Conclusion

Based on the record, and for the reasons stated above, we conclude that the School District did not violate Sections 10(a)(3) and (1) of the Law when it reprimanded and suspended Murphy. Accordingly, the Complaint of Prohibited Practice is dismissed.

SO ORDERED.

* * * * * *

In the Matter of ATHOL-ROYALSTON REGIONAL SCHOOL DISTRICT

and

ATHOL TEACHERS ASSOCIATION

Case No. MUP-1832

54.2	***hours***
65.6	***employer speech***
67.6	***other refusal to bargain***
82.4	***bargaining orders***
91.4	***procedure and rules***

November 2, 1999
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Peter Berry, Esq.	*Representing the Athol-Royalston Regional School District*
Brian Riley, Esq.	*Representing the Athol Teachers Association*

DECISION AND ORDER

Statement of the Case

The Athol Teachers Association (the Union) filed a charge with the Labor Relations Commission (the Commission) on May 5, 1997, alleging that the Athol-Royalston Regional School District (the Respondent) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of the Commission's rules, the Commission investigated the Union's charge and, on September 28, 1998, issued a Complaint of Prohibited Practice alleging that the Respondent failed to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1), by making statements indicating that it would not bargain with the Union and interfered with, restrained, and coerced its employees by making certain statements, in violation of Section 10(a)(1) of the Law. On October 9, 1998, the Respondent filed an answer to the Commission's complaint. The Respondent amended its answer on June 25, 1999 as follows:

> Pursuant to 456 CMR section 15.08 Respondent states that it desires to waive hearing on the allegations in the complaint and not to contest the proceedings and therefore Respondent refrains from contesting the proceedings.

In accordance with Commission rule 15.08, 456 CMR 15.08, all the allegations of the complaint are admitted to be true. The Respondent has waived a hearing and has authorized the Commission, without a hearing, without taking evidence, and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon the Respondent an order to cease and desist from the violation of the Law charged in the complaint.[1]

The Commission's complaint alleged:

Count I

1.The Respondent is a public employer within the meaning of Section 1 of the Law.

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3. The Union is the exclusive collective bargaining representative for certain teachers, guidance counselors, psychologists, speech pathologists, librarians, and school nurses employed by the Respondent.

4. Carol Curtis (Curtis) is the middle school principal and a member of the Respondent's negotiating committee.

5. On April 7, 1997, after learning that the Respondent planned to implement block scheduling at the middle school, the Union gave the Respondent a proposal concerning block scheduling and demanded to bargain over the issue.

6. On April 10, 1997, Curtis called a staff meeting.

7. At the meeting referred to in paragraph 6, above, Curtis stated that she would not negotiate about the issue referred to in paragraph 5, above.

8. By the conduct described in paragraph 7, above, the Respondent has failed to bargain in good faith by making statements indicating that it will not bargain with the Union, in violation of Section 10(a)(5) of the Law.

---

1. Commission Rule 456 CMR. 15.08 Waiver of Hearing states:

"In case the respondent desires to waive hearing on the allegations set forth in the complaint or the amended complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceedings or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from violations of M.G.L.c. 150E alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Either of the first two such answers shall have the same force and effect as if all the allegations of the complaint were admitted to be true, and, as in that case, shall be deemed to waive a hearing thereon and to authorize the Commission, without a hearing, without evidence and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violation of M.G.L.c. 150E charged in the complaint or to take such other action as provided in the Law. If the respondent does not file an answer, the Commission may proceed in a like manner."

9. By the conduct described in paragraph 7, above, the Respondent has derivatively interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed under the Law, in violation of Section 10(a)(1) of the Law.

Count II

10. The allegations contained in paragraph 1 through 6, above, are re-alleged.

11. At the meeting referred to in paragraph 6, above, Curtis addressed the attendees and made an announcement, including the following statements:

> Personally, I will never let the internal workings of a school schedule become a negotiated item.
>
> Why should an elementary teacher, 3 high school teachers, two middle school teachers, Central Office, School Committee members, and some lawyers decide if we should move our time and structure around?
>
> But now that it has been taken from our hands and placed in this nebulous land of negotiations, we cannot go on without some real dangers.
>
> I will never let the formation of our internal time schedule and needs leave our hands and go to a negotiating committee.
>
> I'm not going to play the game of which changes are not a change in working conditions.

12. By the conduct described in paragraph 11, above, the Respondent had interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under the Law, in violation of Section 10(a)(1) of the Law.

DISCUSSION

Section 6 of the Law requires a public employer and a union to meet at reasonable times to negotiate in good faith over wages, hours, standards of productivity and performance, and any other terms and conditions of employment. See, *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983). The duty to bargain requires the parties to enter into negotiations with an open mind and a sincere desire to reach an agreement and to make efforts to compromise differences. *Commonwealth of Massachusetts*, 8 MLC 1499, 1510 (1981); *Brockton School Committee*, 23 MLC 43 (1996); citing *Holbrook Education Association*, 14 MLC 1737, 1740 (1988). Here, by operation of 456 CMR 15.08, the Respondent has admitted to all facts alleged in Count I of the Commission's complaint. The facts as alleged constitute a violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Therefore, the Commission enters the order below.

Section 2 of the Law provides that employees shall have the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment. A public employer violates Section 10(a)(1) of the Law when it engages in conduct which may reasonably be said tends to interfere with, restrain, or coerce employees in the exercise of their rights under the Law. *Town of Winchester*, 19 MLC 1591, 1595 (1992), *citing*, *Bristol County House of Correction and Jail*, 6 MLC 1582, 1584 (1979), *quoting*, *Illinois Tool Works*, 153 F.2d 811, 17 LRRM 841, 843 (1946). The Commission has determined that disparaging remarks directed to an employee's protected activity, even without direct threats of adverse consequences, are unlawful, if the remarks tend to reasonably interfere with, restrain or coerce employees in the exercise of their Section 2 rights. *Groton-Dunstable Regional School Committee*, 15 MLC 1551 (1989). Further in *Groton-Dunstable Regional School Committee*, 19 MLC 1194 (1992), the Commission decided that a superintendent's statements, which ridiculed and belittled an employee's grievance activities, could reasonably chill employees from freely exercising their Section 2 rights. Here, by operation of Commission rule 15.08, 456 CMR 15.08, the Respondent has admitted to all facts alleged in Count II of the Commission's complaint. The facts as alleged constitute a violation of Section 10(a)(1) of the Law. Therefore, the Commission enters the order below.

ORDER

WHEREFORE, on the basis of the above and in accordance with Commission rule 15.08, 456 CMR 15.08, it is hereby ordered that the Athol-Royalston Regional School District shall:

1. Cease and desist from:

> a. Failing to bargain in good faith with the Athol Teachers Association by making statements indicating that it would not bargain over block scheduling at the middle school.
>
> b. Making statements that interfere with, restrain and coerce employees in the exercise of their rights under the Law.
>
> c. In any like or similar manner interfering with, restraining, or coercing its employees in the exercise of their rights under the Law.

2. Take the following affirmative action that will effectuate the policies of the Law:

> a. Upon demand, bargain in good faith with the Athol Teachers Association over block scheduling at the middle school.
>
> b. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.
>
> c. Notify the Commission within ten (10) days of receiving this order of the steps taken to comply herewith.

SO ORDERED.

NOTICE TO EMPLOYEES

The Labor Relations Commission has ordered the Athol-Royalston Regional School District to cease and desist from failing to bargain with the Athol Teachers Association by making statements indicating that it would not bargain over block scheduling at the middle school, and to cease and desist from making statements that interfere with, restrain, and coerce its employees in the exercise of their rights guaranteed under Massachusetts General Laws, Chapter 150E, the Public Employee Collective Bargaining Law.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

to engage in self-organization; to form, join or assist any union;

to bargain collectively through representatives of their own choosing;

to act together for the purpose of collective bargaining or other mutual aid or protection; and,

to refrain from all of the above.

WE WILL NOT refuse to bargain with the Athol Teachers Association by making statements indicating that we would not bargain over block scheduling in the middle school.

WE WILL NOT make statements that interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under M.G.L. Chapter 150E.

WE WILL NOT in any like or similar manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under M.G.L. Chapter 150E.

WE WILL, upon demand, bargain in good faith with the Athol Teachers Association over block scheduling at the middle school.

[signed]
Athol-Royalston Regional School District

* * * * * *

In the Matter of NATIONAL ASSOCIATION OF GIOVERNMENT EMPLOYEES

and

MARIO LONGO

Case No. SUPL-2650

72.	***Duty of Fair Representation***
72.22	***duty to investigate and process grievance***
91.1	***dismissal***

November 9, 1999
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Joseph G. Donnellan, Esq.	*Representing the National Association of Government Employees*
Mario Longo	*Pro Se*

DECISION[1]

Statement of the Case

On September 3, 1996, Mario Longo (Longo) filed a charge with the Labor Relations Commission (the Commission) alleging that the National Association of Government Employees (the Union) had engaged in a prohibited practice within the meaning of M.G.L. c.150E (the Law). Following an investigation, on December 18, 1996, the Commission issued a Complaint of prohibited practice alleging that the Union had violated Section 10(b)(1) of the Law by the manner in which it had represented Longo in processing a grievance involving the upgrade of certain investigators at the Division of Registration. On June 30, 1997, Mark A. Preble, a duly designated administrative law judge (ALJ) of the Commission, conducted a hearing, at which all parties had an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. At the outset of the hearing, the Union elected to defer its rebuttal concerning the merits of the underlying grievance until after the Commission had determined whether or not the Union's conduct violated the Law.[2] Longo presented his closing argument on the record. The Union filed a post-hearing brief on August 27, 1997. Neither Longo nor the Union challenged any of the administrative law judge's Recommended Findings of Fact.

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

2. See, *Quincy City Employees Union, H.L.P.E.*, 15 MLC 1340, 1376, n.67 *aff'd sub nom. Nina Pattison* v. *Labor Relations Commission*, 30 Mass. App. Ct. 9 (1991).