COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NOS.: 033611-87 052871-97**

John Handren	Employee
Suffolk County Sheriff Department	Employer
City of Boston	Self-Insurer

REVIEWING BOARD DECISION
(Judges Levine, Maze-Rothstein and Carroll)

APPEARANCES
Michael C. Akashian, Esq., for the employee
Lawrence McGrath, Esq., for the self-insurer at hearing
James M. McDonough, Jr., Esq., for the self-insurer on appeal

LEVINE, J. The employee appeals from a decision in which an administrative judge concluded, as a matter of law, that the employee had not sustained an injury arising out of and in the course of his employment, when he experienced a mental disability related to handouts attacking his fitness to be a union official. Under the circumstances of this case, we consider that the union election activity causing the disability was an incident of the employment. As such, liability for the employee's injury has been established. We reverse the decision, and recommit the case for further findings on G.L. c. 152, § 1(7A), causal relationship and the extent of incapacity.

The employee had worked for nineteen years as a corrections officer with the employer/self-insurer at the time of the hearing. (Dec. 3.) On June 8, 1987, the employee sustained an injury to his back, neck, shoulder, wrist and knee. The self-insurer accepted the claim, and the employee remained out of work for approximately four years. The employee returned to accommodated work in May 1991. (Dec. 4.)

All corrections officers are required to be members of Local 419 of the union. The employee had been an active member of Local 419, and had previously held elective

office as vice-president of the union. (Dec. 4.) In November 1997, the employee once again became a candidate for union office. On December 9, 1997, the employee reported to work. Upon entering the roll-call room, co-workers handed him a copy of a handout, which criticized his prior union duty and his current competence and fitness to serve as a union official. The employee felt hurt, embarrassed, and angered by the handout, and considered it a concerted effort to do him harm. During his shift the employee became aware of two other handouts that were similar in content. (Dec. 5, 6, 14, 16.)

The employee completed his shift, but was so upset that he did not return to work the next day. When the employee did return to work on January 6, 1998, he objected to his assignment to the "courtyard trap," a booth from which gates to different sections in the facility were operated. (Dec. 4, 6.) He apparently perceived this assignment as an attempt to inflict more mental injury on him. (Dec. 6-7.) The employee has not returned to work since then. (Dec. 7.)

The employee claimed workers' compensation benefits for his emotional injury, which includes reduced concentration, increased aggravation and anxiety. Id. The self-insurer opposed the claim. The claim was denied at conference and then went to hearing. (Dec. 2.) Following the hearing, the judge made the following findings:

> The weight of the evidence persuades me that the handout of December 9, 1997, was the precipitant event for the employee's leaving work, and that it was motivated by the employee's status as a candidate for executive board member of the union, and was a commentary on the employee's perceived ability to serve in that capacity. I do not find that the attack was motivated by the employee's accommodated assignment, a situation which had existed essentially uninterrupted since his return to work in 1991.
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> I find that, but for the employee's nomination for the position of executive board member, there would have been no personal attack against him. I further find that the employee's participation in the election did not arise out of any condition or obligation of his employment.
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> The employee's emotional condition is a result of his reaction to the handouts which criticized his previous union leadership, and to the perceived lack of support from either the union or the employer. While union-management harmony is a benefit to employees and employers, active participation in that

> relationship is a personal choice, and one which is not compelled by the employee-employer relationship, or controlled in any manner by the employer.

(Dec. 14.) The judge concluded that "[t]here is nothing associated with a campaign for elected union office which was impelled by the employment or the employer. While labor-management relations may serve the interests of the employer, the employee was engaged in the 'business affairs' of the union. There is nothing to support that any aspect of the employee's activity was 'impelled' by the employer." (Dec. 15.) The judge therefore denied the employee's claim on the basis that the employer was not liable for the employee's reaction to the December 9, 1997 handout. (Dec. 15-16.)

The employee on appeal challenges the judge's ruling that the injury-causing union activity was not work-related. There are no cases on point in Massachusetts. We look, therefore, to guidance from courts in other jurisdictions.

We do not have to look far. In Masko v. Board of Educ. of Wallingford, 710 A.2d 825 (Conn. App. 1998), the Appellate Court of Connecticut analyzed whether an employee's death as a result of a particularly stressful union/management arbitration was work-related and therefore compensable. The court held that it was:

> First, the trial commissioner found that the decedent attended the arbitration hearing as a union member with his employer's permission, and he was paid for that time. Second, the trial commissioner found that the decedent collapsed during this hearing, which was being conducted during the regular business hours of his employment. Third, it is undisputed that the hearing took place on the school board's premises, a place where the decedent reasonably could have been found as a union participant during the arbitration proceedings.
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> Finally, the decedent was, at the very least, doing something incidental to his employment. . . . [A]rbitration hearings are the usual and regular legal mechanism to resolve municipal labor disputes. [Citation omitted.] Consequently, the decedent's death arose during the course of his employment. . . .
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> " . . .[W]hen an employee is *on the premises* and is *within the period of employment* . . . it should not be necessary to satisfy the additional test of employer benefit. Rather, the basic test should be remembered and applied: Is this activity incidental to the employment? The meaning of the term 'incidental' need not be defined as compulsion by or benefit to the employer in all cases." (Emphasis in original.) McNamara v. Hamden, 176 Conn. [547,] 553, 398 A.2d 1161 [1978].

Masko, supra at 827-828.[1] See also Schultheis v. Industrial Comm'n, 449 N.E.2d 1341, 1344 (Ill. 1983)(Illinois Supreme Court cited failure of employee's proof of such facts as "whether he was actually required to join the union as a condition of his employment" in its affirming Commission's denial of claim based on union activity).

Similarly, the employee's engagement in the election activities of the *compulsory* union, *while on the employer's premises and during his normal work hours*, were incidental to his employment, without regard to the question of the *employer's* benefit.[2] We see no purpose in parsing the various union-related activities; the union is undeniably a part of the employer's existence, and elections are an obvious part of the existence of the union. We conclude that the union-related handout, including the employee's reaction to that document, was an incident of the employment, "looked at in any of its aspects." Caswell's Case, 305 Mass. 500, 502 (1940).

We reverse the decision. We recommit the case for further findings on § 1(7A) causal relationship[3] and the extent of the employee's incapacity.

So ordered.

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[1] In Peters's Case, 362 Mass. 888 (1972), the employee Peters was having lunch in the employer's plant with one Johnson, a fellow employee who was also a union official. A third person, a former employee, quarreled with Johnson over a union matter. Johnson and the third person began fighting, and Peters was beaten by the third person when Peters went for help. The Supreme Judicial Court agreed that "Peters's injuries arose out of his employment, for 'his employment brought him in contact with the risk that in fact caused his injuries.' " Id.

[2] No doubt arguments can be made that the union benefits the employer as well as the employees.

[3] The employee must prove that the employment event or series of events were "the predominant contributing cause" of his claimed disability.

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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