

TOWN OF TEWKSBURY AND TEWKSBURY FIRE FIGHTERS, LOCAL 1647, I.A.F.F.,
MUP-9016 (5/18/93).

65.62 threat of reprisal

Commissioners Participating:

Maria C. Walsh, Chairperson
William G. Hayward, Jr., Commissioner
William J. Dalton, Commissioner

Appearances:

Sally J. Calhoun, Esq. - Representing the Town of Tewksbury
William Lafferty, Esq. - Representing Local 1647, I.A.F.F.

DECISION¹

Statement of the Case

Local 1647, I.A.F.F. (Union) filed a charge with the Labor Relations Commission (Commission) on June 1, 1992, alleging that the Town of Tewksbury (Town) had engaged in prohibited practices within the meaning of §10(a)(1) of M.G.A. Chapter 150E (the Law).

The Commission issued a complaint on September 16, 1992, alleging that the Town interfered with, restrained or coerced employees in the exercise of their rights guaranteed under the Law, in violation of Section 10(a)(1) of the Law.

Pursuant to Commission Rule 13.02(2), an evidentiary hearing was held on February 12, 1993 and February 24, 1993, at which time the parties had full opportunity to be heard, to present, examine and cross examine witnesses and to introduce documentary evidence. The Town filed a post hearing "Requested Findings of Fact," and the Union filed a post hearing "Union's commentary on Town's Request for Findings of Fact by the Commissioner."

The Hearing Officer's Recommended Findings of Fact were issued April 5, 1993. The Union filed a "Challenge to Recommended Findings" dated April 19, 1993, and the Town filed a letter dated May 4, 1993 which reiterated its earlier "Requested Findings of Fact." Based upon all of the evidence presented and after consideration of the parties' supplementary statements, the Commission makes the following findings of fact and renders the following opinion.

¹ Pursuant to 456 CHR 13.02(1), the Commission has redesignated this case as one in which the Commission shall issue a decision in the first instance. Therefore, these recommended findings of fact are issued under 13.02(2).

Town of Tewksbury and Tewksbury Fire Fighters, Local 1647, I.A.F.A.,
19 MLC 1808

Findings of Fact

The Town is a public employer within the meaning of Section 1 of the Law. The Union is an employee organization as defined in that Section and is the exclusive bargaining representative of a bargaining unit of firefighters employed by the Town. The Town Manager is an agent of the Town for purposes of dealing with its public employees. Mr. Timothy N. Niven is president of the Union.

During the early months of 1992, the Town faced a projected budget deficit in its Fiscal Year 1993 budget. In response to the projected deficit, a Budget Committee was formed to develop a strategy relative to the budget to present to the Town Meeting in May 1992. The Budget Committee consisted of representatives of the Town's Finance Committee, School Committee, and Board of Selectmen, along with the Superintendent of Schools and Town Manager.

On April 29, 1992, the Budget Committee reached a consensus to propose a level funded budget with no layoffs to Town Meeting. On May 1, 1992, Town Manager David G. Cressman met with several department heads and union representatives, including Timothy N. Niven, to inform them of the Budget Committee's proposal.

The Town Manager said at that meeting that if the union representatives did not support the budget committee's strategy and tried to increase the department's appropriation beyond the level funded amount he'd be forced to take the more responsible position of a lower budget amount with layoffs.

Mr. Niven testified at the evidentiary hearing that he felt that the Town Manager's statements were a threat that if any union official spoke at Town Meeting against the Budget Committee's proposal then the Town Manager would change his support to a lower budget amount which, if passed by the Town Meeting, would require layoffs of bargaining unit members.²

At the Town Meeting, the level funded budget was adopted, following which Mr. Niven made a motion for reconsideration. The reconsideration was adopted but no one spoke in favor of increasing any departmental budget amount.

OPINION

An employer violates Section 10(a)(1) of the Law if it engages in conduct that tends to restrain, coerce, or interfere with employees in the free exercise of their rights under Section 2 of the Law. Town of Mashpee, 11 MLC 1252, 1270 (1984). The pertinent inquiry is the effect that the employer's conduct would tend to have upon "reasonable employees." Town of Chelmsford, 8 MLC 1913, 1917, aff'd

2

Several other witnesses testified but added no additional probative facts.

Town of Tewksbury and Tewksbury Fire Fighters, Local 1647, I.A.F.A.,
19 MLC 1808

15 Mass. App. Ct. 1107 (1983). It is the effect that the employer's action had upon the employees rather than the employer's motivation that is the essence of the case. Town of Chelmsford, 8 MLC 1913, 1916.

In the instant case, it is not necessary to make a determination as to the Town Manager's motivation when he made the statement to the department heads and union representatives. His motivation is of no consequence in determining whether his words had a tendency to restrain, coerce, or interfere with employee rights. If a reasonable employee would interpret the Town Manager's words in a manner that would tend to restrain, coerce, or interfere with an employee in the free exercise of Section 2 rights then there is a violation of the Law.

We find that a reasonable employee would understand the Town Manager's words to be a threat to speak in favor of a lower budget, which would mean layoffs of bargaining unit personnel, if an employee exercised his statutory right to speak against the Budget Committee's proposal. This threat would manifest itself by tending to restrain or coerce employees from speaking freely in support of their views at the town meeting.³

Whether or not Niven actually spoke in support of his position is of no consequence to the Commission in this case. The purpose of the Law is to restrain employers from undertaking activity which would tend to restrain, coerce, or interfere with the employee's rights. The fact that an employee resists the tendency to restrain, coerce, or interfere with his rights neither minimizes nor excuses the employer's conduct. The Commission cannot ignore the potentially chilling effect that our finding to the contrary would have on future employees who might refrain from protected activities that they would otherwise undertake in response to an employer's threatening statements.

Conclusion

For the foregoing reasons, we hold that the Town Manager's statement interfered with the employee rights under Section 2 of the Law, in violation of Section 10(a)(1) of the Law.

3

The Commission has previously held that attendance at public meetings is protected activity (see, Boston Housing Authority, 11 MLC 1189, 1194 (1984) and City of Boston, 8 MLC 1872, 1875) and that employees have broad latitude to engage in concerted activity to protest working conditions or to pressure an employer about collective bargaining concerns (see, Southeastern Regional School District Committee, 7 MLC 1801, 1808 (1981) and Wakefield School Committee, 19 MLC 1355, 1358 (1992)). The implication of our prior decisions leads to a conclusion that speaking at a town meeting is activity protected by Section 2.

Town of Tewksbury and Tewksbury Fire Fighters, Local 1647, I.A.F.A.,
19 MLC 1808

Order

WHEREFORE, IT IS ORDERED, pursuant to Section 11 of Chapter 150E of the General Laws, that the Town of Tewksbury shall:

1. Cease and desist from interfering with, restraining and coercing its employees, including Tom Niven, in the exercise of their rights under Section 2 of the Law.
2. Post immediately in all conspicuous places where employees usually congregate and where notices to employees are customarily posted, and leave posted for not less than thirty (30) consecutive days, the attached Notice to Employees.
3. Notify the Commission in writing within thirty (30) days of the receipt of this order of the steps taken to comply with this order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

WILLIAM G. HAYWARD, JR., COMMISSIONER

WILLIAM J. DALTON, COMMISSIONER