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**CITY OF BOSTON AND BOSTON POLICE SUPERIOR OFFICERS  
FEDERATION, MUP-7704 (8/5/94).  
DECISION ON APPEAL OF HEARING OFFICER'S DECISION.**

65.2 concerted activities  
65.3 interrogation  
65.6 employer speech  
92.51 appeals to full commission

**Commissioners Participating:**

William J. Dalton, Chairman  
Claudia T. Centomini, Commissioner

**Appearances:**

David P. Ryan, Esq. - Representing the City of Boston  
Alan J. McDonald, Esq. - Representing the Boston Police  
Superior Officers Federation

**DECISION ON APPEAL OF  
HEARING OFFICER'S DECISION**

**Statement of the Case**

On December 20, 1989, the Boston Police Superior Officers Federation (Union) filed a charge with the Labor Relations Commission (Commission), alleging that the City of Boston (City) had violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). On April 20, 1990, the Commission issued a Complaint of Prohibited Practice alleging that the City had violated Section 10(a)(1) of the Law by its reaction to the Union president's comments published in a Boston Globe article. A hearing was held before Hearing Officer Judith Neumann and, on February 27, 1991, she issued her decision finding that the City had violated Section 10(a)(1) of the Law.<sup>1</sup>

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The full text of the hearing officer's decision is reported at 17 MLC 1546.

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The City filed a timely notice of appeal pursuant to Commission Rule, 456 CMR 13.15(3). Subsequently, the City and the Union filed supplementary statements.

For the reasons stated below, we affirm the hearing officer's decision.

### FACTS

The Union represents a bargaining unit of sergeants, lieutenants, and captains employed by the City's police department. William Broderick (Broderick) has been the president of the Union and its chief spokesman since 1989. As the Union president and as a member of the Union's promotion committee, Broderick has taken an active interest in the City's promotional practices in the police department, including the availability of Civil Service promotional examinations.

On September 18, 1989, the Civil Service Commission issued a ruling that an acting captain who had been summarily demoted to lieutenant was not entitled to a Civil Service pre-demotion hearing. As of the Fall of 1989, the City had not held a Civil Service promotional examination for the position of captain for approximately fifteen years. As a result, twenty-one of the twenty-four captains held provisional or "acting" appointments. On November 28, 1989, Broderick sent a letter to the Commonwealth's Department of Personnel Administration (DPA), complaining of the City's practices regarding the appointment of captains and urging the DPA to require the City to hold a captain's examination. Shortly thereafter, DPA ordered the City to take steps within a specified time period to hold a captain's promotional examination.

On December 11, 1989, a Boston Globe reporter called Broderick seeking the Union's reaction to DPA's directive regarding the captain's promotional examination. During the interview, Broderick explained to the reporter that the Union had sought the captain's promotional examination because it had been concerned about the City's practice of appointing provisional or acting captains who lacked Civil Service rights. Broderick believed that the absence of Civil Service rights would make the acting captains reluctant to oppose department policy. In an article published in the Boston Globe on December 12, 1989, entitled "Captain's Exam for Hub Police Ordered," Broderick is quoted in the following manner:

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"I applaud [DPA's] actions," said William Broderick, president of the 225-member federation, referring to [DPA's] order. "I think he sees through the smoke and mirrors the department is throwing up in its own defense...we wouldn't have half the problems we have on the street if we had properly promoted captains."

Broderick said that acting captains lack the will to oppose the department's controversial stop-and-frisk policy being carried out against suspected gang members.

"There is strong opposition from the superior officers, but if the acting captains opposed it they would be assigned to midnights in Siberia," said Broderick.

On the evening of December 13, 1989, in a parking lot outside a hall where the Union was holding its monthly membership meeting, an on-duty uniformed lieutenant told Broderick that Superintendent Paul F. Evans (Evans), head of the department's uniformed division, had ordered him to hand-deliver the following letter, date December 13, 1989, to Broderick:

I am taking this opportunity to express my outrage and disappointment at the statements attributed to you in a December 12th Boston Globe article. Your statements, if true, reflect most unfavorably on the integrity of the department and of the twenty-one officers who are currently performing in the capacity of acting Captains and these statements, in my opinion, have no basis. I have the utmost confidence in the ability and job performance of the superior officers holding the rank of acting Captain. In fact, I challenge you to show occasions where acting Captains have displayed the "lack the will" to carry out their duties or have been pressured into acting in any manner other than in the best interest of the City and its citizens.

There is no one in the department who welcomes the upcoming Captain's exam more than myself, Superintendent Joseph V. Saia and Deputy Superintendent Joseph F. Dunford, all of whom have been Civil Service lieutenants since 1978 (approximately the same time you joined the department). In fact, several other members of the Command Staff also look forward to the challenge.

The department has grown quite accustomed to your criticism and this letter does not

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intend to challenge your right to speak to the media. It does, however, question the accuracy of your statements.

The department takes extremely serious, its obligation in the area of Constitutional rights and is committed to this obligation. The Police Commissioner and I have repeatedly expressed the role of the department in safeguarding the Constitutional rights of the public. These views have been reiterated on a number of occasions, both in the public media and in the form of special orders promulgated to all members of the department. There is no reason for any member of this department to misunderstand these commitments. Furthermore, the Attorney General of the Commonwealth, the Suffolk County District Attorney, and the Boston Bar Association all have reviewed the department's policies relative to "stop and frisk" and all have concluded that the policies are within the Constitutional guidelines. The Attorney General, District Attorney, Boston Bar Association and I have personally urged people who have allegedly been victims of illegal searches by members of the department to come forward, so the department may address these issues and take action if warranted. Although not one person has come forward to file a complaint with this department or any other agency (except for a lawsuit), it is my duty to pursue any possibility that such incidents might be occurring, even on an isolated basis. Statements attributed to you indicate you may have knowledge that such practices may exist.

In furtherance of this mandate, you are hereby ordered to appear in my office on Tuesday, December 19, 1989 at 11:00 a.m., to be questioned as to your knowledge regarding the existence of illegal searches and seizures conducted by members of this department. You may bring counsel, if you desire, and the interview will be recorded.

The Department's stop-and-frisk policy had generated significant public controversy, as well as confusion and apprehension within the Department, commencing in approximately April 1989, and intensifying during the period September through November 1989. On September 19, 1989, Suffolk Superior Court Judge Mathers issued a decision finding that the department had countenanced routine unconstitutional searches of young black males. After this decision, Superintendent Evans became the department's "point man" for responding to the stop-and-frisk controversy.

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On November 22, 1989, a group of Boston citizens filed a civil suit in Superior Court against the City naming certain officers involved in specific incidents for allegedly conducting unlawful searches. In response to the court action, Superintendent Evans ordered the named officers' Area Commanders to obtain written reports from them concerning the specific incidents. Evans also met with the officers at their work stations, but he did not interrogate them in the presence of Internal Affairs Division (IAD) personnel, did not tape-record his interview with them, did not advise them to have an attorney present, and did not request that they sign forms confirming their understanding that a failure to answer questions could lead to disciplinary action.

On at least two occasions prior to the events giving rise to the instant case, the Boston media had published comments attributed to Captain Bobbie Johnson (Johnson) and Deputy Superintendent William Celester (Celester) suggesting the existence of an unlawful "search on sight" policy. Captain Johnson's comments were published in a May 19, 1989 Boston Herald article entitled "Police Zeroing in on Gangs." Superintendent Evans traveled to Captain Johnson's headquarters in Area B to interview him concerning the comments attributed to him in the newspaper article and his knowledge of unlawful searches. Evans did not notify Johnson in writing to appear at Evans' office, nor did Evans advise Johnson that he could be accompanied by an attorney, that the meeting would be tape-recorded, and that he should sign forms confirming his understanding that a failure to answer questions could lead to disciplinary action. In addition, there was no IAD representation at the interview. The second occasion concerned comments attributed to Deputy Superintendent Celester published in an October 16, 1989 Boston Globe article entitled "As Shootings Spread, Police Vow Searches." Superintendent Evans ordered Celester into his office where he questioned him regarding the statements attributed to him in the newspaper article. Celester was not advised that an attorney should accompany him to the meeting, that the meeting would be tape-recorded, and that he should sign forms confirming his understanding that a failure to answer questions could lead to disciplinary action. Furthermore, there was no IAD representative at the interview. However, Evans did order Celester to submit a written report regarding the article.

Pursuant to Superintendent Evans' December 13 directive, Broderick appeared at Evans' office on December 19, 1989, with his attorney, James Lamond (Lamond). Attending the meeting, at Evans' request, was Superintendent Arthur Morgan (Morgan), the head of IAD, who has been present in previous interviews with Broderick only where discipline was under consideration. Evans explained that he needed Morgan present

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because of his interrogation expertise and because he was the custodian of the department's tape equipment. At the outset of the interview, Broderick was required to sign a form acknowledging that any failure on his part to answer the department's questions could have disciplinary consequences.<sup>2</sup> Evans taped the interview because he "realized that my calling Sergeant Broderick into the offices would be a controversial matter" and he wanted to ensure that the purpose of the interview was clearly recorded.<sup>3</sup>

Superintendent Evans commenced Broderick's interview in the following manner:

EVANS: Again, I think as my letter inferred the Department Heads had been under scrutiny for some time as to our policies in the area of Area B in the area of stop and frisk. We have constantly urged people on numerous occasions, as to if people have complaints, to come forward with those complaints, to come forward with those complaints. We take that seriously and when a member of our Department, a sworn member of the Department, or that there is an inference from his statements that he has knowledge of it, I think we're hypocritical if we don't look into the possible knowledge when we are urging other people to do so. Certainly, we should make inquiry as to the sergeant's knowledge. So this is not a complaint against him. It's solely an inquiry as to his knowledge of those -- at least if the statements were true -- and I'm not saying they're true -- it appears that he may have knowledge of those.

Now, when we ask the public to come forward I think it's hypocritical on our part when a sworn member at least appears in the newspaper to say in an inference that unconstitutional practices are taking place. I think we have the right to and it's mandated that we should inquire as to his knowledge of it. So this is solely an inquiry to determine if Sergeant Broderick has any knowledge of practices that are

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Broderick was also asked to sign a so-called "Silverio form," which indicated that the interviewee would not be subjected to criminal liability for any misconduct revealed during the course of the interview. After Broderick balked at signing his form, it was withdrawn.

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A court reporter subsequently transcribed the taped record. The complete transcript was admitted into evidence.

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unconstitutional, or of practices that are not in keeping with this Department's standards. So let me be very clear on the face of it. There is no existing complaint against Sergeant Broderick. There is no complaint as to his speaking to the media. I think that was clear in the letter I sent to him. This is solely -- it is part of that overall thing we've been doing for quite some time. If there are complaints with members of our Department acting or doing unconstitutional searches we want to know about it. And when one of our own personnel seems to indicate that he has knowledge, I think it's incumbent upon us to at least do an inquiry. That's what this session is about....

LAMOND: ....[W]e in no way agree with your characterization of the article in terms of what he said or didn't say and whether he has made allegations regarding unconstitutional practices of the Department. With that in mind, we certainly understand from your letter that the purpose is for him to respond to any questions from you and from Superintendent Morgan, regarding his knowledge of any unlawful searches, certainly we are prepared to do that.

EVANS: That's what we're here about. We are solely here to see if the characterization of the statements that have been attributed to him, if there is a basis in fact for them. That's, I think our job to inquire. We've made it clear with the citizenry and I think when he have one of our own staff that makes a statement, and again I think at the start of the letter, if true, and I'm not saying that those statements are true. I've been in a position on numerous occasions where I've been misquoted. The whole inquiry is the issue of search and seizure, not the issue of statements made to the press....

Broderick's interview lasted approximately forty-six minutes.

During the course of the interview with Superintendent Evans Broderick made references to complaints generated by superior officers in Areas B and E. As a result, Evans issued written orders, dated January 16 and 17, 1990, to the commanders of Area B, E and the City Wide Anti-Crime Unit to have all the superior officers under their command submit written reports as to their knowledge of (1) searches being conducted in violation of the Fourth Amendment; and (2) orders from any high ranking superior officers encouraging officers to conduct unconstitutional searches. Evans personally reviewed those responses and concluded that they did not substantiate that the officers had been ordered to conduct or had conducted unlawful searches.

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OPINION

An employer violates Section 10(a)(1) of the Law if it engages in conduct that it may reasonably be said tends to interfere with employees in the free exercise of their rights under Section 2 of the Law. Town of Winchester, 19 MLC 1591, 1596 (1992). The primary focus of the Commission's inquiry is the effect of the employer's conduct on a reasonable employee. Massachusetts Board of Regents, 14 MLC 1397, 1401 (1987); Town of Chelmsford, 8 MLC 1913, 1916 (1982), aff'd 15 Mass. App. Ct. 1107 (1983).

Our focus in the instant does not concern Superintendent Evans' right to question any of the officers under his command regarding statements attributed to them in newspaper articles regarding police department policy. Nor do we find that the substance of Superintendent Evans' questions during Broderick's interrogation were in and of themselves improper.

Our analysis primarily addresses the manner and method Evans utilized to notify and interrogate Union president Broderick. The evidence reveals that Superintendent Evans treated Union President Broderick differently than other patrol officers and superior officers in similar situations. When Superintendent Evans confronted Captain Johnson and Deputy Superintendent Celester concerning comments attributed to them in newspaper articles, the manner in which he conducted these interrogations differed from the interrogation he conducted with Broderick: he did not serve them with a letter hand-delivered by a uniformed officer; he did not hold a meeting in the presence of IAD personnel; he did not tape the meeting; and he did not advise the officers of a right to counsel or request them to sign forms confirming their understanding that a failure to answer questions could lead to disciplinary action.

Although Evans' December 13, 1989 letter appears to give Broderick the benefit of the doubt ("Your statements, if true..."), unlike the above-named officers, Evans had a uniformed superior officer hand-deliver this formal letter of notification of the time, date, and place of the interview to Broderick. Moreover, Superintendent Evans did not interview Broderick in the same manner as the patrol officers who were the subject of the November 1989 lawsuit, or the same as Captain Johnson and Deputy Superintendent Celester. Although at the outset of Broderick's interrogation on December 19, 1989, Evans declared that "...[w]e are solely here to see if the characterization of the statements that have been attributed to [Broderick], if there is a basis in fact for them....," Evans' interrogation of



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Broderick was accompanied with the trappings of a disciplinary interview: the presence of IAD Superintendent Morgan and Broderick's attorney, the tape-recording of the interview, and requiring Broderick to sign a form acknowledging that any failure on his part to answer the department's questions could have disciplinary consequences.

Furthermore, the City admits that the manner and method of interrogating Broderick was necessitated by the rancorous and litigious relationship between Broderick in his "union capacity" and the police department, citing several prohibited practice cases filed by Broderick with the Commission. It is well-established that the filing and processing of charges with the Commission constitutes protected activity under Section 2 of the Law. City of Woburn, 9 MLC 1417 (1981); City of Quincy, 8 MLC 1527 (1981). Therefore, the City admits that it treated Broderick differently because he exercised his rights under Section 2 of the Law. The City's admission, coupled with the formality of the notification to Broderick and the disciplinary atmosphere created by the manner in which the interrogation was conducted, lead us to conclude that the City's conduct had an intimidating and coercive effect. For all of the above reasons, we find that the City violated Section 10(a)(1) of the Law.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City of Boston shall:

1. Cease and desist from:
  - a) Treating Union President William Broderick differently than any other police officer who has comments attributed to him/her in a newspaper article regarding the police department's search policy;
  - b) In any like or similar manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Massachusetts General Laws, Chapter 150E.
2. Take the following affirmative action which will effectuate the purposes of the Law:

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- a) Post in conspicuous places where employees represented by the union usually congregate, or where notices are usually posted, and display for a period of thirty (30) days, signed copies of the attached Notice to Employees.
- b) Notify the Commission in writing within thirty (30) days of service of this decision of the steps taken to comply herewith.

**SO ORDERED.**

**COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION**

**WILLIAM J. DALTON, CHAIRMAN**

**CLAUDIA T. CENTOMINI, COMMISSIONER**