

In the Matter of COMMONWEALTH OF
MASSACHUSETTS

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Case No. SUP-4337

62.6 *misconduct*
63.4 *other discrimination*
65.2 *concerted activity*
91.1 *dismissal*

May 11, 1998

Robert C. Dumont, Chairman
Claudia T. Centomini, Commissioner
Helen A. Moreschi, Commissioner

Patricia Noone, Esq. Commonwealth of Massachusetts
Brian K. Harrington, Esq. National Association of
Government Employees

DECISION¹

Statement of the Case

The National Association of Government Employees (Union) filed a charge with the Labor Relations Commission (Commission) on October 21, 1996, alleging that the Commonwealth of Massachusetts (Respondent) had engaged in prohibited practices within the meaning of Sections 10(a)(1), (3) and (4) of M.G.L. c. 150E (the Law). The Commission investigated the charge and issued a Complaint of Prohibited Practice alleging that the Respondent had terminated an employee represented by the Union for engaging in concerted, protected activity in violation of Section 10(a)(3) of the Law and that the Respondent had interfered with, restrained and coerced Pierangeli in violation of Section 10(a)(1) of the Law. The Respondent subsequently filed an answer to the Commission's Complaint.

On May 21, 1997, Deputy Chief Counsel Philip J. Holmes, acting as the Administrative Law Judge (the ALJ), conducted a hearing at which both parties had a full opportunity to present evidence and to cross-examine witnesses. On June 20, 1997, the Respondent filed a post-hearing brief and, on June 23, 1997, the Union filed its brief. On September 5, 1997, the ALJ issued recommended

findings of fact. On September 19, 1997, the Respondent filed challenges to the findings of fact. On September 23, 1997, the Union filed its challenges to the findings of fact. After reviewing the parties' objections and the record in this case, we adopt the recommended findings of fact, except where noted, and summarize the relevant portions below.²

Facts³

The Respondent, acting through the Commissioner of Administration and Finance, is a public employer within the meaning of Section 1 of the Law. The Union is an employee organization within the meaning of Section 1 of the Law. The Union is the exclusive collective bargaining representative for employees in statewide bargaining unit 6, including certain employees employed by the Respondent in its Department of Revenue (DOR). Joseph Pierangeli was a full time Tax Examiner II and a member of the Union.

On July 18, 1996, Pierangeli asked Helen Daly, the vice president of the Union, whether he could use vacation time in one-hour increments, as specified in the new collective bargaining agreement between the Union and the Respondent. Later that day, Pierangeli's supervisor, Frank Liseno called Pierangeli into his office and told Pierangeli to discuss any vacation issues with him and not Helen Daly⁴ and to follow the chain of command when requesting leave time.

On July 19, 1996, Liseno spoke with Pierangeli in his office and informed him that his pay would be docked for ten minutes because he had left work ten minutes early on July 18, 1996. Liseno also discussed some overdue work reports with Pierangeli. Pierangeli became agitated and threw Liseno's desk calendar against the wall and told Liseno, "if you want to deal with this, then we can take it outside."

On July 22, 1996, Pierangeli received a letter from the Respondent informing him that he was being placed on administrative leave and that the Respondent was contemplating terminating him. The Respondent held a hearing on August 26, 1996, and terminated Pierangeli on October 18, 1996.

DECISION

The Commission applies a three-step analysis to cases alleging a violation of Section 10(a)(3) of the Law. *Trustees of Forbes Library v. Labor Relations Commission*, 384 Mass. 559 (1981); *Boston City Hospital*, 11 MLC 1065 (1984); *Town of Clinton*, 12 MLC 1361. The charging party must first establish a *prima facie*

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. The parties both filed objections to the Findings of Fact noting typographical errors, and we have corrected those errors. In addition, the Union made several additional challenges to the Findings of Fact. None of those challenges raise substantive issues that are material to this decision. Some of these challenges claim that the Recommended Findings of Fact were incomplete. In these challenges, the Union requested further clarification and more detailed findings of fact. After reviewing the record, the Commission finds that the current findings of fact are sufficiently detailed in scope. In other instances, the Commission finds that the record does not support the Union's requested challenges.

3. The Commission's jurisdiction is uncontested in this matter.

4. The Respondent objected to the ALJ's finding that Helen Daly was a Union steward, claiming that no reference was ever made to Ms. Daly's position as union steward. After reviewing the record, we agree with the Respondent and alter the findings to reflect this change.

case by producing evidence to support each of the four elements of the violation: 1) the employee is engaged in protected activity within the meaning of Section 2 of the Law; 2) the employer knew of this activity; 3) the employer took adverse action against the employee; and 4) the adverse action taken by the employer was motivated by the desire to penalize or discourage the protected activity. *Town of Clinton* at 1364.

Once the charging party has established a *prima facie* case, the employer may rebut it by producing evidence that one or more lawful reasons actually motivated the adverse action. *Id.* If it does so, the Commission will not find the employer's action unlawful unless it concludes that the employer would not have taken the adverse action against the employee but for the employee's protected activity. *Boston City Hospital* at 1071.

The Union argues that the Respondent terminated Pierangeli because he spoke to Helen Daly, the Union vice president about leave time. First, by asking Helen Daly whether he could use vacation time in one-hour increments, Pierangeli was engaged in protected activity. Second, the Respondent knew of the protected activity because Liseno instructed Pierangeli to discuss any vacation issues with him and not Helen Daly.⁵ Third, the Respondent took adverse action against Pierangeli by placing him on administrative leave on July 22, 1996 and terminating him a month later. However, the Respondent terminated Pierangeli because he threatened his supervisor and threw a desk calendar at him. There is no evidence linking Pierangeli's termination to any motive of the Respondent's to discourage Pierangeli's protected activity of requesting information from Helen Daly. Indeed, the only evidence in the record concerning the Respondent's motivation for terminating Pierangeli reflects that it took that action solely in response to Pierangeli's violent outburst at the meeting

with Liseno on July 19, 1996. Absent evidence of a nexus between Pierangeli's protected activity and the Respondent's decision to terminate him, we conclude that the Respondent did not violate Section 10(a)(3) of the Law when it terminated Pierangeli.

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). Here, there is no record evidence that the Respondent interfered with, restrained and coerced Pierangeli in the exercise of his rights guaranteed under the Law when, on July 19, 1996, Liseno told Pierangeli that his pay would be docked for leaving early the previous day. Furthermore, there is no evidence that docking Pierangeli's pay had a chilling effect on his ability to exercise his rights guaranteed under the Law. Therefore, we conclude that the Respondent did not violate Section 10(a)(1) of the Law.

CONCLUSION

For the foregoing reasons, we conclude that the Respondent did not terminate Pierangeli for engaging in protected activity in violation of Sections 10(a)(3) and (1) of the Law. In addition, we conclude that the Respondent did not interfere with, restrain and coerce Pierangeli in the exercise of his rights in violation of Section 10(a)(1) of the Law. Accordingly, the Complaint of Prohibited Practice is dismissed.

SO ORDERED.

* * * * *

5. The Union argument that Liseno's statements on July 18, 1996 reflect the Respondent's hostility towards the Union and Pierangeli's protected activity is

without merit. Liseno's comments simply do not rise to the level of hostility, nor do they indicate any animus towards the Union.