GROTON-DUNSTABLE REGIONAL SCHOOL COMMITTEE AND GROTON-DUNSTABLE EDUCATORS' ASSOCIATION/MTA/NEA, MUP-6748 (3/20/89). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

65.2 concerted activities
65.6 employer speech
92.51 appeals to full commission

Commissioners participating:

Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

Henry Stewart, Esq. - Representing the Groton-Dunstable Regional School Committee

Lee Weissinger, Esq. - Representing the Groton-Dunstable Educators' Association

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On November 20, 1987, Hearing Officer Diane M. Drapeau issued a decision in the instant case holding that the Groton-Dunstable Regional School Committee (School Committee or Employer) had violated Massachusetts General Laws, Chapter 150E, Section 10(a)(1) (the Law).[1] The hearing officer concluded that a letter from the Employer to Philip Paradis, an officer of the Groton-Dunstable Educators' Association/MTA/NEA (Association), restrained and coerced employees in the exercise of their rights guaranteed by Section 2 of the Law. The Employer filed a timely notice of appeal on December 1, 1987. On December 21, 1987, the Employer filed a supplementary statement challenging the hearing officer's failure to include several findings in her findings of fact. The Association filed its supplementary statement on January 4, 1988. After having reviewed the evidence and the submissions of the parties, we affirm the hearing officer's decision.

Findings of Fact[2]

We affirm the hearing officer's findings of fact, with the modifications noted below.

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[1] The full text of the hearing officer's decision appears at 14 MLC 1330.

[2] Because the Employer has contested certain omitted findings of fact, we have reviewed the entire record.

Groton-Dunstable Regional School Committee and Groton Dunstable Educators' Association/MTA/NEA, 15 MLC 1551

Philip Paradis has been a teacher in the Groton-Dunstable school system since 1964. From 1964 until the present he has held several positions in the Association, including, President, Vice-President, and negotiating team member. At the time of the instant dispute, he was Vice-President and Treasurer of the Association.

On September 10, 1986, Paradis sent a letter to Carol Manter, the head of the Social Studies Department, informing her that he had a problem with his class schedule.[3] He then had a meeting with Manter on September 18 at which Manter informed Paradis that she had spoken with William McGuirk, Principal of the Groton-Dunstable Regional School, and that McGuirk had decided that Paradis's schedule should not be changed. On September 22 Paradis filed a grievance with Principal McGuirk at Level 1 of the grievance procedure pursuant to the terms of the collective bargaining agreement. On September 29 McGuirk sent Paradis a memorandum acknowledging receipt of the grievance and suggesting a meeting date of October 1 to discuss the grievance. Because the collective bargaining agreement provides for a meeting at Level 1 within five days after receipt of the grievance, Paradis advanced the grievance to Level 2 on September 30, by delivering it to Superintendent of Schools John Barranco. Paradis indicated that he had proceeded to Level 2 because McGuirk had failed to meet with him within the contractual time limit at Level 1.[4]

On October 1, Paradis received a written response from Barranco suggesting that Paradis have a "face-to-face meeting to discuss the grievance" with McGuirk prior to advancing the grievance to Level 2. On October 2, Paradis wrote to Barranco suggesting that Barranco meet with him prior to October 8 to discuss his grievance at Level 2.

By letter to the School Committee on October 9, Paradis advanced his grievance to Level 3. His letter noted that "since Dr. Barranco has failed to meet with me within the five (5) school days after receipt of the written grievance at Level 2, I am proceeding to Level 3 of the procedure."[5]

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3 The conditions in Paradis's schedule which prompted the complaint involved the equitable assignment of divisions within academic areas. The 8th grade was divided into seven groups in Math and Science, eight groups in English but only six groups in Social Studies, Paradis's teaching assignment, which resulted in larger classes.

4 Paradis testified that he had, in the past, waived the five-day period when requested by the Employer. In the instant case, McGuirk never requested an extension of time for the Level 1 meeting and Paradis testified that he did not waive the time limitation. Superintendent Barranco did not suggest to McGuirk that he should request an extension of the time limitations subsequent to Barranco's receipt of the grievance at Level 2.

5 (see page 1553)

Groton-Dunstable Regional School Committee and Groton Dunstable Educators' Association/MTA/NEA, 15 MLC 1551

On October 15 Superintendent Barranco held a previously-scheduled meeting with Association representatives. The meeting had been initiated on October 6 by David L. Bean, President of the Association, for the purpose of introducing two new Association officers and to open the doors of communication between the administration and the Association.[6] No specific grievances were discussed during the course of the meeting. The participants left the meeting generally agreeing that communications between the Association and the administration should be better, and that responses to all communications should be in writing.

On the following day, Barranco learned that Paradis had advanced the grievance to Level 3. Barranco talked with Association President Bean about Paradis's grievance, and told Bean that he was upset that Paradis had not mentioned the grievance at the meeting.

On October 16 Barranco wrote the following letter[7] to Paradis, who received it on October 20:

> I received a call from Ron Englade, Chairman of the Groton-Dunstable Regional School Committee informing me that he received a letter from you asking to go to Level three (3) on a grievance which you have not even discussed face to face with Bill McGuirk as I asked you to.
>
> I find your actions incredible in light of the fact that just the previous afternoon (Wednesday, October 15) I met with you, Dave Bean, Bob Block, Tony Gallo and Bill Haynor to discuss the role of contract managers, the need for assisting members in understanding the contract, and finding ways of improving communication at all levels. One of the goals was to solve problems at step one.

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5 (from page 1552)
The Employer challenges the hearing officer's finding that Paradis processed his grievance in compliance with the parties' grievance procedure. The Employer argues that Paradis did not comply with the grievance procedure when he appealed to Level 3 prior to either a disposition of the grievance, or a meeting at Level 2. We need not resolve this issue because whether or not Paradis complied with the grievance procedure is irrelevant to our disposition of the case. Even assuming, for the sake of this appeal, that Paradis prematurely advanced the grievance to Level 3, we would reach the same legal conclusion in the case.

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In attendance were Barranco, Paradis, Bean, Anthony Gallo (new Association Contract Manager of the Secondary School), William Haynor (Contract Manager at the Elementary Level), and Robert Block (Secretary of the Association).

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It is undisputed that Barranco has dealt with approximately 25 to 30 grievances during his tenure as Superintendent, 14 of which were filed by Paradis. He has never previously written a letter similar to the one he sent to Paradis on October 16, and his processing of grievances has never resulted in the filing of a prohibited practice charge.

> How then do you justify your actions in light of our discussion? You knew you sent a letter to the chairman and you never even mentioned it to me or Dave Bean. I have not even received a copy to date. You have not even followed the contract procedures which you supposedly support and that seems at best hypocritical and at worst callous in your disregard for other union officers. Perhaps you ought to examine and reflect on your communication skills. I think they are sorely lacking.
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> I will try to remember that your unilateral actions do not represent the views of either the union or its elected officers.

Copies of this letter were sent to Bean, McGuirk, and members of the Representative Assembly.[8]

Positions of the Parties

The Employer argues that the Hearing Officer ignored the following facts:[9] first, that Barranco has processed many other grievances from Paradis and others; second, that Barranco was angry that Paradis had not mentioned the grievance at the October 15 meeting; and third, that Barranco did not learn that Paradis had filed the grievance at the third level until October 16. These three facts, argues the Employer, show that the message of the October 16 letter "was not that adherence to the grievance procedure will result in a derogatory letter, but only that Mr. Paradis was less than forthright during a meeting held the previous afternoon." Supplementary Statement of Employer at 2. Moreover, contends the Employer, "in view of Barranco's flawless record in past grievances, this letter cannot reasonably be interpreted as interfering or coercing anyone's processing of a grievance ...[but] only...as an expression of anger directed at conduct inconsistent with the Union's goal of improving communications." The Employer also cites the timing of the letter as proof that the letter was "a reaction to what occurred (or did not occur) at the meeting [of October 15], and not to a grievance appeal filed a week earlier." Id.

The Employer asserts its right to exercise free speech by communicating its views to employees, and argues that criticism of Paradis, without a direct or indirect threat of a sanction for protected activity, does not violate the law. The Employer argues that the Superintendent was not criticizing Paradis as an individual employee pursuing his grievance rights, but instead, directed his comments to Paradis's "hypocritical" participation in the meeting of October 15.

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[8] The Representative Assembly was comprised of seven or eight Association members. They constitute the governing legislative body of the Association and one of their roles is to decide what grievances should be appealed to arbitration.

[9] As noted above, we have modified the Findings of Fact to reflect the three referenced findings.

The Association's position is that there were no omissions of material fact and that the hearing officer's decision must stand. The Association contends that Barranco's letter constitutes conduct which serves to interfere with, restrain or coerce employees in the exercise of rights guaranteed under the Law.

Opinion

An employer violates Section 10(a)(1) of the Law if it engages in conduct which may reasonably be said to tend to interfere with employees in the exercise of rights under Section 2 of the Law. City of Boston, 8 MLC 1281 (1981). The Commission has held that proof of illegal motivation is not required to establish a violation of Section 10(a)(1). Id. at 1284-85.

The School Committee maintains that Barranco's letter to Paradis was not an attack on Paradis's right to advance his grievance to Level 3, but rather expresses Barranco's disappointment with Paradis's failure to be forthright with the Superintendent regarding the grievance appeal during the October 15 meeting, designed to foster communications.

The test of interference, restraint and coercion under Section 10(a)(1) does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employees' protected rights. See Massachusetts Board of Regents, 13 MLC 1697, 1702 (1987); Bristol County House of Correction, 6 MLC 1582, 1584 (1979). Therefore, we must analyze whether the Superintendent's conduct may reasonably be said to have a tendency to interfere with the exercise of employee rights under Section 2 of the Law.

The first sentence of Barranco's letter not only references the appeal to Level 3 but also admonishes Paradis for "not even discuss[ing] face to face with Bill McGuirk as I asked you to" the merits of the grievance. The School Committee does not dispute that filing a grievance constitutes protected concerted activity. See School Committee of East Brookfield v. Labor Relations Commission, 16 Mass. App. Ct. 46, 51 (1983); Newton School Committee, 6 MLC 7101 (1980). When Paradis moved his grievance through the contractual grievance procedure he engaged in protected activity.[10]

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[10] The reference to Paradis's failure to comply with Barranco's instruction that he meet face-to-face with McGuirk, appears to impose a condition that is not contractually required. The Employer does not dispute that the grievance procedure is self-processing between Level 1 and Level 2 so that a grievant may advance to Level 2 if no decision has been rendered within five school days after presentation of the grievance at Level 1. Paradis complied with this procedure and indicated in his Level 2 grievance to Barranco, dated September 30, that the basis of the appeal was McGuirk's failure to meet with him within the contractual time limitations.

Similarly, Paradis engaged in protected activity when he chose not to discuss his grievance appeal during the October 15 meeting with Barranco. The Employer has not demonstrated any basis for concluding that Paradis was obligated to disclose the Level 3 appeal at the October 15 meeting, and we perceive none.[11] When Paradis registered his complaint about workload and assignments with the School Committee by moving his grievance to the third level of the grievance procedure he engaged in protected concerted activity.[12] Cf. Town of Hopkinton, 4 MLC 1072, 1078 (H.O. 1977) (employer unlawfully interfered with employee's right to protest conditions of employment through, inter alia, going over supervisor's head) aff'd 4 MLC 1731 (1978).

The School Committee argues that the timing of Barranco's letter can only be interpreted "as a reaction to what occurred (or did not occur) to [sic] the meeting and not to a grievance appeal filed a week earlier."[13] Since Paradis had a legally protected right to refrain from discussing his grievance in the meeting, Employer criticism of the employee's conduct of the meeting tends to interfere with the exercise of protected activity. The timing of the letter suggests also that Barranco was reacting to the fact that Paradis had advanced his grievance to Level 3 without meeting with McGuirk as Barranco had suggested.

The School Committee argues that the Association did not prove that Paradis or any employee felt intimidated, ridiculed or coerced. It points out that the hearing officer failed to consider Barranco's record of dealing with numerous grievances in the past without similar prohibited practice charges.

An employer's conduct need not actually coerce or restrain employees in the exercise of their rights in order to interfere with their rights, and to constitute a violation of the Law. See Massachusetts Board of Regents, 14 MLC 1397, 1402 n. 4

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[11] Although Paradis might have mentioned the fact that he had moved his grievance to the third step, he had a legally protected right not to volunteer this information at the meeting. Whether his failure to mention his appeal to the third step was diplomatic, or sensitive to Superintendent Barranco's interests does not alter the protection afforded by the Law.

[12] Even if we accept the Employer's interpretation of the contractual grievance procedure, and therefore conclude that Paradis filed the grievance at Level Three prematurely, we find that Paradis has a protected right to raise questions concerning contract interpretation and to raise workload complaints with the School Committee. Nothing in the record suggests that Paradis's conduct removed his activity from the protection of the Law.

[13] Assuming, for the purpose of this appeal, that Barranco's letter was directed only to what occurred at the meeting, we have concluded that Paradis's conduct at the meeting was protected activity. Therefore, employer action in response to that meeting was directed at protected activity.

(1987) and cases cited therein. The fact that the record discloses no prior unlawful conduct by Barranco does not excuse the instant acts. Barranco criticized Paradis for moving his grievance to the next step of the grievance procedure, for failing or declining to announce his appeal at the October 15 meeting, and for failing or declining to discuss the grievance with McGuirk. By labeling Paradis a hypocrite and accusing him of having a "callous disregard" for other union officers, Barranco clearly conveyed his displeasure with Paradis's conduct. Since that same conduct is protected by Law, Barranco had no right to interfere with it. The expression of employer anger, criticism or ridicule directed to an employee's protected activity has been recognized to constitute interference, restraint and/or coercion of employees. E.g., Greater New Bedford Infant Toddler Center, 12 MLC 1131, 1134-35, 1157 (H.O. 1985) (July conversation with Houtman) aff'd 13 MLC 1620 (1987); Commonwealth of Massachusetts, 8 MLC 1672, 1674-76 (1981).

The School Committee also contends that a balance must be struck between the rights of employees and employers, and "If this balancing of rights is to be fair, then when an employee's conduct stretches into the grey area...the level of supervisor reaction should be considered and balanced..." In the instant case, however, Paradis's conduct did not stretch into the grey area. It was legally protected and therefore entitled to be free from employer interference, restraint and coercion. We conclude that Barranco's letter constitutes interference, restraint and coercion because it expresses the Employer's displeasure with Paradis's exercise of protected rights. The letter communicated the Employer's criticism not only to Paradis, but also to other union officials and, by doing so, disparaged Paradis to his colleagues for having engaged in protected activity.

We conclude that disparaging remarks, even without direct threats of adverse consequences, which tend to reasonably interfere with, restrain or coerce employees in the exercise of rights guaranteed by Section 2 of the Law violate Section 10(a)(1) of Chapter 150E.

Therefore, the Superintendent's disparaging letter to Paradis for his failure to notify the Superintendent that he was appealing his grievance to Level 3 has interfered with, restrained and coerced employees in violation of G.L. c.150E, Section 10(a)(1). The decision of the hearing officer is affirmed.

Order

WHEREFORE, based upon the foregoing IT IS HEREBY ORDERED that:

1. The Groton-Dunstable Regional School Committee shall cease and desist from restraining, coercing and interfering with employees in the exercise of rights guaranteed under the Law.

2. The Groton-Dunstable Regional School Committee shall take the following affirmative action which will effectuate the purposes of the Law:

   a) Post immediately in all conspicuous places where employees usually

congregate and where notices to employees are customarily posted, and leave posted for not less then thirty (30) consecutive days, while school is in session, the attached Notice to Employees;

b) Notify the Commission in writing within thirty (30) days of receipt of this decision and order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

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

The Labor Relations Commission has determined that the Groton-Dunstable Regional School Committee violated Section 10(a)(1) of M.G.L. Chapter 150E when superintendent John Barranco sent a disparaging letter to Philip Paradis because he filed and pursued a grievance.

Section 2 of General Laws, Chapter 150E gives public employees the following rights:

to engage in self-organization;
to join or assist any union;
to bargain collectively through representatives of their own choosing;
to act together for th purpose of collective bargaining or mutual aid or protection;
to refrain from any or all of the above.

WE WILL NOT in any way restrain, coerce or interfere with employees in the exercise of their rights.

Chairperson
Groton-Dunstable Regional
School Committee