

COMMONWEALTH OF MASSACHUSETTS, METROPOLITAN DISTRICT COMMISSION AND FRANK MACDONALD, AP-3027 (6/2/87). DECISION ON APPEAL OF HEARING OFFICER'S DECISION

- 65.2 concerted activities
- 65.6 employer speech
- 82.1 affirmative action
- 82.124 notices
- 92.51 appeals to full commission

Commissioners Participating:

- Paul T. Edgar, Chairman
- Maria C. Walsh, Commissioner
- Elizabeth K. Boyer, Commissioner

Appearances:

- William J. Hayward, Jr., Esq. - Representing the Commonwealth of Massachusetts, Metropolitan District Commission
- Mr. Frank MacDonald - Pro se

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Pursuant to a charge filed by Frank MacDonald (MacDonald), a police officer with the Commonwealth of Massachusetts, Metropolitan District Commission (Employer MDC), and a Complaint issued by the Labor Relations Commission (Commission), Hearing Officer Robert B. McCormack, Esq. issued a decision on February 27, 1987, finding that the Employer violated Sections 10(a)(4) and (1) of General Laws Chapter 151B (the Law) by taking certain actions against MacDonald because of MacDonald's activities before the Commission on a previous prohibited practice complaint.²

The Employer filed a timely appeal of the Hearing Officer's decision. No supplemental statements have been filed. Since the Employer does not specifically challenge any of the Hearing Officer's findings of fact, we adopt the findings set forth in the decision and examine only the Hearing Officer's legal conclusions. 456 R 13.13(7). Whitman-Hanson Regional School Committee, 9 MLC 1615, 1616 (1983). We have reviewed the Hearing Officer's decision and, finding no error, affirm his decision. We do note, however, that the Hearing Officer made no legal conclusion regarding Captain Daniel Murphy's statement to Officer MacDonald that the latter would be brought up on charges, pursuant to internal department rules and regulations, for subpoenaing a superior officer to appear as a witness in a Commission proceeding.³

¹The full text of the Hearing Officer's decision is attached hereto.
²A decision in that case (Case No. SUP-2814) is reported at 12 MLC 1753 (1986). The Hearing Officer noted, that case involves the same parties and provides a factual background to the current matter.
³The omission from the conclusions of law was obviously inadvertent since the

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Employer has offered no evidence demonstrating the legitimacy of Murphy's state-
ment, evidence that the Employer has a rule regulating its employees' right to
superior officers and that the rule serves a legitimate purpose. Absent
evidence, the statement can only be viewed in the context of Murphy's other
statements that day. In these circumstances, we conclude that Murphy's
to discipline MacDonald for subpoenaing him without departmental permission
constitutes an additional violation of Section 10(a)(1) of the Law.⁴

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the Metropolitan District Commission,
its Commissioner William G. Geary and the subordinate officers under his com-
mand:

- 1. Cease and desist from:
 - a. Interfering with, restraining, and coercing police officer Frank
MacDonald in the exercise of any of his rights guaranteed under the
Law.
 - b. Discriminating against MacDonald because he has signed or filed a
complaint or has given any information or testimony to the Labor
Relations Commission.
- 2. Sign and post the attached Notice to Employees, and leave the same posted
for a period of thirty (30) days. The Notice shall be posted at all MDC
police stations throughout the Commonwealth.⁵
- 3. Notify the Commission within thirty (30) days of receipt of this Decision
and Order of the steps taken to comply therewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN
MARIA C. WALSH, COMMISSIONER
ELIZABETH K. BOYER, COMMISSIONER

(continued)

Officer included a remedy for the resulting interference with MacDonald's

Murphy's conduct was so pleaded in the Complaint in this case.

We note that the Hearing Officer ordered the Employer to post two different
one to be signed by the Commissioner of the Metropolitan District Commission;
to be signed by Captain Murphy, the individual supervisor whose conduct formed
basis of this charge. Since an order of the Commission runs against the employer
entity rather than against any individual employer agent, we have modified the

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**NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

After a hearing at which all parties had the opportunity to present evidence, Massachusetts Labor Relations Commission has determined that the Metropolitan District Commission (MDC), acting through its agent, Police Captain Daniel Murphy, violated Sections 10(a)(1) and (4) of Massachusetts General Laws, Chapter 150E (the Law) by interfering with, restraining, and coercing a police officer in the exercise of his rights under the Law, and further, by discriminating against him because he filed a complaint with the Massachusetts Labor Relations Commission, and had given testimony before that agency.

Section 2 of M.G.L. Chapter 150E provides as follows:

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 of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in Section 12.

The MDC hereby assures its employees that it will not interfere with them in the exercise of any of their aforesaid rights. More specifically, MDC employees are hereby assured that the MDC will not attempt to utilize the services of the Massachusetts Labor Relations Commission, to file complaints there, to give testimony before that agency, and to subpoena witnesses for proceedings there.

The MDC will not discriminate against Police Officer Frank MacDonald, or any other MDC police officer, because he or she has filed a complaint with the Labor Relations Commission, has given testimony to the Labor Relations Commission or has exercised the subpoena powers of the Labor Relations Commission.

Commissioner
Metropolitan District Commission

5 (continued)
The Commission hereby orders the Metropolitan District Commission to require a single Notice to Employees which is to be signed by the chief executive officer of the Metropolitan District Commission and posted throughout the MDC's facilities.

HUSETTS LABOR CASES

CITE AS 14 MLC 1004

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HEARING OFFICER'S DECISION

Date Issued: February 27, 1987

Officer:

Robert B. McCormack, Esq.

Counsel:

William J. Hayward, Jr., Esq. - Representing the Commonwealth of Massachusetts, Metropolitan District Commission

Mr. Frank MacDonald - Pro se

Statement of the Case

Captain Daniel Murphy of the Metropolitan District Commission Police Force, based at its Fells Division in Medford, has again been charged with violations of sections 10(a)(1) and (4) of M.G.L. Chapter 150E (the Law) for his treatment of Frank MacDonald, an officer under his command.¹ Pursuant to notice, the matter came on to a hearing before me on February 18, 1987. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After considering the evidence as a whole, I find and rule as follows.

Findings of Fact

MacDonald's earlier case (SUP-2814) was heard on December 23, 1985. Prior to the hearing, MacDonald subpoenaed Captain Murphy to appear and testify. Murphy appeared on December 23rd, and testified briefly. Afterwards, he left before the hearing concluded.

On January 7, 1987, at approximately 8:00 a.m., Murphy confronted MacDonald at a station house. Murphy remarked "they told me you said I threatened you at the hearing. They're going to let me hear the tapes."² If it's true, you're in big trouble." MacDonald attempted to explain what had occurred at the hearing, whereupon

¹A prior decision (Case No. SUP-2814) involving the same parties as here is recorded at 12 MLC 1753 (1986). The findings in that case serve as background for this decision, and I incorporate that decision by reference.

²Expedited hearings of the Commission are electronically recorded. The MDC maintains copies of those tapes, which are public records.



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Murphy stated "do you think that Picardi will let you get away with this labor relations thing? Smarten up, before they fire you! If you don't watch what you are doing, you will lose your pension!"³

Later that afternoon, Murphy stationed MacDonald in the "guard room," which was about 10 feet long by 5 feet wide. He was required to remain there throughout his working hours for several weeks. Absolutely no work was assigned to him, and he was forbidden to leave the room, talk to anyone, use the telephone, or enter the desk work areas of the station.

Still later on the afternoon of January 7th, Murphy entered the tiny guard room, and ordered MacDonald to write a report on what he did at the Labor Relations Commission on the day of the hearing on December 23. MacDonald told Murphy that he would not be required to write a report on what he had done at the Commission; and that he had come before this agency as a matter of right. MacDonald expressed his dismay at being threatened or penalized for his doings before the Commission. Murphy, however, persisted, and MacDonald wrote a very short report saying that he had been at the Commission's offices on the date and time in question "conducting business."

Murphy was dissatisfied with the brevity of the report, and said that it wasn't enough, and that if MacDonald didn't write more detail of what he did, he would be brought up on charges. MacDonald replied that he couldn't understand why Murphy was doing this to him; why he was making him stay in the room; why he wouldn't use the telephone; and why he was being threatened with punishment for not writing a report like Murphy wanted. MacDonald again protested that Murphy shouldn't threaten him because of his use of the Commission's services, and that if he persisted, he (Murphy) was going to get in trouble. MacDonald then asked "if someone after me, why don't you refer it to headquarters? Why don't you let them come after me?" Murphy replied "because I'm gonna getcha!" At the time this remark was made, Sergeant Bill Costello was also in the room with MacDonald and Murphy. He intervened, but MacDonald called for him to come back in, saying "hey, if I'm gonna stand here and be threatened, I want someone to be a witness!" Costello did return to the room, and Murphy continued in his presence. Murphy specifically demanded to know why MacDonald had subpoenaed him to the December 23rd hearing, and told MacDonald that he was going to be brought up on charges for subpoenaing him. Murphy went on to say that was the reason he was ordering MacDonald to write the report; because under MDC rules and regulations, a police officer must seek a superior officer's permission before he may subpoena him.⁴ MacDonald replied that it would be ridiculous for him to try to get someone's permission before subpoenaing him, because

³Picardi was formerly president of the union which represents the MDC police officers. In May of 1984 he was promoted to Deputy Superintendent. Some details of promotion are described in the decision on SUP-2814. See 12 MLC at 1754.

⁴Such was stated to MacDonald by Murphy. I do not know whether such a rule of regulation does exist.



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said "no" it would mean that they would have the discretionary power of coming
t at their whim, so therefore he would never be able to exercise his rights,
he would never be able to get any of those people in as witnesses. These
apparently ended the debate, and MacDonald never did write the expanded re-
ch was demanded of him. On that same day, MacDonald wrote a complaint to MDC
owner William G. Geary entitled "Threats," which complained of many of Mur-
ings described above, and invoked Geary's intervention and assistance. His
t unheeded.

MacDonald testified that as a result of Murphy's actions his position became
rious among his peer structure that people were afraid to be seen talking
 for fear of retaliation from the Captain and other people in authority; so
stracized, and no one would socialize with him for fear that being seen with
d get them in trouble.

MacDonald is currently in the proces of retiring from the MDC. Although he
ed on the payroll, he is not currently receiving any wages. Certain paper
essary to process his retirement application has been submitted, but he is
ly certain when or if his retirement application will be allowed. "Right
mented MacDonald, "I'm sitting with no job, no money, no income...and I
ven make sergeant."

astly, MacDonald testified, in response to my specific inquiry, that the
ot in compliance, in whole or in part, with the Commission's order issued
No. SUP-2814. I note, however, that the order in that case incorrectly ref-
the "state police," and incorrectly infers that a MDC police captain had
ily committed a similar violation of M.G.L. Chapter 150E.

Opinion

Section 10(a)(1) of M.G.L. Chapter 150E expressly forbids any public employer
esignated representative to interfere with, restrain, or coerce any employee
xercise of any right guaranteed under the law. Section 10(a)(4) forbids, in
it part, discrimination against any employee because he has signed or filed
avit, petition, or compliant or has given any information or testimony under

The Labor Relations Commission frequently finds public employers to be in vio-
of the Massachusetts Public Employee Collective Bargaining Law. Frequently,
olations are the result of unfamiliarity with the law's requirements, rather
atant attempt to violate the statutory mandate. Such most certainly is not
 here. It is difficult to imagine more deliberate or flagrant violations.²

Rejected out of hand is the Employer's contention that Murphy was acting in
 "realistic" way toward MacDonald, in order to give him timely warning so he
rd off approaching danger. The claim that the Employer's actions are "de-
' is similarly rejected.



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Unrebutted evidence requires a ruling that Captain Murphy violated Sections (a)(1) and (4) of the Law by:

1. Ordering MacDonald to write a report on why he had subpoenaed Murphy without permission;
2. Isolating MacDonald in the guard room without work for several weeks as previously described; and
3. Threatening MacDonald with loss of his job and loss of his pension because of his activities before this Commission.

Case authority supporting the above rulings are cited in the previous case (UP-2814). I see no compelling reason to repeat them here.

Upon the basis of the foregoing, the following order is required. Should the Metropolitan District Commission ignore this order, I hereby advise MacDonald of his right to request a compliance hearing. Requests for compliance hearings must be in writing, signed by the party making the request, and mailed or delivered to the Executive Secretary of the Commission.

Order

It is hereby Ordered that the Metropolitan District Commission, through its Commissioner William G. Geary, and the subordinate officers under his command, shall:

1. Cease and desist from interfering with, restraining, and coercing police officer Frank MacDonald in the exercise of any of his rights guaranteed under the Law. More specifically, cease and desist from discriminating against MacDonald because he has signed or filed a complaint or has given any information or testimony to the Labor Relations Commission.
2. Sign and post the attached two (2) Notices to Employees, and leave the same posted for a period of thirty (30) days. The Notice of Commissioner William G. Geary shall be posted at all MDC police stations throughout the Commonwealth. The Notice of Captain Daniel Murphy may be limited to posting at the Fells Division station in Medford.
3. Notify the Commission within thirty (30) days of receipt of this decision and order of the steps taken to comply therewith.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

ROBERT B. McCORMACK, ESQ.
HEARING OFFICER



State of Massachusetts, Metropolitan District Commission and Frank MacDonald,
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NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

After a hearing before the Massachusetts Labor Relations Commission, at which the employees were given an opportunity to be heard, a hearing officer found that Metropolitan District Commission Captain Daniel Murphy violated Sections 10(a)(1) of M.G.L. Chapter 150E, the Massachusetts Public Employee Collective Bargaining Act, by interfering with, restraining, and coercing police officer Frank MacDonald in the exercise of his rights under said law; and by discriminating against MacDonald because he filed a complaint with the Massachusetts Labor Relations Commission and gave testimony before that agency.

The Commission will not discriminate against police officer Frank MacDonald, or any other Metropolitan District Commission Police Officer, because he or she has filed a complaint with the Labor Relations Commission, or has given testimony to the Labor Relations Commission, or has exercised the subpoena powers of the Labor Relations Commission.

The Commission will not in any like manner restrain, coerce or intimidate employees in the exercise of their rights guaranteed under Section 2 of M.G.L. Chapter 150E.

Daniel Murphy
Captain

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NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

After a hearing before the Massachusetts Labor Relations Commission, at which parties were given an opportunity to be heard, a hearing officer found that a Metropolitan District Commission Police Captain violated Sections 10(a)(1) and (4) M.G.L. Chapter 150E (the Massachusetts Public Employee Collective Bargaining Law) interfering with, restraining, and coercing a police officer in the exercise of rights under the law; and by discriminating against him because he had filed a complaint with the Massachusetts Labor Relations Commission, and had given testimony before that agency.

Section 2 of M.G.L. Chapter 150E provides as follows:

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 of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in Section 12.

I hereby assure our employees that we will not interfere with them in the exercise of any of their aforesaid rights. More specifically, our employees are free to utilize the services of the Massachusetts Labor Relations Commission, to file complaints there, to give testimony before that agency, and to subpoena witnesses at hearings held there.

WILLIAM G. GEARY
COMMISSIONER

