

MASSACHUSETTS BOARD OF REGENTS AND NORTHERN ESSEX COMMUNITY COLLEGE AND MASSACHUSETTS TEACHERS ASSOCIATION, SUP-2798 (3/14/85). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

63.45 paid time off to attend Commission proceedings
 92.51 appeals to full commission

Commissioners participating:

Paul T. Edgar, Chairman
 Gary D. Altman, Commissioner
 Maria C. Walsh, Commissioner

Appearances:

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| Judith A. Wong, Esq. | - Representing the Massachusetts Board of Regents |
| Americo A. Salini, Jr., Esq. | Representing Massachusetts Teachers Association |

Decision on Appeal of
 Hearing Officer's Decision

Statement of the Case

On June 27, 1984, Hearing Officer Robert McCormack issued a decision in the above-captioned matter dismissing the Commission's Complaint of Prohibited Practice.¹ The hearing officer held that the Board of Regents (Employer) had not violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it paid full wages to a friendly employee witness for time missed from work to appear at a Commission investigation, while refusing to pay an employee witness who wished to testify against the Employer. The Massachusetts Teachers Association (Association) filed a timely notice of appeal pursuant to Commission Regulation 402 CMR 13.13.

Facts

The Association does not contest the hearing officer's findings of fact, and we therefore affirm them in their entirety.

Rubin Russell is a member of the collective bargaining unit represented by the Association and works for the Employer. On July 1, 1983, Russell requested from the Employer a one day paid leave of absence to testify on behalf of a co-employee at a Commission investigation scheduled for July 8, 1983. Russell's request was denied on the grounds that he was not entitled to such compensation under the collective bargaining agreement. Russell was then informed that he could attend if he used a vacation day or a day of personal leave. However, the Employer did permit one Richard LeClair, an employee who was to testify on its behalf, to attend the same investigation at full pay. Russell opted not to attend.

¹ (see page 1533)



Massachusetts Board of Regents et al., 11 MLC 1532

Opinion

The Association argues, in effect, that employees who wish to attend Commission investigations for the purpose of testifying, have a right to do so at the employer's expense, when the employer chooses to compensate its own witnesses. We disagree. In this case there is neither a contractual nor a statutory right to receive a paid leave of absence to attend Commission investigations. It is undisputed that the collective bargaining agreement does not entitle employees to such payment. Furthermore, the failure to pay Russell because he wished to attend did not violate his rights as guaranteed under Section 2 of the Law. The remuneration given to Richard LeClair does not constitute an interference with the rights of Rubin Russell. Encouraging one's own witnesses to attend an investigation does not equate to a discouragement of opposition witnesses. Thus compensating one's own witness does not thereby give to others the right to an equivalent payment.

We agree with the decision reached by the hearing officer and hereby affirm. However, we do consider it appropriate to modify his finding that the Employer's actions did "not constitute a sufficient interference, restraint or coercion of employee rights to constitute a violation of Section 10(a)(1) of the Law." 11 MLC 1034, 1036 (H.O. 1984) (emphasis added). Rather, we hold that there is no interference with Russell's statutory rights on the part of the Employer.

Conclusion

We have reviewed the hearing officer's decision in light of the arguments raised by the Association. We conclude that the hearing officer correctly interpreted and applied the Law to the facts in this case and that his order dismissing the Complaint is appropriate.

The decision of the hearing officer is therefore affirmed, and the Complaint is dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN
GARY D. ALTMAN, COMMISSIONER
MARIA C. WALSH, COMMISSIONER

¹ (from page 1532)

The full text of the hearing officer's decision is reported at 11 MLC 1034 (H.O. 1984).

