
In the Matter of MASSACHUSETTS CORRECTION
OFFICERS FEDERATED UNION

and

BRISTOL COUNTY SHERIFF'S DEPARTMENT

Case No. MUPL-01-4307

76. **Refusal to Bargain in Good Faith**
91.1 **dismissal**

June 29, 2004

Allan W. Drachman, Chairman
Helen A. Moreschi, Commissioner
Hugh L. Reilly, Commissioner

Matthew E. Dwyer, Esq. Representing the Massachusetts
Joseph S. Fair, Esq. Correction Officers Federated
Union

Robert M. Novack, Esq. Representing the Bristol County
Ronald J. Lowenstein, Esq. Sheriff's Department

DECISION¹

Statement of the Case

On April 27, 2001, the Bristol County Sheriff's Department (the Sheriff's Department) filed a charge with the Labor Relations Commission (the Commission) alleging that the Massachusetts Correction Officers Federated Union (MCOFU) had violated Sections 10(b)(1), (2) and (3) of Massachusetts General Laws, Chapter 150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on December 27, 2001. The complaint alleged that MCOFU: 1) failed to

bargain in good faith in violation of Section 10(b)(2) and, derivatively, Section 10(b)(1) of the Law by attempting to bypass mediation and to proceed directly to fact-finding; 2) did not participate in good faith in mediation in violation of Section 10(b)(3) and, derivatively, Section 10(b)(1) of the Law by attempting to bypass that process; 3) failed to bargain in good faith in violation of Section 10(b)(2) and, derivatively, Section 10(b)(1) of the Law by making statements to the press on November 24, 2000 without providing the Sheriff's Department with forty-eight hours notice as required in the parties' ground rules; and 4) did not participate in good faith in mediation in violation of Section 10(b)(3) and, derivatively, Section 10(b)(1) of the Law when it violated the parties' ground rules.²

MCOFU filed an answer on January 15, 2002.

On April 15, 2002 and April 16, 2002, Margaret M. Sullivan, Esq., a duly-designated Commission hearing officer, conducted a hearing at which all the parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. The Sheriff's Department and MCOFU submitted post-hearing briefs postmarked on July 8, 2002.

On March 26, 2004, the hearing officer issued her Recommended Findings of Fact. Pursuant to 456 CMR 13.02(2), MCOFU filed challenges to the Recommended Findings of Fact on April 14, 2004. The Sheriff's Department filed no challenges to the Recommended Findings of Fact. After reviewing those challenges and the record, we adopt the Hearing Officer's Recommended Findings of Fact, as modified where noted, and summarize the relevant portions below.

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 Commission dismissed those portions of the Sheriff's Department's charge alleging that MCOFU had violated Section 10(b)(1) of the Law by: 1) interfering with the Sheriff's Department's rights and obligations to maintain and to administer its workplace in a safe and efficient manner when MCOFU brought charges against certain members for allegedly violating the terms of MCOFU's constitution and bylaws; and 2) acting in a manner that was intended to interfere with, restrain and coerce the Sheriff's Department from exercising its right to manage the institution by comments that MCOFU's steward Joseph Zekus allegedly made to Internal Affairs Investigator Lieutenant Larkin.

Additionally, the Commission dismissed those portions of the Sheriff's Department's charge alleging that MCOFU had failed to bargain in good faith in violation of Section 10(b)(2) of the Law when MCOFU unilaterally attempted to change: 1) Article XXI, Section 3 of the parties' 1994-2000 collective bargaining agreement (Agreement) when David Miranda (Miranda), then MCOFU's treasurer, interfered with staff members in the performance of their duties; 2) Article XIX of the Agreement when Miranda purportedly endangered and interfered with the safety and security of staff and inmates; 3) Article XIX of the Agreement when MCOFU's representatives interfered with staff in the performance of their duties; 4) Article VII of the Agreement when Miranda interfered with the staff's set hours of work; 5) Article VIII of the Agreement when MCOFU's representatives conducted unauthorized union business at the correctional facility; 6) Article XX of the Agreement when MCOFU induced, supported, encouraged and condoned a work stoppage and the withholding of services by employees; 7) Article VIII of the Agreement when MCOFU condoned correction officers Miller's, Gouveia's and Davignon's abandonment of their positions; 8) Article VIII of the Agreement when MCOFU con-

doned correction officers' wrongful use of the Sheriff's Department's telephones for union business; 9) Articles V and XIX of the Agreement when MCOFU paid the salaries of Davignon, Gouveia and Miller on or about December 2000 and January 2001 after the Sheriff's Department had suspended them for disciplinary violations; 10) Article VIII of the Agreement when MCOFU condoned the fact that Officer Gibney had abandoned his post; 11) Article VIII of the Agreement when MCOFU condoned certain correction officers' use of roll-call to conduct union business; and 12) the parties' past practice of MCOFU submitting information requests either to the Sheriff or to the Sheriff's legal counsel when on December 6 and 11, 2000 MCOFU submitted a request for information to the Deputy Superintendent.

Further, the Commission dismissed those portions of the Sheriff's Department's charge alleging that MCOFU had violated Sections 10(b)(2) and (3) of the Law by: 1) filing a complaint for contempt in Superior Court and seeking payment of an unliquidated arbitration award; 2) engaging in regressive bargaining when MCOFU attempted to convince the mediator on or about November 3, 8 and 29, 2000 that the Sheriff's Department had withdrawn a proposal that set forth a zero tolerance policy for correction officers' use of alcohol and controlled substances; and 3) engaging in regressive bargaining when MCOFU agreed to provide the Sheriff's Department with the financial reports for vision and dental plans and then reneged.

Also, the Commission dismissed the portion of the Sheriff's Department's charge alleging that MCOFU had violated Section 10(b)(3) of the Law by refusing to participate in good faith in mediation and fact-finding when it sent a letter to the mediator requesting that issues in dispute in successor contract negotiations be sent to arbitration.

Finally, the Sheriff's Department did not seek reconsideration pursuant to 456 CMR 15.03 of those portions of its charge that the Commission dismissed.

Findings of Fact³

MCOFU is the exclusive collective bargaining representative for all full-time and regular part-time correction officers at the Sheriff's Department, but excluding the Sheriff, deputy superintendents, assistant deputy superintendents, captains, the training lieutenant, K-9 officers and all other employees. MCOFU and the Sheriff's Department were parties to a collective bargaining agreement in effect from July 1, 1997 through June 30, 2000.⁴

On March 27, 2000, the parties entered into successor contract negotiations. At that bargaining session, the parties verbally agreed upon the following ground rules:⁵ 1) all negotiations would be held at the Sheriff's Department's offices; 2) there would be only one spokesperson for each side, Attorney Matthew Dwyer (Dwyer) for MCOFU and Sheriff Thomas Hodgson (Sheriff Hodgson) for the Sheriff's Department; 3) each party agreed to give the other party forty-eight hours notice before making public statements about pending negotiations, including making statements to the media;⁶ 4) all proposals were tentatively agreed to until the parties negotiated and ratified the entire agreement; and 5) the parties reserved the right to amend or to supplement their initial proposals. MCOFU introduced proposals concerning the following issues: wages, vision and dental benefits,⁷ vacation leave,⁸ shift differentials, longevity and a cleaning allowance for unit members' uniforms (cleaning allowance).⁹ The Sheriff's Department introduced proposals concerning the following issues: wages, Step 2 of the contractual grievance procedure,¹⁰ floater positions,¹¹ drug and alcohol testing,¹² vacations¹³ and civic duty/jury leave.¹⁴ Bargaining sessions also took place on May 16, 2000, May 23, 2000, June 21, 2000 and June 29, 2000.¹⁵

On July 5, 2000, MCOFU filed for mediation with the Massachusetts Board of Conciliation and Arbitration (the BCA). In July 2000, the BCA assigned mediator John Driscoll, Jr. (Driscoll) to the matter. The first mediation session took place on September 19, 2000. MCOFU and the Sheriff's Department exchanged proposals and counterproposals.¹⁶ The parties discussed all of the outstanding issues; however, the parties spent more time discussing certain issues than other issues. During that mediation session, the Sheriff's Department made a proposal concerning alcohol testing,¹⁷ which MCOFU objected to on the grounds that the Sheriff's Department had withdrawn that proposal at an earlier bargaining session. The Sheriff's Department disputed MCOFU's assertion.

On October 24, 2000, Dwyer wrote to Driscoll suggesting that if the parties did not reach a resolution at the next mediation session on November 3, 2000,¹⁸ they should proceed directly to arbitration. Dwyer also noted in the letter that: 1) the Sheriff's Department had attempted to introduce a proposal at the September 19, 2000 mediation session, which it allegedly had not raised during prior negotiations;¹⁹ 2) the Sheriff's Department had not responded to MCOFU's newest proposals during the September 19, 2000 session, but instead had responded to earlier proposals that MCOFU had submitted and subsequently amended; and 3) only one session had been held since MCOFU filed the mediation petition.

The next mediation session took place on November 3, 2000. The Sheriff's Department proposed: 1) the imposition of drug testing; 2) separate vacation bids for lieutenants and rank and file officers; 3) a right of first refusal for captains in certain overtime situations; and 4) the creation of a certain percentage of floater positions. MCOFU then submitted counterproposals to have: 1) the Sheriff's

3. The Commission's jurisdiction in this matter is uncontested, and the Commission's finds that it has jurisdiction.

4. The parties acknowledge that the terms and conditions of the 1997-2000 collective bargaining agreement remain in place while the parties negotiate a successor agreement.

5. The parties never reduced the ground rules to writing.

6. The Sheriff's Department proposed forty-eight hours notice for public statements to avoid a recurrence of a situation that had taken place during prior contract negotiations when correction officers conducted a surprise picket of the personal residence of then Sheriff Nelson.

7. Previously, the Sheriff's Department had not offered vision and dental benefits to unit members. MCOFU proposed that vision and dental benefits be offered through a trust fund that was administered by MCOFU and the Commonwealth of Massachusetts (the MCOFU trust fund).

8. MCOFU proposed that the Sheriff's Department permit unit members to take up to ten vacation days singly (i.e. one vacation day at a time). Previously, the Sheriff's Department had permitted unit members to take only five days of vacation singly and required them to take the remainder of their vacation leave in weekly increments.

9. The record does not indicate whether unit members previously received shift differentials, longevity payments or a cleaning allowance.

10. Article IV of the 1997-2000 collective bargaining agreement states that:

The Sheriff or his designee shall hold a hearing within fourteen (14) calendar days from the date of submission. Failure by the Sheriff to hold such hearing within this period shall be construed as a decision favorable to the employee unless the Sheriff within such latter period advised the Union that

for good cause set forth an additional period of ten (10) calendar days is needed, or [MCOFU] agrees to an extension of time.

The Sheriff submitted a proposal to increase the fourteen days to twenty-one days.

11. Currently, correction officers are assigned to a particular facility. The Sheriff's Department proposed to designate a certain percentage of officers who are assigned to each shift as floaters, whom the Sheriff's Department could assign to any facility.

12. The Sheriff's Department wanted to implement drug and alcohol testing.

13. The Sheriff's Department was seeking to have weeklong vacations run from Sunday through Saturday.

14. The record is silent as to the nature of the Sheriff's Department's proposal concerning civic duty/jury leave.

15. A bargaining session was also scheduled for April 19, 2000. However, negotiations never took place on that date, because one member of MCOFU's bargaining team was unavailable to attend the negotiation session because of his work schedule.

16. As is typical in mediation, the parties were located in separate rooms and did not engage in direct face-to-face bargaining. Rather, the mediator traveled between the two rooms conveying the parties' proposals and counterproposals.

17. The Sheriff's Department indicated that it would withdraw its proposal to have correction officers submit to alcohol testing, if MCOFU agreed to no longer seek vision and dental benefits.

18. In response to MCOFU's challenge, we amend the year to accurately reflect the record.

19. The proposal concerned overtime for lieutenants and captains.

Department implement drug testing at some point other than the first year of the contract and to impose a thirty-day suspension rather than a termination the first time that a unit member tested positive on a drug test;²⁰ 2) the number of vacation slots for lieutenants be proportionate to the overall number of vacation slots for rank and file correction officers at a particular facility; 3) an acceptance of the captains' right of first refusal for overtime contingent on the Sheriff's Department agreeing that a lieutenant would not be forced to work if every captain declined an overtime opportunity; and 4) the Sheriff's Department create a fixed number of floater positions and fill those positions according to seniority. MCOFU also proposed that: 1) unit members receive a three percent wage increase plus an additional one percent increase in their salary as compensation for training as well as another one percent increase in salary for firearms qualification pay; 2) unit members receive longevity pay of \$1000 after nine years of service, \$1500 after fourteen years of service and \$2000 after nineteen years of service; 3) employees who had worked more than 19.5 years earn a total of six weeks vacation leave and be permitted to take ten days of that leave singly; and 4) certain revisions be made to its earlier proposal concerning the cleaning allowance.

The parties held their third mediation session on November 8, 2000. MCOFU amended its prior shift differential proposal to have unit members receive an additional forty-five cents for working the second shift and an additional seventy cents for working the third shift. The Sheriff's Department resubmitted its proposal to increase from fourteen days to twenty-one days the time period during which the Sheriff's Department must hold a Step 2 hearing. MCOFU agreed to that proposal but requested that the change be applied prospectively.

On November 9, 2000, Sheriff Hodgson sent a letter to Dwyer requesting that Dwyer bring his appointment book to all mediation sessions to facilitate scheduling future sessions.²¹ Dwyer responded on November 15, 2000 stating that there were no cancellations or delays attributable to his calendar, and that he would be available to meet on November 29, 2000 for the next mediation session, as he had previously informed the mediator.

On November 15, 2000, Miranda sent out a letter to bargaining unit members informing them that an informational picket would take place on Friday, November 24, 2000 between the hours of 7:30 AM to 9:30 AM and from 3:30 PM to 5:30 PM and advising them to contact their local stewards for further information.²² On either Monday, November 20, 2000 or Tuesday, November 21, 2000, Steve Donnelly (Donnelly), then a MCOFU vice-president, Paul Reynolds (Reynolds), a MCOFU field representative, and Miranda met with Sheriff Hodgson in his office. Donnelly, Miranda and Reynolds had traveled to the Sheriff's Department in response to telephone calls that they had received from certain bargaining unit members.²³ During that meeting, Donnelly informed Sheriff Hodgson that the parties were going to conduct an informational picket to protest the lack of progress in successor contract negotiations, and that the picket would take place on Friday, November 24, 2000 from 7:30 AM to 9:30 AM and from 3:30 PM to 5:30 PM at the intersection of Route 6 and Faunce Corner Road by the Dartmouth Mall.²⁴ Donnelly also asked if Sheriff Hodgson had any questions about the picket.²⁵ As Donnelly, Miranda and Reynolds left the Sheriff's office, Miranda made an off-the-cuff remark to Sheriff Hodgson that the sheriff ought to come to the picket because he might be on television.

At the November 24, 2000 informational picket, approximately seventy-five to eighty individuals were present.²⁶ Reynolds, Donnelly and Miranda were all present at some point during the picket. Reynolds arrived at the picket site shortly before 7:30 AM. He and Miranda set out coffee and donuts and handed out picket signs to individuals as they arrived. Donnelly arrived at the site between 12:30 PM and 1:00 PM and initially met with Miranda to discuss certain logistical issues.²⁷ Miranda then asked Donnelly to speak to members of the media who were present.²⁸ Donnelly spoke to a reporter from the *Fall River Herald* newspaper (the *Fall River Herald*), a reporter from the *New Bedford Standard Times* newspaper (the *Standard Times*) and a reporter from a cable television station. Donnelly commented to the reporters that the Sheriff's Department's correction officers did not have a vision and a dental plan, while inmates did. He also noted that he did not want to talk about specific issues that were the subject of negotiations, but that

20. During negotiations, the Sheriff's Department had proposed terminating unit members the first time that they tested positive on a drug test.

21. The Sheriff's Department introduced testimony from Michael Murray (Murray), Esq., then counsel for the Sheriff's Department, about conversations that Driscoll allegedly had at various mediation sessions with members of MCOFU's bargaining team. A bargaining team member allegedly informed the mediator during those conversations that he did not have his appointment book with him and could not agree to dates for future mediation sessions. However, Murray admittedly had no first hand knowledge of those comments, because the parties were always in separate rooms during the mediation sessions. Rather, this portion of Murray's testimony is solely based upon what the mediator allegedly conveyed to him. The Sheriff's Department relies upon this portion of Murray's testimony to support its claims that a MCOFU bargaining team member routinely did not bring an appointment book to mediation sessions, thus delaying scheduling subsequent sessions. Because the Sheriff's Departments uses Murray's testimony to demonstrate the truth of the matter asserted, it is triple hearsay and inherently unreliable. Therefore, the hearing officer declines to credit this testimony.

22. During the period between October 24, 2000 and November 11, 2000, MCOFU held a meeting at which bargaining unit members approved a proposal to conduct informational picketing.

23. The bargaining unit members alleged that the Sheriff's Department's internal affairs investigators had asked them questions about the upcoming picket. Those allegations are the subject of a pending complaint before the Commission in Case No. MUP-2782.

24. November 24, 2000 was the day after Thanksgiving, and MCOFU anticipated that the Dartmouth Mall would be busy with holiday shoppers.

25. At one point, Sheriff Hodgson and Reynolds became engaged in a heated discussion about the picket.

26. Approximately ninety-five percent of the individuals present were bargaining unit members. A few state correction officers also attended.

27. Donnelly wanted to spread the participants out and to have individuals carrying picket signs at each street corner.

28. Reynolds noted that he and other MCOFU members had previously decided that the media should be notified about the picket on the morning of November 24, 2000 before 7:30 AM. However, the record does not indicate which MCOFU members actually notified the media, when the notification was made or how the notification was made. MCOFU did not issue any written statements to the media.

MCOFU was seeking better health benefits for bargaining unit members, including a vision and a dental plan. Donnelly also opined that Sheriff Hodgson had not entered into negotiations in good faith.²⁹ Reynolds at some point also spoke to the *Standard Times* reporter and commented that correction officers were looking for better pay and increased benefits, among other demands.

The parties held a fourth mediation session on November 29, 2000. At this session, the Sheriff's Department indicated that it would no longer be possible to offer retroactive monies to bargaining unit members. Instead, the Sheriff's Department proposed a 3% wage increase for the first year of the contract, a 3% wage increase for the second year of the contract and a 3% wage increase for the third year of the contract.³⁰ When MCOFU rejected that proposal, the Sheriff's Department proposed that the parties agree to two possible collective bargaining agreements. The first proposed contract would provide for the payment of retroactive monies, while the second contract would not. The parties would seek approval of the first contract by the state office of Administration and Finance (A&F). If A&F did not approve the first contract, the parties would submit the second contract to A&F for its approval without engaging in further bargaining. MCOFU also declined to accept this proposal. Thereafter, the Sheriff's Department proposed that unit members receive a 1.5% wage increase retroactively and a signing bonus equal to 1.5% of unit members' salaries. MCOFU rejected this proposal, because the 1.5% signing bonus would not be incorporated into unit members' base pay.

In a December 7, 2000 letter, Driscoll requested that MCOFU formulate a counterproposal to a Sheriff's Department proposal to pay a pro-rated 3% wage increase on unit members' base pay and a 1.5% signing bonus. In that letter, Driscoll also expressed concerns that since the second mediation session, MCOFU had attempted to bypass the mediation process and to proceed directly to fact-finding.³¹ Finally, Driscoll also noted that because he could no longer afford to wait until the last minute for MCOFU³² to accept or to decline proposed mediation dates, he was scheduling the next mediation session for December 11, 2000 and expected MCOFU to be present.³³ On December 8, 2000, Dwyer sent a let-

ter to Driscoll in which he disagreed with and objected to the assertions and characterizations in the December 7, 2000 letter.³⁴

A fifth mediation session was held on December 11, 2001. The parties again exchanged proposals and counterproposals at that session.³⁵

A sixth mediation session took place on January 11, 2001. At that session, in response to MCOFU's proposal concerning vision and dental benefits, the Sheriff's Department put forth a counterproposal offering dental benefits under the County Blue Care Plan and offering one free eye exam per year through the Sheriff's Department's health insurance providers. Additionally, the Sheriff's Department indicated that its vision and dental proposal cost twenty percent less than MCOFU's vision and dental proposal. The Sheriff's Department also requested a copy of an audited financial report for MCOFU's trust fund.³⁶ Thereafter, MCOFU announced that it was making its final offer to the Sheriff's Department. The Sheriff's Department declined to accept that offer. At the conclusion of the January 11, 2001 mediation session, MCOFU's bargaining representatives opined that the parties were not making progress in mediation, and that the dispute should proceed to fact-finding. A seventh mediation session was held on March 27, 2001.³⁷ At this mediation session, MCOFU modified its proposals concerning shift differentials and the Sheriff's Department's contribution rates for the vision and dental plan. At the end of this mediation session, there were still a few minor issues that the parties had not addressed during any of the mediation sessions.

In a letter dated March 27, 2001, BCA notified the parties that it was instituting fact-finding pursuant to Section 9 of the Law.

Opinion

Counts I and II

Count I and Count II of the Complaint allege that MCOFU failed to bargain in good faith during mediation. Section 6 of the Law requires an employer and the exclusive bargaining representative of its employees to meet and to negotiate in good faith with respect to wages, hours, standards of productivity and performance and any

29. The Sheriff's Department entered into evidence two newspaper articles dated November 25, 2000 from the *Fall River Herald* and the *Standard Times*. Those articles contained comments that Donnelly allegedly made to reporters at the November 24, 2000 picket. Donnelly in his testimony corroborated certain of the comments, and the hearing officer adopted those comments in the findings. However, the hearing officer did not credit those comments in the newspaper articles that Donnelly expressly denied uttering, because the accuracy of those comments was not established.

30. Previously, the Sheriff's Department had offered to pay retroactive monies and a 2% wage increase for the first year of the contract, a 3% wage increase for the second year of the contract, and a 3% wage increase for the third year of the contract.

31. Driscoll also stated that in order for the dispute to proceed to fact-finding that he would need to certify to the BCA that the parties had bargained in good faith to impasse, and that he was unwilling to do so at that point.

32. Driscoll indicated that he had left MCOFU a voice mail message on Thursday, November 30, 2000 offering Monday, December 4, 2000 as a date for a possible mediation session and that the union did not contact him until December 4, 2000 at which time he had already cancelled the proposed session.

33. The Sheriff's Department had already agreed to that date.

34. On or about that same date, Reynolds telephoned Driscoll, who was at a conference in California, to protest the letter. Reynolds informed Driscoll that, at the end of the November 29, 2000 mediation session, he and other members of MCOFU's bargaining team believed that the mediator was going to recommend that the dispute be sent to fact-finding.

In response to MCOFU's challenge, we amend the date of the mediation session to accurately reflect the record.

35. At the end of this session, the parties agreed upon December 27, 2000, January 10, 2001 or January 11, 2001 as potential dates for the next mediation session.

36. In a March 23, 2001 letter, the Sheriff's Department's counsel, Robert Novack, Esq., made a written request for financial statements for the years that the trust fund was in operation.

37. Prior to that mediation session, MCOFU again requested that the BCA send the dispute to fact-finding. MCOFU proposed that the BCA appoint a fact-finder, that the fact-finder conduct a brief mediation, and that if the mediation effort was unsuccessful, the parties proceed to fact-finding on that same date. The BCA did not grant MCOFU's request and, instead, Driscoll scheduled a seventh mediation session for March 27, 2001.

other terms and conditions of employment. The duty to bargain in Section 6 does not compel either party to agree to a proposal or to make a concession. The Commission has explained the meaning of the “good faith” requirement of Section 6 of the Law:

Parties to negotiations must bargain with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. *Commonwealth of Massachusetts (Unit 6)*, 8 MLC 1499, 1510 (1981); *Town of Braintree*, 8 MLC 1193, 1196 (1981); *King Philip Regional School Committee*, 2 MLC 1393, 1396 (1976).

In assessing whether an employer and an employee organization have bargained in good faith, the Commission will look to the totality of the parties’ conduct, including acts away from the bargaining table. *Melrose Police Association*, 27 MLC 136, 137 (2001); *Town of Hudson*, 25 MLC 143, 146 (1999); *King Philip Regional School*, 2 MLC 1393, 1397 (1976). Viewed in its totality, we conclude that MCOFU’s conduct during mediation does not evince a lack of good faith. *See Harwich School Committee*, 10 MLC 1364, 1367 (1984) (totality of the employer’s conduct during negotiations does not support a bad faith bargaining allegation). The record reveals that MCOFU attended seven mediation sessions on September 19, 2000, November 3, 2000, November 8, 2000, November 29, 2000, December 11, 2000, January 11, 2001 and March 27, 2001 and that MCOFU submitted proposals and counterproposals throughout the mediation process. The Commission has previously found a willingness to listen to the other party’s arguments and to at least consider compromise to be an indicia of good faith bargaining. *See Town of Braintree*, 8 MLC at 1197 (union engaged in bad faith bargaining when it refused to even listen to or consider certain of the employer’s proposals because those proposals would allegedly curtail certain employee benefits). Although the Sheriff’s Department acknowledged that MCOFU attended mediation sessions, submitted proposals and rendered counterproposals, the Sheriff’s Department contended that MCOFU’s conduct was only a façade and that MCOFU instead violated Section 10(b)(2), and, derivatively, Section 10(b)(1) of the Law by attempting to foreshorten bargaining and to proceed directly to fact-finding, which included frustrating the scheduling of mediation sessions. However, although MCOFU expressed frustration with the mediation process on at least two occasions, the record does not demonstrate that the union’s sentiments affected its conduct during the process. Finally, the Sheriff’s Department fails to establish by a preponderance of the evidence that MCOFU engaged in dilatory conduct during the mediation sessions or that the mediation sessions were delayed because of the purported conduct. *See generally City of Westfield*, 25 MLC 163, 165 (1999) (charging party had an obligation to prove by a preponderance of the evidence that a unilateral change had taken place).

Additionally, because the facts before us do not support an allegation that MCOFU failed to bargain in good faith during mediation in violation of Section 10(b)(2) and, derivatively Section 10(b)(1) of the Law, we also decline to find that MCOFU failed to participate in good faith in mediation in violation of Section 10(b)(3) and, derivatively, Section 10(b)(1) of the Law.

Counts III and IV

Counts III and IV of the Complaint concern MCOFU’s alleged breach of the parties’ ground rule requiring each party to give the other party forty-eight hours notice before making public statements about pending negotiations, including making statements to the media. It is well established that a party violates its duty to bargain in good faith when it breaches an agreed upon ground rule. *North Middlesex School Committee*, 28 MLC 160, 162 (2001); *Boston School Committee*, 15 MLC 1541, 1546-1547 (1989). Further, the Commission has specifically noted in the past that a party may negotiate a ground rule permitting the parties to communicate their bargaining positions to the media and to the public. *See North Middlesex Regional School District Teachers Association*, 28 MLC at 162; *citing, Holbrook School Committee*, 5 MLC 1491, 1494 (1978).

Here, the Sheriff’s Department contends that MCOFU violated Sections 10(b)(2), and, derivatively, Section 10(b)(1) of the Law when the union’s representatives Donnelly and Reynolds made certain statements to the media about pending negotiations without providing the employer with sufficient advance notice as required by the parties’ ground rule. Donnelly and Reynolds made the disputed comments while participating in an informational picket that MCOFU conducted on November 24, 2000 to protest what it perceived as a lack of progress in successor contract negotiations. The Commission has repeatedly held that activities designed to involve or persuade non-parties for the purpose of favorably resolving a dispute or a grievance are concerted and protected, provided the activities are not unlawful, violent, in breach of contract, disruptive or indefensibly disloyal to the employer. *City of Lawrence*, 15 MLC 1162, 1165 (1988) and cases cited therein.

It is uncontested that MCOFU complied with the ground rule by providing the Sheriff’s Department with at least forty-eight hours notice before it conducted the informational picket. Further, the record reveals that although Donnelly and Reynolds informed the media that unit members were seeking increased pay and better benefits, neither individual revealed specific details about the parties’ bargaining proposals. Moreover, Donnelly actually declined to talk about specific issues that were the subject of negotiations. Therefore, we conclude that Donnelly’s and Reynolds’ statements to the media, providing a general summary of MCOFU’s aspirations in bargaining, were a natural and incidental outgrowth of MCOFU’s informational picket that did not trigger a separate notice obligation under the parties’ ground rule.

Furthermore, because the record before us does not support an allegation that MCOFU failed to bargain in good faith in violation of Section 10(b)(2), and, derivatively, Section 10(b)(1) by breaching the parties’ ground rules, we also decline to find that MCOFU failed to participate in good faith during mediation in violation of Section 10(b)(3), and, derivatively, Section 10(b)(1) of the Law.

Based on the record and for the reasons stated above, we dismiss the following allegations in the Complaint: Count I that MCOFU violated Section 10(b)(2), and, derivatively, Section 10(b)(1) by failing to bargain in good faith when it allegedly attempted to by-

pass mediation and proceed directly to fact-finding and to frustrate the scheduling of future mediation sessions; Count II that MCOFU violated Section 10(b)(3), and, derivatively, Section 10(b)(1) by failing to participate in good faith in mediation by engaging in the conduct referred to in Count I; Count III that MCOFU violated Section 10(b)(2) and, derivatively, Section 10(b)(1) by failing to bargain in good faith when it allegedly breached the parties' ground rule requiring each party to provide the other party with forty-eight hours notice before a party issued public statements about pending negotiations; and Count IV that MCOFU violated Section 10(b)(3), and, derivatively, Section 10(b)(1) by failing to participate in good faith in mediation by engaging in the conduct referred to in Count III.

Pursuant to M.G.L. c.150E, §11, decisions of the Labor Relations Commission are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a Notice of Appeal with the Labor Relations Commission within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

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In the Matter of BRISTOL COUNTY SHERIFF'S DEPARTMENT

and

MASSACHUSETTS CORRECTION OFFICERS FEDERATED UNION

Case No. MUP-2872

- 52.6 *interpretation*
- 52.64 *past practices*
- 54.41 *ground rules*
- 54.8 *mandatory subjects*
- 62.3 *discrimination*
- 63.11 *no solicitation rule*
- 63.43 *selective discipline of union leaders*
- 63.7 *discrimination – union activity*
- 65.2 *concerted activities*
- 65.5 *no solicitation rule*
- 65.62 *threat of reprisal*
- 66.1 *employer responsibility for actions of supervisor*
- 67.15 *union waiver of bargaining rights*
- 67.8 *unilateral change by employer*

July 15, 2004

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DECISION¹

Statement of the Case

The Massachusetts Correction Officers Federated Union (Union or MCOFU) filed a charge of prohibited practice with the Labor Relations Commission (Commission) on December 21, 2000, alleging that the County of Bristol (Employer), acting through its Sheriff, Thomas M. Hodgson (Sheriff Hodgson) had engaged in a prohibited practice within the meaning of Sections 10 (a)(1), (2), (3) and (5) of M.G.L. c. 150E (the Law). Following an investigation, the Commission issued an eleven-count complaint of prohibited practice on July 3, 2001. On August 31, 2001, after reconsideration, the Commission issued an amended complaint that included one additional Section 10(a)(1)

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.