

CITY OF MEDFORD AND MEDFORD POLICE PATROLMEN'S ASSOCIATION AND DAVID J. CIAMPI, PRESIDENT; PETER A. MCGAFFIGAN, VICE-PRESIDENT; JAMES L. GRUBB, SECRETARY; CESAR R. DELATORRE, TREASURER, SI-164 (8/8/84). NOTICE TO PARTIES.

92.31 notice
108.21 refusal of overtime
108.22 sick-out

Commissioners participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner

Appearances:

Paul L. Kenny, Esq.	- Representing the City of Medford
Michael Reilly, Esq.	- Representing the Medford Police Patrolmen's Association and its officers in their official capacities

NOTICE TO PARTIES

On July 3, 1984, the City of Medford (City) filed a petition with the Labor Relations Commission (Commission) pursuant to Massachusetts General Laws, Chapter 150E, Section 9A(b) (the Law). The City alleged that, beginning on or about June 27, 1984, the Medford Police Patrolmen's Association (Association) was engaging in, or was about to engage in, a strike, work stoppage, slowdown or withholding of services. The City also alleged that the Association was condoning, encouraging or inducing a strike by the Association's members.

On July 9, 10, and 27, 1984, an investigation was conducted by the Commission.¹ After careful consideration of all of the facts adduced during the investigation, we conclude that the petition against the Association must be dismissed. Our ruling is based upon the following findings:

1. The City is a public employer within the meaning of Section 1 of the Law.
2. The Association is an employee organization within the meaning of Section 1 of the Law.
3. The officers of the Association are: David J. Ciampi, President; Peter A. McGaffigan, Vice-President; James L. Grubb, Secretary; Cesar R. Delatorre, Treasurer.

¹The investigation was interrupted on July 11 and reconvened on July 27 due to an interim order issued by the Commission. The interim order indicated that the Commission had concluded that the purposes of the Law "would be best served by directing the City and the Association to engage in continuous negotiations in an effort to reach a successor collective bargaining agreement." The Commission retained jurisdiction of the petition but ordered the parties to bargain under the auspices of the Joint Labor-Management Committee.



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4. The City has recognized the Association as the exclusive bargaining representative of members of the City's police department holding the rank of patrolman.
5. All members of the Association employed by the City are public employees within the meaning of Section 1 of the Law.
6. The City and the Association were parties to a collective bargaining agreement which expired by its own terms on June 30, 1982.
7. The agreement contained, in relevant part, the following provision regarding the assignment of overtime:

Section 3. Scheduling of Overtime. In emergencies or as the needs of the service require, employees may be required to perform overtime work. Employees shall be given as much advance notice as possible of overtime work. Scheduled overtime shall be posted and distributed to all employees on an equitable and fair basis, pursuant to the provisions of Section 7 hereof. Employees, other than those required to work beyond their normal tour of duty due to the exigencies of their workday (such as late ambulance run, etc.), shall have the option of declining offered overtime; but in the event that sufficient personnel do not accept such offered overtime on a voluntary basis, or in the event of emergency situations where time is of the essence in executing the overtime job, such additional personnel as are deemed necessary by the City may be required to work overtime on an assigned basis. All employees shall be afforded the opportunity to accept overtime service, but there shall be no discrimination against any employee who declines to work overtime on a voluntary basis. The Department will seek to avoid assigning overtime (as contrasted with voluntary overtime) to employees working "short day", so called, on days-off, or working with night platoons who are required to attend court, etc. (See Article IX) between their tours of duty or on days-off, so that such employees may be afforded every opportunity for required rest or to attend to their personal business before and after working hours or on a day off.

Section 7. Overtime Assignment Procedure. The following procedure will be adhered to in the assignment and recording of overtime:

(a) Overtime will be distributed to employees fairly and equitably as to number of assignments, hours, compensation and type thereof, and averaged on a thirteen (13) week basis for the purposes of this subparagraph unless otherwise agreed upon by the parties. Employees shall be given the maximum possible advance notice of overtime assignments. Any employee who refuses an overtime assignment offered on a voluntary basis shall be charged for purposes of overtime assignment as overtime actually worked under the heading "overtime refused" (OR) with the overtime hours thereof noted, in determining the equitable and fair distribution of overtime to such employee. Both assigned and voluntary overtime shall be recorded and posted on the bulletin board daily for the attention of all employees



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on overtime distribution forms acceptable to the parties hereto (and shall incorporate information as to overtime worked, number of hours worked, overtime refusals and applicable dates.)

8. The City and the Association have been negotiating the terms of a successor agreement and are presently negotiating under the auspices of the Joint Labor-Management Committee.
9. The daily work schedule in the City's police department consists of three shifts: 7:45 a.m. to 3:45 p.m., 3:45 p.m. to 11:45 p.m., and 11:45 p.m. to 7:45 a.m.
10. On June 27, 1984, the Association held a membership meeting in order to vote on the City's latest contract offer.
11. At the June 27th meeting, the Association members unanimously rejected the City's contract offer. In addition to rejecting the contract offer, the members voted to refuse voluntary overtime.
12. On June 28, 1984, John C. Kirwan, the City's Chief of Police, issued the following orders:

Effective this date, all Commanding Officers will adhere to the following instructions:

1. As the needs of the Public Service requires, all officers will be ordered to perform overtime service.
2. In the event an officer performing overtime service turns in sick, the Commanding Officer will order him to remain on duty until a replacement can be found. It will be the duty of the Commanding Officer to find a replacement.
3. In the event the Commanding Officer is on overtime duty, he is specifically instructed, in the event he becomes sick to remain on duty until he is replaced or relieved.
4. All Commanding Officers are ordered to report in writing to me all cases of reported sickness among overtime Personnel.
13. On June 29, 1984, Chief Kirwan issued a supplementary order concerning overtime. The supplementary order provided that officers requesting to leave their shift because of illness or calling in sick may be ordered to remain on or report for duty until relieved. It further specified a procedure for calling in replacement officers and for reporting to the Chief about absence due to illness.
14. Also, on June 29, 1984, Ciampi, the Association's president, called Acting City Manager Lee and informed him that the Association had met on June 27 and that it had rejected the City's offer and had voted to



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refuse voluntary overtime. Ciampi also asked Lee: "Are you working July 4th?"

15. From June 27 through July 25, various superior officers attempted to reach patrolmen by phone to work mandatory overtime but were unsuccessful in reaching anyone.
16. From June 27 through July 25, certain patrolmen who have completed their regular shift are being assigned to work mandatory overtime for the next shift.
17. The City admits that it is not complying with the contractual overtime assignment procedure.
18. From October 11, 1983 through June 26, 1984, approximately 42% of patrolmen who were requested to work voluntary overtime refused.
19. Between June 26, 1983 and June 26, 1984, there were only two days when officers were ordered to work overtime, May 4 and 5, 1984. Of the six patrolmen ordered in to work overtime, all six turned in sick after the beginning of the shift.
20. On July 3, 1984, Ciampi, president of the Association, posted the following notice on the Association's bulletin board and had it read at roll call:

To All Members of the Medford Police Patrolmen's Association

On Tuesday morning we had a hearing before Justice Young who ruled that the City cannot order a sick individual to work. Justice Young stated that the Police Officers of the City of Medford shall abide by the City ordinance in regard to "Time off for sickness." (Chapt. 19, Sec. 8) which states:

"In cases where sickness is not contributed to or caused by the discharge of duty, sick leave with pay shall be granted to employees of the Police Department only when they are incapacitated for the performance of their duties by sickness, injury, exposure to contagious disease or to serious illness of the employee's immediate family, and the fact of sickness is certified to by the City Physician or family physician, and the cause thereof specified, for periods not exceeding twenty-one working days annually for each year of service beginning January 1, 1946."

All employees are asked and encouraged to abide by the above city ordinance. However, be advised that at present time the city is without a physician and if you cannot contact your family physician or an associate (because they were unavailable for whatever reason or they are away on vacation, etc.) then you may use any available physician.



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Please also be advised that the city has served the M.P.P.A., through its officers, with papers for a hearing before the Massachusetts Labor Relations Commission in regard to a strike investigation. It would appear to me that the city believes because we are refusing voluntary overtime we are striking.

For clarification purposes I wish to remind all members of the M.P.P.A. that Article XIII Section 1 of our collective bargaining agreements states:

"No employee covered by this Agreement shall engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services. The Association agrees that neither it nor any of its officers or agents will call, institute, authorize, participate in, sanction or ratify any such strike, work stoppage, slowdown, or withholding of services."

I am hereby once again asking all members to follow the above, mentioned article and section to their best abilities as well as the rest of the agreement.

Fraternally
David Ciampi

21. From June 27, 1984 through July 25, 1984, Ciampi was not ordered to work overtime.
22. Delatorre, treasurer of the Association, was ordered to work the 11:45 p.m. to 7:45 a.m. shift on July 4, 1984, after having completed his regularly assigned shift of 3:45 p.m. to 11:45 p.m. He completed the overtime shift. On July 6, 1984, Delatorre was again ordered to work the 11:45 p.m. to 7:45 a.m. shift after having completed his regularly assigned shift. He turned in sick at 2:21 a.m.
23. Grubb, secretary of the Association, was ordered to work the 11:45 p.m. to 7:45 a.m. shift on July 6, 1984, after having completed his regularly assigned shift of 3:45 p.m. to 11:45 p.m. He completed his overtime shift. On July 8, 1984, Grubb was again ordered to work the 11:45 p.m. to 7:45 a.m. shift, after having completed his regularly assigned shift. He turned in sick at 12:25 a.m. due to fatigue.
24. McGaffigan, vice-president of the Association, was ordered to work the 3:45 p.m. to 11:45 p.m. shift on July 1, 1984, after having completed his regularly assigned shift of 7:45 a.m. to 3:45 p.m. He completed the overtime assignment. On July 4, 1984 McGaffigan was again ordered to work overtime on the 3:45 p.m. to 11:45 p.m. shift, after completing his regularly assigned shift. He completed his overtime assignment. On July 5, 1984, he was again ordered to work overtime on the 7:45 p.m. to 11:45 p.m. shift, after completing his regularly assigned shift. He turned in sick at 9:03 p.m. On July 22, 1984, he was again ordered



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to work overtime on the 3:45 p.m. to 11:45 p.m. shift, after having completed his regular assigned shift. He turned in sick at 5:05 p.m.

25. The City concedes that there is a nightly shortage of officers on the 3:45 p.m. to 11:45 p.m. shift and the 11:45 p.m. to 7:45 a.m. shift. This problem has been in existence for at least two years.
26. From June 26, 1983 through June 26, 1984, the average number of police officers on sick leave per day was 4.05. From June 27, 1984 through July 6, 1984, the average was 13.8.
27. On June 27, 1984 three patrolmen were ordered to work overtime, and all three turned in sick.
28. On June 28, 1984, six patrolmen were ordered to work overtime, and all six turned in sick.
29. On June 29, 1984, eight patrolmen were ordered to work overtime, and all eight turned in sick.
30. On June 30, 1984, seven patrolmen were ordered to work overtime, and all seven turned in sick.
31. On July 1, 1984 six patrolmen were ordered to work overtime, and five turned in sick.
32. On July 2, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.
33. On July 3, 1984, seven patrolmen were ordered to work overtime, and six turned in sick.
34. On July 4, 1984, six patrolmen were ordered to work overtime, and four turned in sick.
35. On July 5, 1984, five patrolmen were ordered to work overtime, and all five turned in sick.
36. On July 6, 1984, five patrolmen were ordered to work overtime, and four turned in sick.
37. On July 7, 1984, four patrolmen were ordered to work overtime, and two turned in sick.
38. On July 8, 1984, seven patrolmen were ordered to work overtime, and all seven turned in sick.
39. On July 9, 1984, no statistics are available.
40. On July 10, 1984, four patrolmen were ordered to work overtime, and all four turned in sick.



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41. On July 11, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.
42. On July 12, 1984, there was no ordered overtime for patrolmen.
43. On July 13, 1984, there was no ordered overtime for patrolmen.
44. On July 14, 1984, there was no ordered overtime for patrolmen.
45. On July 15, 1984, there was no ordered overtime for patrolmen.
46. On July 16, 1984, eight patrolmen were ordered to work overtime, and all eight turned in sick.
47. On July 17, 1984, four patrolmen were ordered to work overtime, and all four turned in sick.
48. On July 18, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.
49. On July 19, 1984, two patrolmen volunteered to work overtime, and both turned in sick.
50. On July 20, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.
51. On July 21, 1984, there was no ordered overtime for patrolmen.
52. On July 22, 1984, five patrolmen were ordered to work overtime, and two patrolmen volunteered to work overtime, and all seven turned in sick.
53. On July 23, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.
54. On July 24, 1984, there was no ordered overtime for patrolmen.
55. On July 25, 1984, three patrolmen were ordered to work overtime, and all three turned in sick.

Discussion

We dismiss the City's strike petition against the Association because the City has failed to produce sufficient evidence from which we could conclude that the Association or its officers have violated the Law. We discern that patrolmen ordered to perform mandatory overtime are turning in sick in significant numbers. We have no evidence to suggest that the illnesses were not genuine. Even assuming, however, that the illnesses were feigned, the City has failed to show that the Association or its officers are inducing, encouraging or condoning the "sick-outs."

In support of its petition, the City has introduced evidence in four areas.



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First it has shown that the Association held a membership meeting on June 27, 1984 at which a vote was taken and passed to refuse voluntary overtime. Because the refusal of voluntary overtime does not constitute a violation of the Law, See Newton School Committee, 9 MLC 1611 (1983), we would have to infer that the vote covered mandatory overtime as well. There is nothing upon which we could legitimately base this inference. It was only after the Association meeting that Chief Kirwin issued his June 28 order requiring mandatory overtime. Nothing brought forward during the course of the strike investigation suggests that the Association met after June 28 or formulated any policy on this issue as a body.

Second, the City urges us to find that Association President Ciampi's statement to Acting City Manager Lee on June 29 ("Are you working July 4th?") is evidence of strike activity on the part of the Association, or evidence that the Association or Ciampi were encouraging or condoning a "sick-out." We are unable to conclude that Ciampi's words should be given anything other than their plain meaning, especially in view of other actions by Ciampi. On July 3, 1984, Ciampi placed a notice on the Association's bulletin board and had the notice read at roll call. This notice encourages bargaining unit members to comply with the collective bargaining agreement's no-strike clause and the City ordinance with respect to sick leave. The City has not suggested nor are we able to discern that Ciampi's statement to Lee had a hidden meaning and that such meaning constitutes condonation of illegal strike activity.

Third, the City has introduced evidence as to the work activity of the Association officers during the time period when it alleges that an unlawful strike has been occurring. It argues, in essence, that the officers have participated in this activity and their participation must be imputed to the Association. An organization acts through its officials and agents. Thus, the City could prevail if it produced sufficient evidence as to the Association officer's actions. It has not on these facts. Association President Ciampi was not ordered to work overtime during any shift in the time in question. Vice-president McGaffigan was ordered to work for four overtime shifts. He completed two and turned in sick on two others. Secretary Grubb completed one mandatory overtime shift and turned in sick on one other. Treasurer Delatorre completed one mandatory overtime shift and turned in sick on one other. Each of the Association officers ordered to work overtime on each occasion had already completed his regularly scheduled overtime shift of eight hours. Each Association officer also testified during the Commission strike investigation. During questioning by Association counsel, they were asked whether they had induced, encouraged or condoned a strike. Each officer testified that he had not. The City failed to question the officers about the occasions they turned in sick during the mandatory overtime shift. Specifically, they were not asked about the nature of their illnesses or about any matter from which we could conclude that they or the Association were violating the Law. We therefore have no reason to question the legitimacy of their illnesses or to disbelieve their statements at the strike investigation.

Moreover, as previously noted, Ciampi encouraged unit members to comply with the no-strike provisions of the contract and the sick leave provisions of the City ordinance. It is affirmative evidence that the Association was taking action to discourage any unlawful activity.



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Fourth, the City introduced evidence about the coverage of mandatory overtime shifts from June 27, 1984 through July 25, 1984. The evidence shows a significant increase in the illness rate among patrolmen. Absent any evidence from which we could conclude that the increase in the illness rate was induced, encouraged or condoned, by the Association however, we decline to find that the Association is responsible for any portion of the illness rate which may be illegitimate and in violation of c. 150E.² Therefore we dismiss the City's petition as it alleges that the Association violated Section 9A(a) of the Law.

The City's petition also names individual patrolmen. Because the individuals were not served with a notice of hearing and had no opportunity to defend against a charge of unlawful activity, we have not considered this portion of the City's petition. We will, however, retain jurisdiction in this matter should the City decide to proceed against individual patrolmen and file proof of service and notice upon any named individual.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

GARY D. ALTMAN, COMMISSIONER

²The City's work records for June 27, 1984 through July 25, 1984 indicate that virtually all of the patrolmen ordered to work overtime had already completed one full regular shift. In some cases, officers were ordered to work 16-hour tours of duty for several consecutive days. The Association argues that under these circumstances, the legitimate illness rate may very well have increased from fatigue alone. We note only that, in the absence of any evidence suggesting that the illnesses were feigned, this is not an unreasonable explanation.

