as her days  
12 off.<sup>7</sup>

13 Events of May 8, 2012

14 On May 8, 2012, Ogaldez was just finishing her tour of duty on the 11 PM to 7  
15 AM shift. King, the chief steward, punched into work at approximately 6:50 AM.<sup>8</sup> King  
16 had worked at the BPRC for facility for nearly twenty-seven years and had been a  
17 MCOFU chief steward since 1989.<sup>9</sup> When King arrived, he heard unit member Charlie

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<sup>6</sup> The DLR's jurisdiction in this matter is uncontested.

<sup>7</sup> Ogaldez began her employment with the DOC in 1998 and previously had worked at MCI Concord, MCI Longwood and Lemuel Shattuck Hospital Correctional Unit.

<sup>8</sup> King worked the 7 AM to 3 PM shift.

<sup>9</sup> King also had been a steward for two years for AFSCME, the predecessor bargaining representative, before MCOFU became the exclusive representative in 1989. He previously has taken courses in labor relations at the Labor Guild.

1 Russell (Russell) complaining loudly about Ogaldez. Russell had been the officer in  
2 charge (OIC) on the 11 to 7 shift, a position which he also had performed on prior  
3 occasions. Russell protested that when he was the OIC, Ogaldez refused to follow his  
4 orders and that he could not find her. Two months previously, Ogaldez had complained  
5 to MCOFU about Russell's conduct towards her while he was OIC and asked MCOFU  
6 to take action on her behalf, which included arranging for mediation between Russell  
7 and her.<sup>10</sup> When King heard Russell's complaints, he asked Russell and Ogaldez to  
8 meet with him in the MCOFU office at BPRC. King unlocked the office door and sat in  
9 the only chair in the office, while Russell and Ogaldez stood. King first explained what  
10 his role was as chief steward. He then focused on Russell's role as OIC.<sup>11</sup> He told  
11 Ogaldez that when Russell was OIC, she needed to follow Russell's orders. He then  
12 asked Russell and Ogaldez about the nature of their interactions and a tense exchange  
13 took place between Russell and Ogaldez with Russell raising his voice. King then made  
14 certain comments and the nature of those comments was the subject of highly  
15 contradictory testimony from both Ogaldez and King, testimony for which no

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<sup>10</sup> King testified that a week prior to May 8, 2012, he had met with Ogaldez to discuss her complaints about Russell. Conversely, Ogaldez denied that meeting took place. I need not reconcile the differences in their testimony because it is not relevant to the events of the May 8, 2012 meeting.

<sup>11</sup> At hearing, King described the OIC as in charge of the institution, which includes ordering COs to perform inmate counts, distribute medicines and carry out security checks. He noted that if the OIC tells a CO to do something, the CO has to do it.

1 independent corroboration exists.<sup>12</sup>

2           Based upon the following concerns about the reliability of both Ogaldez's and  
3 King's testimony, I decline to solely credit either's version of the events of May 8, 2012.  
4 First, Ogaldez's overall testimony was inconsistent. At one point, she insisted that she  
5 only had dealt with King on three occasions: a) in October 2011, when she made  
6 complaints about his conduct to MCOFU vice-president Jon Mograss (Mograss);<sup>13</sup> b) a  
7 subsequent investigation involving BJ's Wholesale Club (BJ's investigation);<sup>14</sup> and c)  
8 the May 8, 2012 meeting in dispute here. However, she later acknowledged that after  
9 the DOC temporarily assigned her to BPRC, she asked King for MCOFU's assistance  
10 because she wanted the DOC to permanently assign her to the BPRC.

11           Second, King's testimony overstated his various actions as chief steward. He  
12 originally claimed to have known Ogaldez for ten years, but, on cross examination,

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<sup>12</sup> Russell did not testify at the hearing, and MCOFU asks me to draw an adverse inference from Ogaldez's failure to call Russell as a witness. Specifically, MCOFU asks me to infer that Russell was not present during the portion of the discussion which is the subject of Case No. SUPL-12-2883 and that Ogaldez's recall of the May 8, 2012 events is flawed. Adverse inferences are appropriate when a witness is accessible to a party and could be expected to testify favorably on the party's behalf. See Quincy School Committee, 27 MLC 83, 91 (2000). I decline to do so for several reasons. First, it is not clear that Russell would have been unbiased and testified favorably on Ogaldez's behalf based on their prior contentious relationship. Also, it is just as likely that Russell, a MCOFU bargaining unit member, would have testified favorably on behalf of MCOFU by confirming King's testimony that Russell was not present to hear the disputed remarks.

<sup>13</sup> On October 11, 2011, Ogaldez complained to Mograss that King had exhibited unprofessional behavior towards her. Specifically, Ogaldez was training CO1 Rigauert Aime (Aime) when King arrived at work and asked Ogaldez why she did not just let Aime sit on her lap. When Ogaldez challenged King's remark, King told her to let Aime be a man.

<sup>14</sup> Neither Ogaldez nor MCOFU provided me with any specific information about the BJ's investigation.

1 admitted that he only "knew of her." At another point, he claimed that he represented  
2 Ogaldez when she transferred from MCI Longwood to Shattuck. He later amended his  
3 testimony to indicate that when MCI Longwood closed, he and MCOFU stewards  
4 reviewed the list of employees that were transferring to other DOC facilities and that  
5 Ogaldez was on that list.

6         Additionally, the disputed comments took place in a highly charged atmosphere  
7 during a five to ten minute period nearly twenty months before Ogaldez and King  
8 testified in the present case. Upon review of their testimony, their recitations of the  
9 events are much more plausible when consolidated together. However, I specifically  
10 have declined to credit King's testimony that Russell was not present when he made the  
11 disputed comments to Ogaldez and that the meeting was private, representations which  
12 Ogaldez contradicted in her testimony. It is more likely that Russell was still in the room  
13 when the discussion veered from Ogaldez's obligation to follow Russell's orders to the  
14 exchange between Russell and Ogaldez to King's disputed comments.

15         During the exchange between Russell and Ogaldez, Ogaldez made certain  
16 statements and then asked Russell if he wanted to respond. King interjected and  
17 informed Russell that he did not have to answer Ogaldez's comments. King informed

1 her: "I've spoken with you many times<sup>15</sup> and when I come to work I've spoken to you to  
2 tell you to stop doing what you're doing, you're creating a hostile environment every  
3 night you come to work. Everybody is complaining about you. I just want you to stop,  
4 all I want you to do is come to work and do your job, you've told me you have a son, you  
5 take care of your mother, you're their sole support. I am trying to make sure you stay  
6 out of trouble because if you keep this up the department (DOC) is going to come after  
7 you so stop." In response, Ogaldez just stared at him. King then continued by stating:  
8 "Listen, these people, if you keep up what you're doing, these people are going to start  
9 coming after you. They're going to get rid of you because you cannot come to work  
10 creating all these problems. I'm trying to stop the supervisors from writing you up; they  
11 want to write you up. I'm meeting with the superintendent on a regular basis about you.  
12 I'm meeting with the DOS [Director of Security] and the Deputy [the Deputy  
13 Superintendent]. All I want you to do is to come to work, do your eight hours, go home.  
14 That's all you have to do, every day, that's all you have got to do." Ogaldez continued  
15 to stand there silently.

16 King also stated that Ogaldez was "trash" to the DOC. King then added: "We're  
17 tired of you girl and your whining. We can always send you back to Shattuck where you

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<sup>15</sup> King claimed that when the DOC temporarily assigned Ogaldez to BPRC from Shattuck, she had approached him on the BPRC's front steps and asked for MCOFU's assistance because she wanted to request that the DOC permanently assign her to BPRC. King then related how he contacted then MCOFU president Steven Kenneway (Kenneway) and Assistant Deputy Commissioner Bender, who was in charge of community corrections, on Ogaldez's behalf. However, Ogaldez claimed that King refused to help her but that she happened to be in the MCOFU office at BPRC when Kenneway called. She then personally asked Kenneway for MCOFU's assistance. I need not reconcile this contradictory testimony, because it is not material to the outcome before me.

1 came from.”<sup>16</sup> Ogaldez responded that she was not there for King to talk badly about  
2 her to Russell or in front of Russell. King replied: “You had the nerve to call on me to  
3 Mograss.<sup>17</sup> You think they didn’t tell me.” Ogaldez asked: “What made me trash?”  
4 King replied: “You know, how you carry yourself around here, like a strong black  
5 woman.”<sup>18</sup> Ogaldez responded by asking King what he meant and whether he had any  
6 suggestions for her. King replied: “No, no you’re doing just fine. You keep doing what  
7 you’re doing.” Ogaldez described herself as confused by King’s statements.

8 The meeting then ended. Russell and Ogaldez, who were done with their shifts,  
9 left the BPRC, while King reported for duty. Ogaldez subsequently took sick leave for  
10 the next two weeks, which at hearing she blamed on King’s statements to her.

#### 11 Events of September 4, 2012

12 On September 4, 2012, the staff on the 11 PM to 7 AM shift at BPRC included:  
13 Lieutenant Stephen Vasalli (Vasalli), Lieutenant Brian Foley (Foley) and CO 1s Aime,  
14 Anderson Jemmott (Jemmott), Ogaldez and Ray Pike (Pike), who did not arrive at work  
15 until 12 midnight that evening.<sup>19</sup> Vasalli, who was the senior lieutenant, was the shift

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<sup>16</sup> The record contains no evidence showing that King or MCOFU had authority to transfer unit members against their will.

<sup>17</sup> At hearing, King contended that because unit members called Mograss all the time about King, King did not become aggrieved by those calls. However, King previously had not been the subject of any formal complaints by unit members.

<sup>18</sup> Ogaldez and King are both African-American.

<sup>19</sup> Ogaldez made a brief reference in her testimony that Lieutenant Brian Westerman (Westerman) also worked the 11 PM to 7 AM shift on September 4, 2012. However, because no other witnesses or documentary evidence indicated that Westerman worked the 11 PM to 7 AM shift on September 4, 2012, I decline to credit Ogaldez’s testimony on this point.

1 commander,<sup>20</sup> and Foley was the OIC.<sup>21</sup> The COs had the following assignments.<sup>22</sup>  
2 Aime was the first floor officer, Ogaldez was the second floor officer and Jemmott was  
3 the control officer.<sup>23</sup> At approximately 11:05 PM, Aime was performing rounds, which  
4 included ensuring that the BPRC's doors and windows were secure, when Jemmott  
5 called him on the radio to let him know that certain inmates had returned from their  
6 worksites. As the first floor officer, Aime was responsible for conducting a pat search of  
7 inmates who had returned to the facility. Aime responded over the radio that he was  
8 doing rounds. Jemmott then asked him to repeat the message. Foley then went and  
9 conducted the pat search of the inmates.

10 Shortly thereafter, Aime entered the control room where Jemmott and Foley were  
11 located. Aime accused Jemmott of harassing him<sup>24</sup> and demanded that Foley do  
12 something about it.<sup>25</sup> Both Jemmott and Foley asked Aime to leave the control room.

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<sup>20</sup> Vasalli's regular assignment was the 3 PM to 11 PM shift. He worked both the 3 PM to 11 PM shift and the 11 PM to 7 AM shift on September 4, 2012 as part of a shift swap with another supervisor, a sergeant, who worked the 3 PM to 11 PM shift for Vasalli on September 3, 2012.

<sup>21</sup> Foley, who became a lieutenant in June 2012 when the DOC assigned him to BPRC, was usually the shift commander on the 11 to 7 shift. On the night of September 4, 2012, both Aime and Ogaldez believed that Foley was the shift commander.

<sup>22</sup> The DOC refers to assignments as post orders.

<sup>23</sup> As control officer, Jemmott was responsible for verifying that inmates were present or had called in from their work sites at certain designated times.

<sup>24</sup> Aime previously had filed confidential incident reports (CI reports) in May and August 2012 in which he accused Jemmott of harassing him.

<sup>25</sup> I need not decide whether Jemmott actually harassed Aime, which Jemmott denied, because it is not material to the outcome of this case.

1 Jemmott also asked Foley whether he could lock the control room door.<sup>26</sup> Vasalli, who  
2 was working in the shift commander's office about twenty feet away from the control  
3 room, heard noises coming from the control room. He left the shift commander's office,  
4 went down the corridor, and stood outside the control room's sliding window. Aime  
5 continued to loudly insist that Jemmott was harassing him. On or about that time,  
6 Ogaldez finished doing her outside rounds. She entered the building and walked by the  
7 control room. When Aime saw her, he asked her to step inside the control room and act  
8 as a witness for him.<sup>27</sup> Ogaldez attempted to calm Aime, who admittedly was agitated.  
9 Vasalli then directed Jemmott to lock the control room door. Vasalli also asked Aime  
10 and Ogaldez to go with him to the shift commander's office, and they did so.<sup>28</sup>

11 As Vasalli and Aime entered the shift commander's office, they were engaged in  
12 a conversation about the control room door. Specifically, Aime wanted to know why  
13 Jemmott had locked the door, and Vasalli replied that the door was to remain locked  
14 when he was the shift commander. Aime also reiterated to Vasalli that Jemmott was  
15 harassing him, but Vasalli replied that he had not been present to see Jemmott

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<sup>26</sup> Ogaldez and Aime also claimed that Jemmott taunted Aime by mimicking him, which Jemmott denied. I need not decide whether Jemmott taunted Aime because it is not relevant to the present case.

<sup>27</sup> Aime and Ogaldez previously had worked together for nearly ten years at Lemuel Shattuck and for one year at BPRC.

<sup>28</sup> Aime and Ogaldez both testified that Jemmott had moved his lips silently to form an expletive at Aime as Aime left the control room. Jemmott, Vasalli and Foley instead claimed that it was Aime, who had moved his lips silently to form an expletive at Jemmott. However, I need not reconcile the testimony because it is not pertinent to the outcome of the case.

1 harassing Aime.<sup>29</sup> Aime also stated that he was sick and that he wanted to go home.  
2 Ogaldez, who was standing in the doorway, reminded Aime several times to calm down.  
3 Ogaldez then returned to her post on the second floor. Before Aime left the office,  
4 Vasalli asked him whether he still wanted to go home, and Aime replied that he would  
5 work the remainder of his shift.<sup>30</sup> Aime then left Vasalli's office to return to his post.

6 About fifteen seconds later, Aime changed his mind, went to the sliding window  
7 in the control room, and asked Foley whether he could leave work early at 5:00 AM.  
8 Aime then decided that he was too sick to work at all and asked to leave immediately.  
9 Foley asked him to wait until Pike arrived at midnight. Aime protested that he should  
10 not have to wait to go home and that Foley was discriminating<sup>31</sup> against him.<sup>32</sup> Vasalli  
11 then came to the sliding window at the control room and told Foley to let Aime go home  
12 because they had a sufficient number of staff on the shift.

13 Aime then called Ogaldez on the radio and asked her to meet him at his location.  
14 When she came down to the first floor, he told her that he was going home. Thereafter,  
15 Aime left work on or about 11:15 PM.

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<sup>29</sup> Ogaldez also started to comment about what Foley needed to do when Vasalli cut her off by stating that they were not there to talk about Foley.

<sup>30</sup> Aime was concerned about preserving his sick leave.

<sup>31</sup> In an August 17, 2012 CI report, Aime claimed that Foley had treated him unfairly and discriminated against him in the assignment of certain duties on August 15, 2012. Aime and Jemmott are African-American, and Foley and Vasalli are Caucasian.

<sup>32</sup> Aime testified that upon hearing Aime's complaints, Foley responded with an expletive, which Foley denied. I need not decide whether or not Foley uttered the profanity because it is not material to the issue before me.

11:30 PM Inmate Count

1 COs on the third shift at BPRC conduct counts of the inmate population at 11:30  
2 PM, 3:30 AM and 6:30 AM. Five minutes before each scheduled count, an  
3 announcement is made that instructs inmates to remain in place until the count is  
4 finished. Typically, BPRC handles counts in the following manner. For the first floor  
5 count, the CO assigned to the first floor post (first floor officer) walks down the tiers of  
6 both the pre-release and the minimum security corridors physically counting the  
7 inmates. The CO assigned to the second floor post (second floor officer) provides  
8 coverage for the first floor officer by standing at the end of the corridor to ensure that  
9 inmates do not move from room to room, while the first floor officer conducts the count.  
10 For the second floor count, the second floor officer counts the inmates, while the first  
11 floor officer provides coverage. After counting the inmates on the first or second floor,  
12 the CO radios the officer assigned to the control room post<sup>33</sup> (control officer) on the  
13 radio and convey the tallies from the counts. The control officer verifies the accuracy of  
14 the tallies by comparing the figures with information in the computer. At the end of the  
15 count, the control officer inputs the new tallies in the computer and "clears" the count.

16 At about 11:25 PM, Vasalli went to the control center, where Jemmott and Foley  
17 were present. In the absence of Aime, Foley assigned Jemmott to do the 11:30 count.  
18 Jemmott informed Vasalli and Foley that he was uncomfortable performing the count  
19 with Ogaldez. Vasalli and Foley were both aware that Jemmott and Ogaldez had a

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<sup>33</sup> The control room contains the BPRC's computer and communications systems as well the facility's keys and radios. The control room has windows on the upper half of the room, including a sliding window that allows COs inside of the control room to communicate with others who are outside of the control room.

1 dispute on July 26, 2012.<sup>34</sup> Vasalli replied that Foley would do the first floor count with  
2 Jemmott while Ogaldez remained on the second floor and that Vasalli would do the  
3 second floor count with Ogaldez. He ordered Foley to tell Ogaldez about the  
4 assignments. At 11:30 PM, Foley and Jemmott left the control center to conduct the  
5 count of the inmates present on the first floor minimum security (M1) corridor. Vasalli  
6 remained at the control center in order to compare the tallies with the data in the  
7 computer and to input those tallies.

8 Jemmott and Foley proceeded to M1 where they encountered Ogaldez near the  
9 M1 day room. Foley informed her that he was going to cover Jemmott for the first floor  
10 count, that Vassalli was going to cover her for the second floor count, and that she  
11 could go back upstairs.<sup>35</sup> Ogaldez did not respond but continued to stand at the end of  
12 the M1 corridor. Jemmott began to count the inmates in M1, while Foley provided  
13 coverage at the end of the corridor. Ogaldez stood next to Foley.

14 After Jemmott and Foley finished the M1 count, they left M1 and started to walk  
15 towards to the corridor (P1) on the first floor where the pre-release inmates were  
16 located. Ogaldez also walked there with them.<sup>36</sup> In the hallway between M1 and P1,  
17 Foley again instructed Ogaldez to return to her post on the second floor, but she did not.  
18 Jemmott then began to count the inmates on P1, while Foley provided coverage.

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<sup>34</sup> In an August 16, 2012 CI report, Jemmott had claimed that Ogaldez had acted aggressively towards him on August 15, 2012 and July 26, 2012. The July 26, 2012 incident is described below in greater detail in FN 41.

<sup>35</sup> Ogaldez indicated that it was rare for a lieutenant to provide coverage during a count and that it only happened once or twice during her career.

<sup>36</sup> Vasalli observed them through the control room's windows.

1 Ogaldez sat in a chair at the beginning of the P1 Hallway. When Jemmott completed  
2 the P1 count and was walking down the tier, Ogaldez stood up as he walked by and  
3 then returned to the second floor. Foley returned to the control room and Vasalli  
4 proceeded to the second floor. Ogaldez conducted the second floor count, while Vasalli  
5 covered her. Foley inputted the data from the second floor count into the computer.  
6 Ogaldez worked the rest of her shift without incident. Vasalli subsequently asked Foley  
7 whether he had ordered Ogaldez to return to the second floor while Foley and Jemmott  
8 conducted the first floor count.<sup>37</sup> Foley confirmed that he had ordered Ogaldez twice to  
9 return to the second floor.<sup>38</sup>

#### 10 Events of September 5-11, 2012

11 In the early morning of September 5, 2012, Vasalli, Foley and Jemmott submitted  
12 CI reports to BPRC's Superintendent Tanja Gray (Superintendent Gray) concerning  
13 their interactions with Aime and Ogaldez on the night of September 4, 2012. Gray, who  
14 usually works from 9 AM to 5 PM, received those CI reports when she arrived at the  
15 office on September 5, 2012. Superintendent Gray then prepared Intake Report

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<sup>37</sup> While acting as the coverage officer for the second floor count, Vasalli never asked Ogaldez why she remained on the first floor while Jemmott and Foley conducted the first floor count.

<sup>38</sup> Foley provided detailed information about where and when he gave Ogaldez the two orders to return to the second floor. However, Ogaldez explicitly denied that Foley ever gave her a direct order to return upstairs. She also claimed that Foley never informed her that he was going to provide coverage for Jemmott on the first floor count. I credit Foley's testimony on those points as it is plausible that he would have ordered Ogaldez not to be present for the count because: a) he was going to be the coverage officer; b) Jemmott had expressed concerns about doing the count with Ogaldez; and c) Foley was aware that Ogaldez and Jemmott had a dispute in July 2012. Further, it is unlikely that Foley would have simply stood there during the first floor count if he intended that Ogaldez act as the coverage officer, especially in light of the fact that Ogaldez acknowledged that it was rare for a lieutenant to provide coverage during a count.

1 #14004 (Report #14004),<sup>39</sup> which she submitted via computer to then Acting Chief of  
2 Internal Affairs Duane MacEachern (Chief MacEachern).<sup>40</sup> In Report #14004,  
3 Superintendent Gray listed Aime and Ogaldez as the two employees who were accused  
4 of misconduct and gave the following description of the issue:

5 On September 4, 2012 confidential information reports were written by Lt.  
6 Stephen Vasalli, ... Lt. Brian Foley and CO Anderson Jemmott, ...  
7 regarding issues that transpired on the 11x7 shift on that date, (and  
8 appear to be ongoing) with Officers Rigaubert Aime and Glennis Ogaldez.  
9 The reports indicate that there were various confrontations with these  
10 Officers that initiated with CO Aime being called over the radio to perform  
11 searches on inmates returning from work release. Reports allege that CO  
12 Aime's behavior was combative and aggressive to both LT. Foley and CO  
13 Jemmott and that Aime told CO Jemmott to "f\_ you". Reports allege that  
14 CO Ogaldez was also combative and aggressive to Lt. Foley and CO  
15 Jemmott and she refused orders from Lt. Foley to return to her post and  
16 actually followed these staff to the inmate housing unit while they were  
17 attempting to conduct a count, and blocked CO Jemmott's passage as he  
18 walking down the corridor.

19  
20 Prior issues were reported by the 11X7 staff<sup>41</sup> and informal actions were  
21 agreed upon and [steps] taken to address these issues to include Labor

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<sup>39</sup> Managers of DOC facilities prepare intake reports to notify Internal Affairs of possible staff misconduct and to request an investigation.

<sup>40</sup> Superintendent Gray did not conduct her own investigation into the events of September 4, 2012 before sending the intake report to Chief MacEachern.

<sup>41</sup> On July 26, 2012, an incident took place in the control room between Foley, Ogaldez and Jemmott, which resulted in the three employees submitting CI reports on July 30, 2012, July 31, 2012 and August 16, 2012 respectively. Ogaldez contended that Jemmott had ordered her to stand in a corner when she asked him a question and that Foley had spoken inappropriately to her and ranted at her in front of Jemmott. Jemmott asserted that Ogaldez acted aggressively towards him. Foley maintained that Jemmott and Ogaldez had a verbal altercation, that he yelled at both of them and told Jemmott to leave the control room, and that Ogaldez was subsequently rude to him for the remainder of the shift. I need not reconcile the employees' different versions of the events that took place on July 26, 2012, because it is not material to the outcome of this decision.

1 management involvement, Interviews by the Director of Security,<sup>42</sup> and  
2 involvement with the Mediation Program.<sup>43</sup>

3 Also, on September 5, 2012, Chief MacEachern requested that the Internal  
4 Affairs Unit undertake an investigation of the events referenced in Report #14004. The  
5 Internal Affairs Unit assigned Sergeant Crystal Johnson (Johnson) to investigate. On  
6 September 7, 2012, Johnson conducted separate interviews with Foley, Ogaldez and  
7 Jemmott at BPRC, all of whom had MCOFU representatives present during their  
8 interviews.<sup>44</sup> On or about that time, Chief MacEachern briefed then Acting DOC Deputy  
9 Commissioner for Administrative Services Paul DiPaolo (Deputy Commissioner  
10 DiPaolo) about Report #14004.<sup>45</sup> Deputy Commissioner DiPaolo reviewed Report

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<sup>42</sup> On August 22, 2012, BPRC's Director of Security James Morrone (Director Morrone) met separately with employees on the 11 PM to 7 AM shift, including Ogaldez, Foley and Jemmott. Director Morrone did not meet with Aime, who was out on sick leave that evening.

<sup>43</sup> On August 5, 2012, Ogaldez met with Peter Bowne from the DOC's Office of Diversity and Equality in order to request mediation with Foley, Jemmott and King. Foley and Jemmott subsequently refused to participate in mediation. However, Ogaldez and King participated in at least one mediation session.

<sup>44</sup> Also, on September 7, 2012, Aime filed an industrial accident report claiming stress as a result of Jemmott's harassment. On September 10, 2012, Aime took out an ex parte Harassment Prevention Order (Harassment Order) against Jemmott, which precluded Jemmott from working at BPRC, a copy of which Aime sent via facsimile to Superintendent Gray on that same date. The DOC successfully moved to vacate the Harassment Order on September 11, 2012 and placed Aime on detachment with pay on that date. Aime remained on detachment with pay until February 2013, when the DOC issued him a suspension. Thereafter, he returned to work at BPRC.

<sup>45</sup> Chief MacEachern typically conducted weekly reviews of the intake reports that various facility managers sent him.

1 #14004 on September 10, 2012 and made the decision to detach Ogaldez with pay<sup>46</sup> on  
2 that same date based upon the seriousness of the insubordination allegations that  
3 Ogaldez faced and the fact that the DOC is a paramilitary organization that requires  
4 COs to obey lawful orders.<sup>47</sup> When Ogaldez reported to work on the evening of  
5 September 11, 2012,<sup>48</sup> Deputy Superintendent DiMoura and Foley gave her a letter  
6 from Superintendent Gray, which bore that day's date. Superintendent Gray's  
7 September 11, 2012 letter stated:

8       Effective immediately you are being detached with pay and without  
9       prejudice from your Correction Officer I position at Boston Pre-Release  
10       Center pending the results of an investigation.

11  
12       You are to remain available for questioning. If you are unavailable at any  
13       time during the period of your detachment, you may request to utilize your  
14       own time. In the event that you are unavailable for more than forty-eight  
15       (48) hours, your authorized leave will be changed to an unauthorized  
16       leave without pay and, as a result, you may face disciplinary action.

17  
18       Additionally, be advised that you are required to immediately surrender  
19       your Department of Correction identification card. Upon your return to  
20       work, this item will be returned to you.

21 Deputy Superintendent DiMoura then escorted Ogaldez to the door. Ogaldez never  
22 returned to active duty after September 11, 2012.

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<sup>46</sup> When the Employer detaches employees, the Employer 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 into possible misconduct.

<sup>47</sup> Deputy Superintendent DiPaolo made the decision to detach Ogaldez with pay in his role as DOC Commissioner Luis Spencer's designee.

<sup>48</sup> During the period between Tuesday, September 4 and Tuesday, September 11, 2012, Ogaldez worked on Wednesday, September 5 and Thursday, September 6, 2012. She took her usual days off on Friday, September 7 and Saturday, September 8 as well as a vacation day on Sunday, September 9, 2012. She then worked on Monday, September 10, 2012.

Events after September 11, 2012

1 Johnson continued her investigation after Ogaldez's and Aime's September 11,  
2 2012 detachments with pay. She interviewed: a) Vasalli on September 13, 2012, b)  
3 Aime on September 19, 2012, c) Ogaldez on September 26, 2012, d) Jemmott on  
4 October 5, 2012, e) King on October 5 and November 1, 2012, and f) Foley on  
5 November 1, 2012.<sup>49</sup> On November 7, 2012, Johnson submitted a report to Philip Silva,  
6 Chief of the Internal Affairs Unit, which described her investigation and the findings that  
7 she compiled<sup>50</sup> as a result of that investigation.<sup>51</sup> On December 7, 2012, the DOC  
8 notified Ogaldez that she was required to attend a disciplinary hearing on December 18,  
9 2012. The December 7, 2012 notice referenced the following conduct:

10 On or about September 4, 2012, your supervisor ordered you to leave the  
11 first floor due to a staff conflict between officers on the shift, and return to  
12 your unit on the second floor at Boston Pre-Release. You failed to do so.  
13

14 Subsequent to the actions in paragraph #1 above, your supervisor  
15 specifically ordered you to return to your post, and you failed to do so.

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<sup>49</sup> All of the employees had MCOFU representatives present during their interviews, except for Foley who declined union representation at his November 1, 2012 interview.

<sup>50</sup> Johnson attached a copy of Ogaldez's disciplinary history to her report. Ogaldez previously had received a three day suspension in 2008, a ten day suspension in 2007 that was reduced to a five day suspension in 2008, a five day suspension in 2006 that was reduced to a two and one-half day suspension in 2008, a three day suspension, two one day suspensions, and two letters of reprimand in 2005, a letter of reprimand in 2004 and a letter of reprimand in 2002.

<sup>51</sup> The DOC subsequently issued Foley a verbal reprimand because he failed to secure the control room door on September 4, 2012 and he failed to address Aime's actions on that evening. The DOC also issued Jemmott a letter of reprimand, which he grieved, about being less than truthful about statements that were made by him or by King to him about Ogaldez. Although Jemmott did not make the statements on September 4, 2012, Johnson looked into those statements as part of her investigation.

1 On December 18, 2012, the DOC conducted Ogaldez's hearing, and she continued to  
2 remain on detachment with pay pending the results of the hearing. On March 6, 2013,  
3 the DOC terminated Ogaldez's employment.<sup>52</sup>

#### 4 Opinion

#### 5 **SUP-12-2182: Section 10(a)(3) Allegation**

6 The issue before me is whether the Employer retaliated against Ogaldez by  
7 placing her on detachment with pay for engaging in concerted, protected activity.

#### 8 Prima Facie Case

9 A public employer that retaliates or discriminates against an employee for  
10 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the  
11 Law. Southern Reg. Voc. School District v. Labor Relations Commission, 388 Mass.  
12 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass.  
13 App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party  
14 must show that: 1) an employee was engaged in activity protected by Section 2 of the  
15 Law; 2) the employer knew of that conduct; 3) the employer took adverse action against  
16 the employee; and 4) the employer took the adverse action to discourage the protected  
17 activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000);  
18 Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9, 1985).

#### 19 Protected Activity and Employer Knowledge

20 Here, Ogaldez engaged in concerted, protected activity by acting upon her co-  
21 worker Aime's request for assistance on September 4, 2012. When Ogaldez entered

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<sup>52</sup> I take administrative notice of the fact that Ogaldez's termination was the subject of a prohibited practice charge in Case No. SUP-13-3096, which a DLR investigator dismissed on January 28, 2014.

1 the BPRC control room in response to Aime's request that she witness his interactions  
2 with Foley, she engaged in mutual aid or protection as referenced in Section 2 of the  
3 Law.<sup>53</sup> Contrary to the Employer's claims, it is irrelevant that Ogaldez rendered this aid  
4 on an ad hoc basis rather than in the context of a formal meeting. Further, the facts  
5 before me show that the Employer was aware of Ogaldez's concerted, protected activity  
6 because its supervisors Foley and Vasalli observed Ogaldez's actions and described  
7 them in CI reports that they submitted to Superintendent Gray on September 5, 2012.

#### 8 Adverse Action

9 The CERB has consistently defined adverse action as an adverse personnel  
10 action, such as a suspension, discharge, involuntary transfer or reduction in supervisory  
11 authority. City of Boston, 35 MLC 289, 291 (2009); Town of Dracut, 25 MLC 131, 133  
12 (1999). Ogaldez contends that detaching her with pay for nearly six months constitutes  
13 adverse action. Conversely, the Employer argues that Ogaldez was not adversely  
14 affected by the decision to detach her because she received her full pay and benefits.

15 An adverse employment action must materially disadvantage the affected  
16 employee in some way. City of Boston, 35 MLC at 291. Material disadvantage arises  
17 when objective aspects of the work environment are affected. See King v. City of  
18 Boston, 71 Mass. App. Ct. 460, 468 (2008) (failing to provide female superior officers

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<sup>53</sup> Section 2 of the Law provides:

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion. An employee shall have the right to refrain from any or all such activities ....

1 with rank-specific locker rooms rises to the level of an adverse action). Because there  
2 must be real harm, subjective feelings of disappointment and disillusionment will not  
3 suffice. See MacCormack v. Boston Edison Co., 423 Mass. 652, 663-664 (1996)  
4 (former employee's claims of adverse action were based upon subjective feelings of  
5 disappointment and disillusionment rather than objective evidence that he had been  
6 disadvantaged in terms and conditions of employment); see also City of Holyoke, 35  
7 MLC 153, 156, MUP-05-4503 (January 9, 2009) (co-workers' subjective opinions and  
8 office banter do not render as adverse a previously requested transfer). Here, the  
9 Employer took an involuntary personnel action against Ogaldez by removing her from  
10 active duty for six months while it investigated her for misconduct. She could not report  
11 to work at a job that she had held for fourteen years and the six month detachment  
12 became part of her employment record. Cf. Southbridge School Committee, 40 MLC  
13 218, 227, MUP-06-4762, MUP-07-5010 (H.O. January 31, 2014), aff'd, Southbridge  
14 School Committee, 41 MLC 199, 201 (January 30, 2015) (placement of early childhood  
15 coordinator on administrative leave with pay constitutes adverse action). Thus, I  
16 conclude that Ogaldez's detachment with pay was an adverse action.

### 17 Animus

18 A charging party may proffer direct or indirect evidence of discrimination in  
19 support of its claim. See Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1,  
20 2002), aff'd sub nom., Town of Brookfield v. Labor Relations Commission, 443 Mass.  
21 315 (2005). Direct evidence is evidence that, "if believed, results in an inescapable or  
22 at least highly probable inference that a forbidden bias was present in the workplace."  
23 Wynn v. Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass.

1 655, 667 (2000) (citing Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294. 300  
2 (1991)). Stray remarks in the workplace, statements by people without the power to  
3 make employment decisions, and statements made by decision makers unrelated to the  
4 decisional process itself do not suffice to satisfy a charging party's threshold burden. Id.  
5 at 667 (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989)). Upon review of  
6 the facts before me, I find no direct evidence of animus towards Ogaldez's concerted,  
7 protected activity. Thus, I have treated her allegations as an indirect evidence case.  
8 The burden of proof in indirect evidence cases is set forth in Trustees of Forbes Library  
9 v. Labor Relations Commission (Trustees of Forbes Library), 384 Mass. 559 (1981).

10 Absent direct evidence of unlawful motivation, unlawful motivation may be  
11 established through circumstantial evidence and reasonable inferences drawn from that  
12 evidence. Suffolk County Sheriff's Department, 27 MLC 155, 159, MUP-1498 (June 4,  
13 2001). Circumstantial factors may include: the timing of the adverse action in relation to  
14 the protected activity, Town of Somerset, 15 MLC 1523, 1529, MUP-6404 (March 9,  
15 1989); the insubstantiality of the reasons given for the adverse action, Commonwealth  
16 of Massachusetts, 14 MLC 1743, 1749, SUP-3081 (May 19, 1988); and the employer's  
17 divergence from longstanding practices. Town of Mashpee, 36 MLC 163, 171, MUP-02-  
18 3653 (April 15, 2010). Here, the Employer detached Ogaldez only seven days after she  
19 engaged in concerted, protected activity by acting as Aime's witness. However, timing  
20 alone is insufficient to find unlawful employer motivation. City of Holyoke, 35 MLC at  
21 157. Ogaldez also claims that the Employer should not have detached her for minor  
22 allegations that had no effect on its operations.

1           The Employer in its September 11, 2012 letter gave no reasons for placing  
2 Ogaldez on detachment. However, Deputy Commissioner DiPaolo testified that he  
3 recommended that Ogaldez be detached because of the seriousness of the  
4 insubordination allegations against her and the paramilitary nature of the DOC, which  
5 compels COs to obey lawful orders. Further, in Report #14004, which Deputy  
6 Commissioner DiPaolo reviewed before making his recommendation, Superintendent  
7 Gray referenced, in part, that Ogaldez had refused Foley's direct orders to return to her  
8 post. Upon review, the Employer's reasons for its actions were neither trivial nor  
9 shifting and inconsistent. Additionally, although Ogaldez makes the bare claim that the  
10 Employer deviated from a prior practice when it placed her on detachment with pay, the  
11 record before me contains no facts in support of that assertion. Thus, Ogaldez has  
12 failed to establish the four element of her prima facie case.

13           However, even assuming that I were to infer animus, Ogaldez has failed to  
14 establish that but for her protected activity the Employer would not have placed her on  
15 detachment with pay.

#### 16 Employer's Burden of Production

17           Under the three-part Trustees of Forbes Library analysis, once a charging party  
18 establishes a prima facie case of retaliation, it is the employer's burden to produce a  
19 legitimate, non-discriminatory motive for taking the adverse action. The employer's  
20 burden to produce legitimate, non-discriminatory reasons for taking the adverse action  
21 is more than simply stating an unsubstantiated allegation. Commonwealth of  
22 Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998). The employer must  
23 state a lawful reason for its decision and produce supporting facts indicating that the

1 proffered reason was actually a motive in the decision. Trustees of Forbes Library, 384  
2 Mass. at 566; Quincy School Committee, 27 MLC at 92; Commonwealth of  
3 Massachusetts, 25 MLC at 46. As was discussed above, the Employer placed Ogaldez  
4 on detachment with pay while it investigated the accusations of insubordination  
5 involving her failure to follow Foley's September 4, 2012 orders. Consequently, the  
6 Employer has met its burden of production.

7 "But For" Analysis

8       Once an employer produces evidence of a legitimate, non-discriminatory reason  
9 for taking the adverse action, the case becomes one of "mixed motives." Under the  
10 Trustees of Forbes Library analysis, the CERB considers whether the employer would  
11 have taken the adverse action but for the employee's protected activities. Suffolk  
12 County Sheriff's Department, 27 MLC at 160; Quincy School Committee, 27 MLC at 92.  
13 The charging party bears the burden of proving that, but for the protected activity, the  
14 employer would not have taken the adverse action. Athol-Royalston Regional School  
15 Committee, 28 MLC 204, 214, MUP-2279 (January 14, 2002); Town of Athol, 25 MLC at  
16 208, 211, MUP-1448 (June 11, 1999). Here, Ogaldez has presented no facts showing  
17 that despite the pending insubordination allegations, the Employer would not have  
18 placed her on detachment with pay, except that she had acceded to Aime's request for  
19 assistance on September 4, 2012.

20       Consequently, the Employer did not retaliate against Ogaldez for engaging in  
21 concerted, protected activity in violation of Section 10(a)(3) of the Law.

**SUPL-12-2283: Section 10(b)(1) Allegation**

1 Opinion

2 The issue before me is whether King's May 8, 2012 comments to Ogaldez  
3 violated Section 10(b)(1) of the Law. An employee organization violates Section  
4 10(b)(1) of the Law when it engages in conduct that interferes, restrains or coerces any  
5 employer or employee in the exercise of any right guaranteed under Section 2 of the  
6 Law.

7 Section 2 Activity

8 As a preliminary matter, I must determine whether Ogaldez was engaged in an  
9 activity protected by Section 2 of the Law when she met with King on May 8, 2012. The  
10 Union argues that the King held a private meeting with Ogaldez and that the meeting  
11 did not implicate her Section 2 rights. Upon review of the facts before me, I do not find  
12 MCOFU's arguments to be either legally or factually persuasive. First, King did not  
13 meet privately with Ogaldez. Instead, Russell also was present for the entire meeting,  
14 not just part of the meeting as the Union asserts. Also, the purpose of the meeting was  
15 to address complaints that Ogaldez had made to MCOFU about Russell, and that  
16 Russell had expressed about Ogaldez. In March 2012, Ogaldez had requested that  
17 MCOFU take action on her behalf regarding Russell. When describing the conflict  
18 between Ogaldez and Russell, King focused on Russell's role as the OIC on the 11 PM  
19 to 7 AM shift. As the OIC, Russell was in charge of the BPRC on the 11 PM to 7 AM  
20 shift and the COs who worked on that shift, including Ogaldez. He ordered COs to  
21 perform inmate counts, distribute medicines and carry out security checks. In his role  
22 as the OIC, Russell was an agent of the DOC, who could potentially impact Ogaldez's

1 terms and conditions of employment. When King met with Ogaldez and Russell, it was  
2 the equivalent of a pre-grievance meeting, where a union attempts to resolve an  
3 employee's concerns before filing a formal grievance. King even started the meeting by  
4 describing his role as Union chief steward. Thus, I conclude that Ogaldez was  
5 exercising her rights under Section 2 of the Law when she attended the May 8, 2012  
6 meeting. As described in the findings portion of this decision, I have determined that  
7 King made certain comments to Ogaldez during the May 8, 2012 meeting.  
8 Furthermore, it is undisputed that King uttered those comments in his capacity as chief  
9 steward and that he was an agent of MCOFU.

#### 10 Reasonable Person Standard

11 I next must determine the proper standard to use when analyzing whether King's  
12 comments would chill employees in the exercise of their rights. Ogaldez, who points out  
13 that she was on sick leave for two weeks after the May 8, 2012 meeting, seeks to have  
14 me use a subjective standard based upon her own feelings. However, a review of the  
15 case law for violations of Section 10(a)(1) of the Law,<sup>54</sup> which contains language similar  
16 to the language in Section 10(b)(1) of the Law, and federal precedent<sup>55</sup> leads me to  
17 conclude that a reasonable person standard is more appropriate. See Steelworkers  
18 Local 1397 (U.S. Steel Corp.), 240 NLRB 848 849 (1979) (applying an objective

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<sup>54</sup> Section 10(a)(1) of the Law states:

It shall be a prohibited practice for a public employer or its designated representative to interfere, restrain, or coerce any employee in the exercise of any right guaranteed under Section 2 of the Law.

<sup>55</sup> The decisions of the National Labor Relations Board (NLRB) and the federal courts provide useful guidance in interpreting state law. See Greater New Bedford Infant Toddler Center, 12 MLC 1131, 1155, n.42, UP-2493 (August 8, 1985), aff'd, 13 MLC 1620 (April 17, 1987).

1 standard of whether a union's statement would have a reasonable tendency to restrain  
2 or coerce employees in the exercise of their statutory rights not whether a particular  
3 employee was actually restrained or coerced). In Section 10(a)(1) cases, the CERB's  
4 inquiry focuses on the objective impact that the employer's conduct would have on a  
5 reasonable employee's exercise of their Section 2 rights. Town of Chelmsford, 8 MLC  
6 1913, 1916 (1982); aff'd sub. nom. Town of Chelmsford v. Labor Relations Commission,  
7 15 Mass. App. Ct. 1107 (1983). The subjective impact of the employer's conduct is not  
8 determinative. City of Fitchburg, 22 MLC 1286, 1292, MUP-9843 (November 28, 1995).

#### 9 Chilling Effect of the Statements

10 Here, the Union argues that King's remarks should be considered as a whole and  
11 that those remarks represent an effort by King to warn Ogaldez that the Employer would  
12 take action against her if she continued to be the subject of complaints. MCOFU is  
13 correct that it does not effectuate the purposes of the Law to subject each phrase in  
14 King's comments to a litmus test of possibility, but instead I must consider the tone of  
15 the comments as a whole. Cf. Town of Winchester, 19 MLC 1591, 1597, n.9, MUP-7514  
16 (December 22, 1992) (examining selectmen's statements as a whole when determining  
17 whether a Section 10(a)(1) violation occurred). However, upon review, King's  
18 comments contain expressions of anger and ridicule coupled with a threatening remark  
19 directed at Ogaldez's complaints to the Union about Russell. Cf. Salem School  
20 Committee, 35 MLC 199, 217, MUP-04-4008 (April 14, 2009) (labeling a teacher's  
21 posting on a website about access to faculty mailboxes as a dishonorable act  
22 constitutes unlawful criticism). King uttered the angry and demeaning remark: "We're  
23 tired of you girl and your whining." Even more troublesome, he noted that: "We can

1 always send you back to Shattuck where you came from.” His statement constitutes a  
2 threat involving an unwelcome employment action, i.e. an involuntary transfer. Cf. See  
3 Town of Bolton, 32 MLC 20, 25, MUP-01-3255 (June 27, 2005) (police chief’s  
4 comments that she would re-evaluate police officers’ job performance and re-assess  
5 their dedication to the employer constitutes an unlawful threat made in response to unit  
6 members’ complaints about detail rates).<sup>56</sup>

7         The Union contends that that a reasonable employee would not be chilled by  
8 King’s statements because only the Employer has the authority to involuntarily transfer  
9 employees. Based upon the facts before me, an employee reasonably could believe  
10 that MCOFU as the exclusive bargaining representative had the Employer’s ear and  
11 could influence the Employer. First, just prior to uttering the threat to involuntarily  
12 transfer Ogaldez, King informed her that he was meeting with the superintendent, the  
13 deputy superintendent and the DOS about her and that he was trying to stop Ogaldez’s  
14 supervisors from writing her up. Also, King’s use of the pronoun “we” when he made  
15 the threat could lead a reasonable employee to conclude that King was not just talking  
16 about himself and his authority as chief steward. Additionally, King had claimed at  
17 hearing that he had interceded on Ogaldez’s behalf with Assistant Deputy  
18 Commissioner Bender when Ogaldez wanted to be permanently assigned to BPRC.  
19 Even though Ogaldez disputed King’s claim, she asserted that when King refused to  
20 help her, she had asked Union president Kenneway to intercede on behalf. While  
21 differences exist between King’s and Ogaldez’s version of events, both versions would

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<sup>56</sup> I have not included King’s remark that Ogaldez was “trash” to the DOC as part of my analysis because King did not actually call Ogaldez “trash” but stated that she was “trash” to the DOC.

1 support a reasonable employee's impression that MCOFU had influence with the  
2 Employer.

3 Finally, the Union argues that a finding of a violation in the present case would  
4 hinder union representatives who need to speak frankly or emotionally with unit  
5 members about unpleasant matters. However, the Union's predictions are too dire.  
6 The present case does not find that mere name-calling or insults during a heated  
7 exchange between union representatives and unit members constitutes a violation of  
8 the Law. See generally Letter Carriers Local 3825 (Postal Service), 333 NLRB 343  
9 (2001) (holding that calling a union member a "scabass" is not unlawful). Instead, a  
10 chief steward made a threat to involuntarily transfer a unit member that was directed at  
11 her Section 2 activity. Therefore, I conclude that King's comments violated Section  
12 10(b)(1) of the Law.

### 13 CONCLUSION

14 Based on the record and for the reasons stated above, I conclude that, by the  
15 May 8, 2012 comments of its agent King, MCOFU violated Section 10(b)(1) of the Law  
16 by interfering with, restraining and coercing Ogladez in the exercise of her rights  
17 guaranteed by Section 2 of the Law. However, I dismiss the allegations that the  
18 Employer retaliated against Ogaldez by placing her on detachment with pay in violation  
19 of Section 10(a)(3) of the Law.

### 20 ORDER

21 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that MCOFU  
22 shall:

23 1. Cease and desist from;

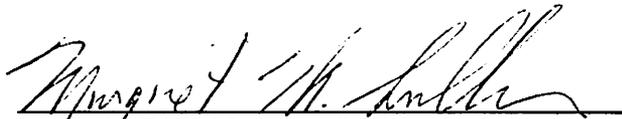
- 1 a) Making statements that would tend to interfere with, restrain or
- 2 coerce employees in the exercise of their rights guaranteed under
- 3 the Law.
- 4
- 5 b) In any like or related manner interfering with, restraining or coercing
- 6 employees in the exercise of their rights guaranteed under the Law.
- 7

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

- 9 a) Refrain from making statements that would tend to interfere with,
- 10 restrain and coerce employees in the exercise of their rights
- 11 guaranteed under the Law.
- 12
- 13 b) Immediately post signed copies of the attached Notice to
- 14 Employees in conspicuous places where notices to bargaining unit
- 15 members are customarily posted including electronic postings, if
- 16 MCOFU customarily communicates to members via intranet or
- 17 email. The Notice to Employees shall be signed by a responsible
- 18 elected Union Officer and shall be maintained for a period of at
- 19 least thirty (30) consecutive days thereafter. Reasonable steps
- 20 shall be taken by the Union to ensure that Notices are not altered,
- 21 defaced or covered by any other material. If MCOFU is unable to
- 22 post copies of the Notice in all places where notices to bargaining
- 23 unit members are customarily posted, MCOFU shall immediately
- 24 notify the Executive Secretary of the DLR in writing, so the DLR can
- 25 request that the Employer permit the posting.
- 26
- 27 c) Notify the DLR in writing of the steps taken to comply with this
- 28 decision within ten (10) days of receipt of this decision.
- 29

30 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, 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

H.O. Decision (cont'd)

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SUPL-12-2283

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 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

WE WILL refrain from making any statements that would tend to interfere with, restrain and 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, 19 Staniford Street, 1<sup>st</sup> Floor, Boston, MA 02114 (Telephone: (617) 626-7132).