July 25, she did not speak with Tuttle until several days later on August 4.

Wyckstrom met again with Tuttle on August 6 and agreed to file a grievance on her behalf and told Tuttle that she would call her the following day. When Tuttle did not hear from Wyckstrom, she left numerous voice mail messages. During this same time period, Wyckstrom received numerous phone calls from other bargaining unit members seeking her assistance. Wyckstrom subsequently filed Tuttle's grievance on September 3.

Even though Wyckstrom did not call Tuttle back precisely on the dates she promised, Wyckstrom was actively pursuing an informal resolution of Tuttle's potential grievance, and did, in fact, file a grievance on Tuttle's behalf. Given the number of phone calls that Wyckstrom received between August 11 and August 26, it is understandable that she may not have been able to return all of her phone calls to all of the bargaining unit members who sought her assistance, including Tuttle.

Furthermore, there is no evidence that Wyckstrom was either ignoring the grievance or treating it in a cursory fashion. Nor is there any evidence that Wyckstrom failed to investigate or evaluate the grievance. On the contrary, Wyckstrom met and spoke with Tuttle and met with Tuttle's former supervisor in an attempt to resolve the matter informally. Although Wyckstrom had promised to file Tuttle's grievance in August and did not file it until September 3, Tuttle does not allege, nor is there any evidence, that the failure to file the grievance in August adversely affected Tuttle's grievance rights.

For all of the above reasons, I find that the Union has not breached its duty of fair representation and, therefore, has not violated Section 10(b)(1) of the Law. Accordingly, the Complaint of Prohibited Practice is dismissed.

SO ORDERED.

* * * * * *

In the Matter of TOWN OF ATHOL

and

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 415

Case No. MUP-1448

62.3	*discrimination*
62.6	*misconduct*
63.44	*pursuing Civil Service Appeal*
63.7	*discrimination—union activity*
65.2	*concerted activities*
65.6	*employer speech*
91.1	*dismissal*

June 11, 1999
Robert C. Dumont, Chairman[1]
Helen A. Moreschi, Commissioner

Brian Harrington, Esq.	*Representing the International Brotherhood of Police Officers, Local 415*
Stanley Weinberg, Esq.	*Representing the Town of Athol*

DECISION[2]

On February 8, 1996, the International Brotherhood of Police Officers, Local 415 (the Union) filed a charge with the Commission alleging that the Town of Athol (the Town) had engaged in a prohibited practice within the meaning of Sections 10(a)(1), (2), (3), and (4) of Chapter 150E of Massachusetts General Laws (the Law). On October 9, 1996, following an investigation, the Commission issued a complaint of prohibited practice alleging that the Town had violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by sending five separate suspension notices to Brian Dodge (Dodge), a police officer and member of the bargaining unit represented by the Union, and subsequently terminating him in retaliation for engaging in concerted, protected activity. Specifically, the complaint alleged that the Town had retaliated against Dodge for appealing one of his suspensions to the Civil Service Commission. The Commission dismissed that portion of the Union's charge alleging that the Town had violated Section 10(a)(4) of the Law, and the Union did not seek reconsideration pursuant to 456 CMR 15.03.[3] On March 19, 1997, Stephanie B. Carey, Esq., a duly designated Administrative Law Judge (ALJ) of the Commission, conducted a formal hearing. Both parties had a full opportunity to be heard, examine witnesses, and introduce evidence into the record. On May 5, 1997, both parties submitted post-hearing briefs. On September 12, 1997, the ALJ issued her recommended findings of fact (findings). The Union and the Town filed challenges to the findings on September 24, 1997, and September 17, 1997, respectively.

1. Commissioner Mark A. Preble did not participate in consideration of this case.

2. Pursuant to 456 CMR 13.02(1), the Commission designated this case as one in which the Commission shall issue a decision in the first instance.

3. The Commission did not address that portion of the Union's charge alleging that the Town had violated Section 10(a)(2) of the Law, and the Union did not seek reconsideration pursuant to 456 CMR 15.03 concerning the alleged Section 10(a)(2) violation.

Findings of Fact[4]

The Union is the exclusive collective bargaining representative for all permanent, full-time police officers employed by the Town in its police department (the department). Dodge worked as a police officer in the department from 1985 until his termination on January 29, 1996. During the period of his employment as a police officer for the Town, Dodge was never a Union officer, had no responsibilities related to negotiating collective bargaining agreements, and had no official responsibilities for processing grievances. In February 1990, then-Police Chief Anthony R. Scott (Scott) suspended Dodge for five days for: 1) fighting with another police officer; and 2) untruthfulness. On March 29, 1990, the appointing authority for the Town, the Athol Board of Selectmen (the Board), upheld that suspension. Dodge received no other discipline from the Town between 1991 and 1995.

In January 1994, Thomas R. Button (Chief Button) was appointed Chief of Police for the Town. Thereafter, Chief Button and Dodge had a conversation in which Chief Button informed Dodge that Chief Button had been told to watch out for three or four people in the department, including Dodge and Becky Guerrin (Guerrin), another police officer and unit member employed in the department.[5] Neither Robert Francis Bouchard (Bouchard), a unit member who had been Union president from 1991 through 1995, nor Karen Kolimaga (Kolimaga), a unit member who had been Union president since 1995, ever witnessed Chief Button make any derogatory statements against either Dodge or any other unit member because of Union activity or membership. Further, neither Bouchard nor Kolimaga ever observed Chief Button take any adverse action against either Dodge or any other unit member because of Union activity or membership.[6] At some point prior to June 1995, Chief Button assigned Lt. Timothy Anderson (Anderson) to investigate certain officers on the night shift, including Dodge and Guerrin. After his investigation, Anderson completed a report and recommended that Dodge receive a five-day suspension and that Guerrin receive a three-day suspension.

On June 29, 1995, Chief Button, Anderson, and then-Union President Bouchard met with Dodge and Guerrin. At that meeting, Chief Button offered to reduce Dodge's suspension from five days to three days and to reduce Guerrin's suspension from three days to one day in return for their agreement to accept the discipline without pursuing any further appeals regarding those suspensions. However, Chief Button informed Dodge that he remained under investigation for other, additional allegations of misconduct and that any settlement would not preclude future action on those allegations involving Dodge that were currently under investigation. In November 1995, Chief Button sent a letter to John Chinian, the Town's labor counsel, suggesting that it would be fiscally sound to consolidate those separate charges as a package and seek Dodge's dismissal. Those additional charges involving Dodge were the subject of Internal Affairs Case Investigations (IACI's) during summer and fall 1995.[7]

On June 30, 1995, Chief Button suspended Dodge for five days for harassing a female civilian dispatcher, untruthfulness, conduct unbecoming an officer, and other violations. Chief Button suspended Guerrin for three days for allegedly taking unauthorized coffee breaks. Both Dodge and Guerrin appealed their suspensions. In December 1995, the Board increased Dodge's suspension from five to fifteen days.[8] On January 4, 1996, Dodge appealed the Board's decision to the Civil Service Commission. On January 29, 1996,[9] the Civil Service Commission upheld the Board's decision and the fifteen day suspension.[10]

Guerrin appealed her suspension to the Board, which upheld Chief Button's decision and also increased Guerrin's suspension from three days to five days. Subsequently, Guerrin appealed the Board's decision to the Civil Service Commission, which affirmed the Board's decision. No additional charges were filed against Guerrin following her appeals to the Board and the Civil Service Commission.[11] In March 1996, Guerrin resigned from the department.

On January 16, 1996, while Dodge was serving the fifteen-day suspension, Chief Button had served on Dodge five separate letters

---

4. The Commission's jurisdiction in this matter is uncontested.

5. The Union proposed that the findings be amended to add that "Dodge had a private conversation with Chief Button where Chief Button stated that Dodge was one of two troublemakers that would be dealt with." Although we decline to make that specific finding because it is not supported by the record, we have amended the findings to reflect a statement by Chief Button that is supported by the record.

6. The Town contends that the findings should include certain portions of the testimonies of Bouchard and Kolimaga which the ALJ had not included because they show that Chief Button did not act adversely towards unit members because of their Union activities. We agree with the Town's argument and find this fact to be material to the issues in this case. Accordingly, we have amended the findings to reflect this fact.

7. The ALJ found that Chief Button had informed Dodge that he remained under investigation for other misconduct and that any settlement would not include future action on those violations that were being investigated at that time. The Town argues that the findings should be clarified to indicate that the charges brought against Dodge by Chief Button in January 1996, which led to his termination by the Board, involved additional allegations of misconduct that had arisen and had been investigated separately from the misconduct that led to Dodge's suspension in June 1995. Further, the Town contends that Chief Button had been investigating those additional allegations of misconduct during summer and fall 1995, before Dodge filed an appeal with the Civil Service Commission regarding his June 1995 suspension. Upon reviewing the record and for purposes of clarification, we agree with the Town's argument and have amended the findings to reflect that a number of IACI's involving Dodge were under investigation during summer and fall 1995.

8. In her findings, the ALJ stated that the Board increased Dodge's suspension by an additional eleven (11) working days, which would yield a sixteen (16) day suspension period. Upon reviewing the record, the evidence demonstrates that the Board increased Dodge's suspension to fifteen (15) days. Therefore, we have amended the findings to clarify this fact.

9. In her findings, the ALJ indicated that the Civil Service Commission upheld the Board's decision on January 29, 1997. After reviewing the record, we have modified the findings to reflect the correct date, January 29, 1996.

10. The Union contends that the findings should state that Dodge appealed his fifteen day suspension to the Civil Service Commission on January 4, 1996, and that he received notice of five new suspensions less than two weeks later. Contrary to the Union's argument, we find that the ALJ's finding is sufficient and decline to include the Union's proposed statement in the findings.

11. The Town argues that the findings should state that, although Guerrin, like Dodge, filed a Civil Service Appeal regarding the suspension originally imposed by Chief Button in June 1995 and increased by the Board, no further charges or disciplinary action were brought against Guerrin after she filed the appeal. We find the ALJ's finding to be sufficient and decline to include this fact in the findings.

dated January 12, 1996, notifying Dodge of five new suspensions for a total of 23 days. Those letters read, in part:

Letter One – 5-day suspension:

> 1. On June 24, 1995, you disobeyed the orders of Sgt. Kevin Heath to report to work at 11:00 P.M. for a vacant 11:00 P.M. to 7:00 A.M. shift.
>
> 2. On June 24, 1995, you feigned illness to avoid being ordered in to work by Sgt. Kevin Heath.
>
> 3. On June 24, 1995, by feigning illness and calling in sick you caused a fictitious illness report to be filed.
>
> 4. On July 25, 1995, you failed to cooperate with Lieutenant Timothy Anderson the investigating officer in this matter and lied in your statement about being too sick to work the 11:00 P.M. to 7:00 A.M. shift on June 24, 1995. . . .
>
> I note for the record your 3 past suspensions, 2 in 1990 and 1 in 1995/6. I further advise you I will be seeking additional punishment from the Board of Selectmen.

Letter Two – 3-day suspension:

> 1. On July 2, 1995, you disobeyed written orders of the Chief of Police to turn in your Department issued I.D. card, folder and badge(s) to watch/acting watch commander prior to 11:00 P.M. on July 2, 1995.
>
> 2. On July 3, 1995, it was learned that you had lost your department I.D. and folder.
>
> 3. On July 18, 1995, it was learned that you weren't properly carrying your department I.D. on duty as required and can only say for sure that you last had your I.D. in August of 1994.

Letter Three – 5-day suspension:

> 1. On July 21, 1995, you were assigned to investigate a complaint . . . . You failed to complete your report and file the charges until September 4, 1995, 6 ½ weeks after the incident . . . .
>
> 2. On December 14, 1995, you lied in your statement to Lieutenant Timothy Anderson, who was conducting an internal investigation . . . .

Letter Four – 5-day suspension:

> 1. On September 22, 1995, at about 3:00 A.M. you left your assigned beat without . . . permission.
>
> 2. On September 22, 1995, at about 3:00 A.M. you left your cruiser and were in Star Donuts without properly notifying Dispatch
>
> 3. . . . you were at Star Donuts, off your beat, without permission at the same time as Officer . . . Guerrin.
>
> 4. On November 7, 1995, you lied in your statement to Sgt. . . . Hager, who was conducting an internal investigation. . . .

Letter Five – 5-day suspension:

> 1. On October 12, 1995, a portable radio assigned to/used by you became damaged . . . and you failed to properly notify the Watch Commander and report this damage. . . .
>
> 2. On December 14, 1995, you lied in your statement to Lieutenant . . . Anderson, who was conducting an internal investigation. . . .

During the course of departmental investigations of these infractions, Dodge raised several concerns with department officials, including: 1) concerns about the confusion associated with ordering-in off-duty officers to fill vacant positions; 2) the number of officers that frequently file incomplete or untimely reports; and 3) the change in the coffee break policy.[12] These concerns were all related to the departmental charges against Dodge that were currently under investigation.

On January 24, 1996, the Board notified Dodge that a suspension hearing regarding his five most recent suspensions was scheduled for Saturday, January 27, 1996.[13] That letter read, in part:

> The Board wishes to advise you that the Board of Selectmen, as appointing authority, will hold an appointing authority hearing regarding your 5 most recent suspensions on Saturday, January 27, 1996. . . . Pursuant to MGL C31, S41 these hearings will be held for the purpose of determining (a) whether there was just cause for the Chief's suspensions and (b) whether more severe sanctions up to and including termination should be taken. . . . Please be advised that the Board will be holding all five suspension appeal hearings and that this hearing will be convened as scheduled, without fail. . . .

On January 25, 1996, Brian Harrington (Harrington), Dodge's attorney, sent a response to the Board that read, in part:

> Please be advised that neither myself nor Mr. Brian Dodge are available to attend the Board's scheduled Saturday, January 27 hearing . . . due to other commitments. I ask that these hearings be rescheduled and that I be consulted prior to any date and time being set.
>
> My understanding is that one selectmen (sic) will not attend Saturday meetings as a matter of principle. We would request that all five selectmen be present at any hearing pursuant to M.G.L. Ch. 31 s.41. If the Board holds this hearing in our absence Mr. Dodge will exercise all rights available to him under M.G.L. Ch. 31 . . . and . . . Ch. 150E. Mr. Dodge specifically reserves his rights under Chapter 150E regardless of whether the Board insists on holding their hearing on Saturday, January 27.

On January 27, 1996, the Board met without Harrington and Dodge and found just cause for all five suspensions. The Board's rationale for terminating Dodge was stated in its decision, dated January 27, 1996. Specifically, the Board found that:

> Officer Dodge has shown to be a liar, he has total disregard for the Rules, Regulations and Policies, he does not adhere to law, does not obey orders or instructions and has violated the public trust by his pattern of behavior. He is dishonest and cannot be trusted. If a Police Officer lies so routinely he can not [sic] be believed, his

---

12. The Union argues that a statement should be added to the findings to indicate that Dodge had raised concerns to fellow officers and supervisors regarding radio procedures and breaks prior to and during the investigation concerning his conduct. We find that the ALJ's finding is sufficient and decline to amend the findings to include the statement requested by the Union.

13. The Board had previously held other suspension hearings for Dodge on Saturdays.

> credibility to testify, to write reports and act as a Police Officer is suspect. Officer Dodge has shown, by his actions that he is clearly incorrigible and his behavior and conduct are unacceptable within a Police Department where members have sworn to uphold the law, protect and serve the community, adhere to Department Rules and Regulations and are required to abide by a code of conduct and ethics.[14]

Further, the Board issued the following order:

> Given Officer Dodge's repeated violations of the Department's Rules and Regulations, including his untruthfulness, continued dishonesty, his lack of adherence to policies and procedures and disobeying of orders the Board hereby terminates Brian J. Dodge's employment as a Police Officer for the Town of Athol Effective (sic) at 12 noon, January 29, 1996.

On Monday, January 29, 1996, at a meeting in his office, Chief Button informed Dodge he was being terminated from the department.[15]

Decision

10(a)(3)

The Commission applies a three-step analysis when considering an alleged violation of Section 10(a)(3). *Town of Belmont*, 25 MLC 95, 96 (1998) (citing *Trustees of Forbes Library* v. *Labor Relations Commission*, 384 Mass. 559 (1981); *Higher Education Coordinating Council*, 23 MLC 101 (1996)). First, the Commission determines whether a *prima facie* case has been established. To establish a *prima facie* case of discrimination based on protected activities, the charging party must produce evidence to support each of the following elements: 1) the employee engaged in concerted activity protected by Section 2 of the Law; 2) the employer knew of this activity; 3) the employer took adverse action against the employee; and 4) the adverse action was motivated by the employer's desire to penalize or discourage the protected activity. *Town of Clinton*, 12 MLC 1361, 1364 (1985); *Boston City Hospital*, 11 MLC 1065, 1071 (1984); *City of Boston*, 8 MLC 1872, 1874 (1982). If the charging party establishes a *prima facie* case, the employer may offer evidence of one or more lawful reasons for taking the adverse action against the employee. Finally, if the employer produces evidence of lawful grounds for its adverse action, the charging party must establish that, "but for" the protected activity, the employer would not have taken the adverse action. *Town of Belmont*, 25 MLC at 97.

To satisfy its burden of establishing a *prima facie* case, the Union must first prove that Dodge was engaged in concerted activity protected under Section 2 of the Law. The Commission has adopted the National Labor Relations Board's approach in determining whether an employee is engaged in concerted activity. *Commonwealth of Massachusetts Commissioner of Administration and Finance*, 24 MLC 116, 118 (1998). This approach recognizes concerted activity where an employee is engaged in activity with, or on the authority of other employees, rather than on behalf of the employee alone. *Id.* (citing *Town of Southborough*, 21 MLC 1242 (1994); *Meyers Industries*, 268 NLRB 73 (1984)). The Commission has also recognized that an employee's challenge to discipline is concerted protected activity whether pursued under the grievance procedure in a collective bargaining agreement (*Id.*; *Town of Southborough*, 21 MLC 1242, 1248 (1994)) or pursued under M.G.L. c. 31, § 43, the Civil Service Law. *Town of Natick*, 7 MLC 1048, 1060 (1980); *Town of Winthrop*, 9 MLC 1884, 1886 (1993) (citations omitted).

Here, the Union argues that Dodge's complaints to management personnel regarding safety and work breaks were concerted activities for the mutual aid and protection of his fellow officers and were, therefore, protected activities under Section 2 of the Law. The Union also contends that Dodge's appeal to the Civil Service Commission was protected under Section 2 of the Law. Therefore, the Union argues, the Town retaliated against Dodge, in violation of Section 10(a)(3) of the Law, when it issued five suspensions against Dodge less than two weeks after he exercised his right to appeal a suspension to the Civil Service Commission. Moreover, the Union claims that the Town had been hostile towards the Union for an extended period of time and had made anti-Union remarks to Dodge. We find that the Union has satisfied its burden of establishing a *prima facie* case against the Town for violating Section 10(a)(3) of the Law.

Contrary to the Union's argument, the record is devoid of evidence demonstrating that Dodge's complaints in the fall of 1995 to representatives of the employer regarding safety and work breaks were made on the authority of other employees. Therefore, we find that Dodge's complaints do not constitute concerted activity under Section 2 of the Law. *See Town of Southborough*, 21 MLC 1242 (1994). However, we do find that Dodge engaged in protected activity by appealing his fifteen day suspension to the Civil Service Commission.

After finding that Dodge was engaged in protected activity, the next two factors of the Union's *prima facie* case are easily met. It is undisputed that the Town was aware of Dodge's appeal to the Civil Service Commission. Further, it is undisputed that Dodge's suspension and termination were adverse employment actions and could be perceived as a punitive response to his appeal to the Civil

---

14. The Town contends that the findings should include the exact language of the Board's decision to terminate Dodge because it is relevant to show that the Town had legitimate reasons for his termination. Upon reviewing the record, we agree with the Town's argument and have amended the findings to include the Town's rationale for suspending Dodge.

15. The Union argues that the following statements should be added to the findings: 1) Dodge appealed his fifteen day suspension to the Civil Service Commission on January 4, 1996 and received notice of five new suspensions less than two weeks later; and 2) Dodge had raised concerns to fellow officers and supervisors regarding radio procedures and breaks prior to and during the investigation concerning his conduct. Additionally, the Town contends that the findings do not state—but should state—that, although Guerrin, like Dodge, filed a Civil Service Appeal regarding the suspension originally imposed by Chief Button in June 1995 and increased by the Board, no further charges or disciplinary action were brought against Guerrin after she filed the appeal. Contrary to the parties' arguments, we find that the ALJ's findings are sufficient concerning the above-enumerated facts and decline to further amend the findings.

Service Commission. *See Town of Holbrook*, 15 MLC 1221, 1225 (1988).

Next we consider whether the Union satisfies the remaining element of its *prima facie* case: improper employer motivation. We have held that, absent direct evidence of improper employer motivation, unlawful motivation may be established through circumstantial evidence and reasonable inferences drawn from that evidence. *Commonwealth of Massachusetts*, 6 MLC 2041, 2045-46 (1980). There are several factors that may suggest unlawful employer motive including: 1) timing of the alleged discriminatory act, *Town of Somerset*, 15 MLC 1523, 1529 (1989); 2) triviality of reasons given by employer, *Commonwealth of Massachusetts*, 14 MLC 1743, 1748 (1988); 3) an employer's deviation from past practices, *Everett Housing Authority*, 13 MLC 1001, 1007 (1986); or 4) expressions of animus or hostility towards a union or the protected activity, *Town of Andover*, 17 MLC 1475, 1483 (1991).

The Union argues that anti-Union statements were communicated to Dodge during his employment evaluation and that he was discriminated against because of both his complaints regarding working conditions and his appeal to the Civil Service Commission. Further, the Union argues that the Town has been hostile towards the Union for an extended period of time.

Contrary to the Union's argument, we do not find the record to reflect that the Town had communicated anti-Union statements to Dodge or that the Town had been hostile toward the Union. However, we do find that the circumstantial evidence—specifically the timing of the Town's decision to suspend and terminate Dodge—suggests that the Town retaliated against Dodge because he appealed his suspension to the Civil Service Commission. Although the Town was engaged in an ongoing investigation of Dodge's misconduct through the summer and fall 1995, the Town did not take any disciplinary action against Dodge during that period. Rather, it decided to terminate Dodge on January 27, 1996 based on past incidents that had occured several months earlier and less than two weeks after he appealed his suspension to the Civil Service Commission. Therefore, the evidence is sufficient to sustain the Union's burden of proof to establish a *prima facie* case of discrimination based on concerted, protected activity.

But For Analysis

The Town argues that it suspended and terminated Dodge not because of any concerted, protected activity, but because he was a bad cop. It contends that, because Dodge had a history of misconduct, including disobeying orders, feigning illness, neglecting his duty, damaging and losing police department property, leaving his assigned beat, and lying, the Board acted responsibly and lawfully when it suspended and terminated Dodge from the police department. Further, the Town argues that it would have terminated Dodge in January 1996 even if Dodge had not appealed his suspension to the Civil Service Commission.

To determine whether the Town has met its burden of proffering legitimate and non-discriminatory reasons for suspending and ultimately terminating Dodge, we must consider whether the Town articulated reasons for its actions and produced supporting facts indicating that its reason was actually a motive in the decision. *School Committee of Boston* v. *Labor Relations Commission*, 40 Mass. App. Ct. 327, 335 (1996) (citing *Trustee of Forbes Library* v. *Labor Relations Commission*, 384 Mass. 559, 566 (1981)).

We find that the Town has met that burden because the Town's reasons for advancing discipline against Dodge have been steadfast and continuing. The Town based its decision to suspend and terminate Dodge on its findings following an ongoing IACI investigation into Dodge's conduct from the spring of 1995 through the fall of 1995. That investigation and resulting discipline, which included five separate suspensions and, ultimately, termination for numerous departmental infractions committed by Dodge from June 24, 1995 through December 1995, were separate from the discipline Dodge incurred on June 30, 1995, which Dodge appealed to the Civil Service Commission. Therefore, based on the record before us, the presumption of discrimination created by the *prima facie* case is dispelled and we must determine whether but for Dodge's concerted, protected activity, the Town would not have taken the adverse action. *Town of Bolton*, 25 MLC at 98 (citing *Trustee of Forbes Library* v. *Labor Relations Commission*, 384 Mass. 559 (1981)).

We find that the preponderance of the evidence here does not demonstrate that the Town retaliated against Dodge because of his concerted, protected activity. Rather, the record reveals that, from June 1995 through December 1995, the Town was engaged in an ongoing investigation of Dodge for repeated incidences of misconduct, the results of which ultimately necessitated his termination. Therefore, even though the Town's decision to suspend and terminate Dodge based on an ongoing pattern of midconduct coincided with his civil service appeal, the nature of his conduct was egregious enough to warrant the Town's action, notwithstanding his civil service appeal. Therefore, the Union has not met its burden of establishing that the Town would not have suspended and ultimately terminated Dodge, but for his concerted, protected activity. 10(a)(1)

We next examine the record to assess the Union's argument that the Town independently violated Section 10(a)(1) of the Law. An employer violates Section 10(a)(1) of the Law when it engages in conduct that may reasonably be said to interfere with its employees in their free exercise of rights guaranteed under Section 2 of the Law. *Groton-Dunstable Regional School Committee*, 15 MLC 1551, 1555 (1989); *City of Boston*, 8 MLC 1281, 1284 (1981). The focus of a Section 10(a)(1) analysis is the effect the employer's conduct would have on a reasonable employee's exercise of Section 2 rights, not the motivation behind the employer's conduct. *Town of Chelmsford*, 8 MLC 1913, 1916 (1982).

The Union contends that, by suspending and terminating Dodge, the Town had resurrected previously-condoned, alleged transgressions. Further, the Union contends that the Town violated Section 10(a)(1) of the Law by interfering with Dodge's rights guaranteed under Section 2 of the Law, especially by retaliating against Dodge for appealing his suspension to the Civil Service Commission. Specifically, the Union claims that the timing of the Town's actions against Dodge and the anti-Union statements communicated to Dodge during his employment evaluation

demonstrate that the Town's conduct violated Section 10(a)(1) of the Law.

Contrary to the Union's argument, we do not find the record to support finding that either the timing of the Town's actions or Chief Button's statements during Dodge's employment evaluation would tend to chill either Dodge or other unit members in the exercise of their rights under the Law. The record does not reflect that Chief Button made any adverse remarks to or took adverse action against either Dodge or any other member of the bargaining unit represented by the Union because of Union activity or membership. Further, Chief Button's statement to Dodge in 1994 that he was one of four officers in the department to "watch out for" does not rise to the level of coercion or interference prohibited by Law. The record does not reflect that Dodge was engaged in any protected activity during that time period. Absent any evidence that Dodge was engaged in protected activity, there would be no basis for inferring a link between Chief Button's statement and interference with Dodge's rights guaranteed under Section 2 of the Law. Moreover, the record reflects that the Town suspended and terminated Dodge in January 1996 before he returned to work following a fifteen-day suspension because the Town had safety and liability issues concerning Dodge if he were allowed to return to work.

Conclusion

For the foregoing reasons, we find that the Town did not violate Sections 10(a)(3) and (1) of the Law. Accordingly, the Complaint of Prohibited Practice is dismissed. SO ORDERED.

* * * * * *