

In the Matter of TOWN OF BOLTON

and

BOLTON POLICE UNION, LOCAL 286, MCOP, AFL-CIO

Case No. MUP-01-3254

65.2 *concerted activities*
65.6 *employer speech*

June 27, 2005

Allan W. Drachman, Chairman
Hugh L. Reilly, Commissioner

James T. Masteralexis, Esq. *Representing the Town of Bolton*

John M. Becker, Esq. *Representing the Bolton Police Union, Local 286, MCOP, AFL-CIO*

DECISION¹

Statement of the Case

On December 5, 2001, the Bolton Police Union, Local 286, MCOP, AFL-CIO (Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Town of Bolton (Town) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of M.G.L. c. 150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on August 20, 2002. On October 30, 2002, the parties filed a joint motion to clarify the complaint of prohibited practice. On November 22, 2002, the Commission issued an amended complaint of prohibited practice. The Commission's amended complaint alleged that the Town interfered with, restrained, and coerced employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law when: 1) Board of Selectmen Chairman Kenneth Troup (Troup) issued a letter on September 18, 2001 criticizing unit members for engaging in concerted, protected activity; and 2) Police Chief Celia Hyde (Chief Hyde) issued a letter on September 26, 2001 criticizing and threatening employees for engaging in concerted, protected activity.² The Town filed its amended answer on December 17, 2002.

On December 17, 2002 and January 16, 2003, Margaret M. Sullivan, Esq., a duly-designated Commission hearing officer (Hearing Officer), conducted a hearing. On December 17, 2002, before any witnesses testified, the Hearing Officer allowed the

Town's motion to sequester all witnesses prior to giving testimony except John Wilcox (Wilcox), the current Union president, and Chief Hyde. Both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. The parties submitted post-hearing briefs postmarked on March 14, 2003.

On May 6, 2005, the Hearing Officer issued her Recommended Findings of Fact. Pursuant to 456 CMR 13.02(2), the Union filed challenges to the Recommended Findings of Fact on May 18, 2005, and the Town filed no challenges to the Recommended Findings of Fact. On May 26, 2005, the Town filed its opposition to the Union's challenges.

Findings of Fact³

The Union filed challenges to portions of the Hearing Officer's 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.

The Union is the exclusive bargaining representative for all full-time and regular part-time police officers and reserve officers employed by the Town, including patrol officers, the patrol supervisor and the sergeant, but excluding the chief of police. On June 15, 2000, the parties executed a side letter of agreement (June 15, 2000 side letter) stating in relevant part:

Distribution of Details

Upon receiving a request for a paid detail, the Chief of Police or her agent shall cause the Police Department (the Department) to call and offer such outside work to the next eligible person on the full-time seniority list. Part-time employees, in order of seniority, shall be offered a detail after all full-time employees have declined the offer.⁴

Rates for Details

Officers shall receive \$32 per hour for paid details. All employees who are assigned to work a detail will be guaranteed four hours of pay at the appropriate rate unless they receive a cancellation notice at least two (2) hours before a detail is scheduled to begin. All employees who are assigned to work a detail that continues for more than four (4) hours but less than eight (8) hours will be guaranteed eight (8) hours of pay.⁵

All hours worked over eight (8) hours on a detail will be paid at one and one-half (1.5) times the appropriate detail rate. Notwithstanding the foregoing, employees performing details for the Town, or the Nashoba Regional School District, or any not-for-profit activity conducted on the property of the Town or said School District, shall be paid the regular detail rate of \$32 per hour for their actual hours worked only. . . .

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's amended complaint also alleged that the Town had failed to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by repudiating Article 10 of the parties' 1999-2000 collective bargaining agreement. However, the Union filed a motion on December 2, 2004 to have the Commission dismiss that portion of the amended complaint. We allow that motion.

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

4. Paid details are voluntary.

5. The guaranteed four or eight hours of pay are colloquially referred to as four or eight hour minimums.

Errors and Omissions

Errors and omissions arising under this Side Letter of Agreement are not subject to the grievance procedure outlined in the Union contract. All such issues shall be referred to the Police Chief, whose ruling shall be final and binding.

Effective Date

This Side Letter of Agreement shall take effect on February 20, 2000.⁶

In August 2000, representatives from the Bolton Fair⁷ expressed concerns about the potential expense that would be incurred if, pursuant to the June 15, 2000 side letter, police officers would earn four and eight hour minimums for working paid details at the event.⁸ Unit members subsequently held a meeting and voted not to seek the four and eight hour minimums for any paid details for the upcoming fair. Instead, police officers working paid details at the Bolton Fair would only be compensated for the time that they actually worked, which is the same method used to calculate the paid detail rate for non-profit activities held on Town or Nashoba School District property.⁹ However, the Union resolved to revisit the issue in 2001 due to its belief that the Bolton Fair did not fall into the category of a not-for-profit activity, and that the Bolton Fair, Inc. was not entitled to a reduction in the paid detail rate.¹⁰

In or about August or September 2001, unit members learned that the Town would not apply the four and eight-hour minimums to paid details taking place at the Bolton Fair in September 2001. Further, Chief Hyde presented documents to Union president Barry, Union vice president Wilcox, and Union secretary-treasurer Sergeant Warren Nelson (Nelson) showing that the Bolton Fair, Inc. held tax-exempt status and was registered as a public charity. However, the Union continued to dispute the Town's decision not to apply the four and eight-hour minimums to paid details at the Bolton Fair. Nelson informed Chief Hyde that unit members were unhappy about the Town's decision. When the Town posted opportunities for unit members to work paid details at the Bolton Fair, only one unit member volunteered.¹¹ Subsequently, at Chief's Hyde's urging, Nelson and several other unit members signed up for the details.

On or about September 14, 2001, the local weekly newspaper, the *Bolton Common*, ran the following editorial letter from the Union, which Barry had drafted.¹²

“Dad, How did you get hurt at work?”

An open letter to the residents and business owners of Bolton

This is one of the hardest questions that any parent that is a Police Officer/Fire Fighter/EMT can answer from their child. The days of family activities, vacations or other things come to an end. Whether it is temporary or extended time, it takes its toll. This letter is in regards to the never-ending battle to erect a radio tower for the Public Safety departments in Bolton, which protect you.¹³ The issue can be as simple as putting it up on town owned property, or on donated land, but it seems whenever it is looked at, a glitch shows its ugly head. Well, as Police Officers, in this town, our families have so much to look forward to when we have been seriously injured while in the performance of our duties to protect this town and for what? I couldn't call our dispatcher from the portable radio because the town was not concerned about the quality of communication which we use at work. It seems that the amount of “Vacant Conservation Land” is ever increasing within Bolton but do you think that we might get a chance to get our lives protected while making sure yours are. The town purchased all the “State of the Art” radio equipment back in 1999 and to what use today? “NOT MUCH!” With a temporary antenna system in place today and currently in limited use, it suffers from severe limitations and serves little or no use at all. When you think that you call 9-1-1, and you expect a cruiser to respond right away to YOUR emergency (no matter how little it may be), but if the duty officer is on a call and away from his cruiser at the far end of town and cannot be reached. This is valuable time taken away from you.

Many individuals spend many hours (whether paid or volunteer) to protect this community 24 hours a day/7 days a week for you. When we are in need of assistance at our jobs (working at a house fire/domestic situations/motor vehicle accidents, etc.) and are unable to call for help due to the poor communications, where do we turn? Do we need to bring back the past loss of brother Police Officers and Fire Fighters who, when trying to call for help, were hampered by problems with “bad reception or not being heard”? This town has many “bad spots” in which you are unable to contact the dispatch center. If we have a situation in which an officer needs assistance right away and couldn't reach the dispatcher, this leaves that officer with his “training and experience” to aid him. That is not a “cure-all”

6. The parties originally negotiated an oral agreement concerning paid details on February 20, 2000. The parties subsequently reduced the oral agreement to writing on June 15, 2000 but also included an amendment permitting unit members to use a police cruiser to perform road details.

7. The Bolton Fair is a four-day event that takes place during the third week of September and attracts thousands of visitors. Although the Bolton Fair takes place on municipal property, a private entity, the Bolton Fair Inc., organizes the event. The Bolton Fair typically generates between 12 and 20 paid details per day.

8. Chief Hyde testified that the parties specifically discussed the Bolton Fair during negotiations for the June 15, 2000 side letter, and that Troup informed the Union that the four and eight hour minimums would not apply. Conversely, former Union president Michael Barry (Barry) testified that the parties never discussed the Bolton Fair during negotiations for the side letter. However, we need not reconcile this contradictory testimony, because the factual finding is not material to the outcome of the issue before us.

9. During negotiations for the June 15, 2000 side letter of agreement, the parties agreed to this exception to the paid detail rate in order that school-related activities would not become cost prohibitive.

10. On or about that time, Paolini Construction Corporation began a project to resurface the pavement and put down new sewer lines in a stretch of highway between Route 117 and Route 495. The project ultimately lasted two years and provided unit members with many opportunities to work paid details. Unit members working those paid details earned the four and eight hour minimums.

11. Certain unit members chose to work paid details at the Paolini construction site, other unit members were on vacation, and one unit member never worked paid details.

12. Barry initially submitted the letter for publication in late August 2001. When the Bolton Common subsequently did not publish the letter, Barry submitted it again.

13. The Town previously had appointed a subcommittee consisting of representatives from the police department, the fire department and the ambulance service to consider possible sites for a proposed radio tower to boost the transmission signal of public safety radio calls.

for this. Recently, a neighboring town had an EMERGENCY assistance call from their officer on duty. The incident was at the farthest end of that town which limited radio communication to the vehicle radio. Fortunately, it turned out for the best and all officers went home at the end of their shifts. Even though the cruisers are equipped with cell phones and computers to receive and transmit information to the dispatch center, most of the time the officers are away from their cruisers when situations occur. On certain days this Police Department runs with only 1 officer on duty to answer radio calls, alarm calls, motor vehicle stops etc. That in itself should make this a priority in getting to the bottom of this for SAFETY REASONS alone.

Look folks, you will be the first to criticize if we are "TAKING SO LONG" to get to your call (and we DO hear this), but when we are on the side of the road trying to subdue a motorist or in the middle of a domestic violence call or in a burning structure fire trying to perform a rescue and are unable to find an exit point. Who's our help if we can't contact our dispatchers on duty? WHO'S GOING TO HELP US???

Let's get this issue resolved for the benefit of all Public Safety personnel who work for this community.

(Emphasis in original.)

On or about September 12, 2001, Troup¹⁴ read the Union's letter in the *Bolton Common*, became admittedly upset and frustrated, and decided to respond to the letter. On September 18, 2001, Troup wrote the following letter, which he requested that Chief Hyde post on the bulletin board at the police station.¹⁵

21 Meadow Road

September 18, 2001

To: Officers and Members of the Bolton Police Union

From: Ken Troup

This is a personal letter and is not from the Board of Selectmen.¹⁶

I did not discuss it with either of the other members nor does it necessarily reflect their views. I am writing to you to tell you how profoundly disappointed I am in the behavior of your union in the past week. One would have hoped that in light of such a significant national tragedy on September 11, 2001, it might have been possible to put petty bickering and arguments in perspective. In that spirit, the Chief and I met on Wednesday afternoon September 12 and agreed that, in deference to the terrorist attacks, we would offer to have the town cover the entire cost of the gun belts¹⁷ that were such an issue in Mr. Becker's August 22 letter to the Chief. It is my understanding that although Mr. Barry was not available, the Chief

made the offer to Sergeant Nelson. Yet I was informed today that a grievance has been filed on this issue.

Also today, I heard from the editor of the *Bolton Common* that the union had submitted an unsigned letter essentially fear-mongering the public concerning the public safety tower on Wattaquodock Hill. Considering that Michael Slepetz [Slepetz]¹⁸ was with the Chief, Harold Brown, Gigi Bonazzoli, and me on the morning of September 12 to select the site of the tower on the parcel being purchased by the town on November 19 and that we agreed to time tables for obtaining the equipment building, performing engineering, and the like so that the tower can be in place before the town ever votes, I am dumbfounded and insulted that such an unprofessional letter would be written AFTER that meeting. All you had to do was ask Michael what was happening, and if ANYONE had questions, they could have contacted me.

I was also disappointed to learn today that the union is "boycotting" detail work on the Bolton Fair this weekend and has gotten officers in other departments to follow suit. As I am sure you know, an outside letter was negotiated as part of the contract which paid each detail officer an hourly amount comparable to what other towns receive. It also clearly listed non-profit organizations which use town property including the Fair. Since this was agreed upon by both sides, such arguments should have been avoided. The issue of the Fair's status, to my knowledge, has not been raised by the union at any time in the past. To leave the Fair and the town in such a position just days before the Fair is callous, unfair, and quite disappointing.

My personal opinion is that from a public relations point of view, your union is making a series of mistakes that can only hurt the membership this week and in the future and that you are in danger of losing the public's respect. The public you serve, whether they are Fair goers or not, is perceptive enough to realize what the issues are and to see through your unfair warnings and petty arguments. If Sharon and Arafat were able to call unilateral cease-fires in light of the terrorist attacks, why couldn't you?

This is how I feel and I wanted you to all understand the level of my dismay.

Sincerely,

s/

Ken Troup

(Emphasis in original.)

The Bolton Fair took place on Thursday, September 20, 2001, Friday, September 21, 2001, Saturday, September 22, 2001 and Sunday, September 23, 2001.¹⁹ Prior to the opening, eight or nine

14. Troup had been a selectman for a total of twenty years and had been chairman of the Board of Selectmen for the last two years.

On July 11, 2001, representatives from the Union and the Town held a meeting to discuss certain concerns that the Union had raised. The Town's representatives included Troup, who was there on behalf of the Board of Selectmen, Chief Hyde, and Town Labor Counsel James Masteralexis.

The Association argues that this fact should have been included in the findings. We find this fact to be supported by the record and have amended the findings accordingly.

15. The record does not reveal what other types of documents are posted on that bulletin board.

16. Troup's letter was not on the Board of Selectmen's letterhead.

17. From March 2001 through August 2001, the Town and the Union had engaged in negotiations over Chief Hyde's decision to change the type of gun belts that police officers wore. On August 20, 2001, Barry filed a grievance over the proposed change. On September 6, 2001, Chief Hyde denied the grievance at Step 1. The grievance procedure in the parties' 2000-2003 collective bargaining agreement states that the Union must file a grievance within fourteen days of when the Step 1 answer is due or received whichever date is later. On September 12, 2001, Chief Hyde informed Nelson that the Town would pay for the new gun belts. Barry filed the grievance at Step 2 on September 17, 2001 in order to preserve the timeliness of the grievance. Barry did not consider the matter to be resolved, because Chief Hyde never made the payment offer directly to him.

18. Slepetz was a bargaining unit member.

19. [See next page.]

of the paid details at the Bolton Fair remained unfilled, including traffic and crowd control.²⁰ Citing public safety concerns, the Chief revoked certain unit members' vacation leave and ordered them to work a regular shift at the Bolton Fair. On September 26, 2001, the Chief placed the following letter in unit members' internal mailboxes:

To: The Members of the Bolton Police Department

RE: Boycotting the Bolton Fair Detail

Saturday and Sunday while I directed traffic for the Bolton Fair, I sensed an air about the people that I had contact with that I had not sensed in 20+ years while working this event. Absent was the melancholy nod of the head as they rushed by—Instead I was met with direct eye contact and a sincere “thank you officer”. People seemed to want to let me know how much they appreciated my presence. Strangers would pause to let me know “they cared and were appreciative of who we are and what we represent”. A little blond girl broke free of her mother's hand and ran up and stood next me, and stated in a loud voice “I want to be a Policeman when I grow up.” Who was her example and what made her so sure of that statement?

If you didn't notice the difference then perhaps you are so tuned out to our public and should examine your sense of awareness to sensitivity and your true interest in your job.

I had to make a very unpopular decision this week and “force” officers of this department in to cover and protect the streets of Bolton. I do not regret this decision one bit because I did not lose sight of what my job is. I cannot say the same for the majority of you.

Each and every one of you decided upon a career in Law Enforcement because “you wanted to help people.” Each and every one of you gave that response when hired into this department. What the hell happened to you between then and now? From my perspective I see that you decided to forego the public interest and their safety for self-interest, greed, and power.

In this time of national need when people are looking to the police across America to show a sign of force and calm their fears you blew it—you failed miserably—and for what? **Because you weren't going to get your 4 and 8 hour detail rate—shame on each and everyone of you!**

I want to warn you about the “indifferent attitude” that has become apparent throughout this department—It will only serve to damage the reputation of this once wonderful department, the businesses in town who donate to our causes on a regular basis will close their purses to us, our supportive Board of Selectmen will view you as uncaring whiners, and the townspeople who vote our salaries, budgets and building will simply say “No.” If this is what you want for our future then keep up this attitude—you are well on your way folks!

Recently, I have fielded numerous complaints about detail officers, officers sweeping incidents under the rug, and our questionable approach to customer service. I will be re-evaluating full time officers, reserves and Badge Carrier's job performances and reassessing your

dedication to serving the Town of Bolton. For those employees who are uncertain about their commitment to this profession I will offer you my personal attention in assisting you with a career change.²¹

This message is not meant for all—but most. And to the officers who put fears of retribution aside and came forward—I thank you.

Disgusted and Embarrassed. Chief.

(Emphasis in original.)

On November 26, 2001, Barry replied to Troup's September 18, 2001 letter by stating in relevant part:

This is a personal response to you with no reflections towards the Bolton Police, Local 286, MASSCOP or the other individuals of the Bolton Police Department. I did not discuss it with any member of the Local nor does it necessarily reflect their opinions of your letter sent on 18 Sept. I am writing to you to respond to your “MEMO” to us.

I can't believe that you are so “in the dark” to the happenings of the Bolton Police Department. . . .

Now getting back to business at hand, I was aware that talks between Chief Hyde and Sgt. Nelson were going on regarding the Leather duty gear issue but I do not respond to verbal agreements with Management that affect the membership of the union. If the members affected agree that they want a deal, then they are to vote accordingly and I as President will pass that on to management as the resolution to the matter. If you forget that even though the “negotiations” were happening, time frames within the contract need to be adhered to regarding grievance procedures and time lines are noted in that area. That is just “following the contract,” which seems to be very hard for some. In this time of “dealing” with the town and the past track records, I needed something in writing before I could further act on it. Don't think that you were doing us a favor by coming up with an agreement the day after 9-11. It doesn't do anything for me personally because it should have never gotten to this point anyhow.

In regards to the Bolton Common, I was unaware that the paper wouldn't accept the Local as a “signed submitter.” (Seeing that this was the first editorial we did regarding ANYTHING happening here but I couldn't prolong the disgust of this issue any longer and neither do the individuals which it impacts either.) I was the person who drafted the letter, and it was brought to the Union body to present to the paper in regards to the concern of having no communications tower for the Public safety departments which protect this community. We agreed that it needed to have the town's people aware of the non-movement of this. A lot of promises were told but as usual, they fell to the wayside. I am very aware of the work done by the committees involved but there is STILL NO TOWER!!! And now we still have litigation going on and it's TWO months later and where do we stand today—NOWHERE! I like the idea that there's a Tower possibly going up in the Stow end of town but too bad the town's demographics don't help us at the Lancaster end (And there MIGHT be space for public safety concerns). That makes me feel better working by myself when I need to call for help at night. But we know by

19. On the first two days of the Bolton Fair, only the midway, with the carnival rides and games, is open. Typically, one thousand to five thousand people attend the fair on each of the first two days. Approximately, fifteen thousand people regularly attend on Saturday and Sunday when all of the exhibits are open.

20. Chief Hyde contacted a variety of communities, even as far as Cape Cod, seeking police officers to fill the paid details. However, fewer officers from outside of the Town signed up for the details than in previous years. The Town asserts that the Union urged police officers in surrounding communities not to accept paid details

at the Bolton Fair. However, the weight of the evidence does not support that factual finding. Chief Hyde testified about how she had heard indirectly that a bargaining unit member traveled to other communities and urged police officers not to volunteer for paid details at the Bolton Fair. However, Chief Hyde declined to elaborate upon the basis of her knowledge. Further, Wilcox and Barry denied knowledge of any such effort by the Union.

21. Chief Hyde had previously assisted Slepetz when he considered making a career change.

past experiences that the communication range doesn't work as close as the Country Cupboard either! I did also take personally that the paper needed to contact you in regards to the letter sent to them, before notifying me and its contents that got mysteriously reworded. (There was nothing derogative said, depicting anyone from anywhere in this town but only the FACTS which were related to.), but not brought to my attention at all. I was called only to ask that a name must accompany the letter and it could not be published with the representing concern. I did save a copy of the Original sent. By the way, it was sent around the end of August the first time and when nothing appeared, I sent it again.

Now the Fair. It is amazing that you are under the assumption (along with the Chief) you could "boycott" a "VOLUNTARY" detail no matter what scuttlebutt is being passed around. This department fills this VOLUNTARY detail like every other detail. A request is made and the AVAILABLE officers willing to work the assignment fill the detail. If in-town officers cannot fill the assignment, then it is sent to surrounding Departments to see if any AVAILABLE officers would like it. I am very aware of the outside letter drafted with the town in regards to the details seeing that I was in the dealing with that. I am also aware that the interpretation of the wording in this agreement seems to have different meanings for each side. We were approached shortly after the signing of the side letter. It was brought to the Union's attention the concern of the increase of the detail amount and it was decided by vote to let the fair continue under the present hourly coverage. The following year (this past fair) it was going to be dealt with the minimum 4 and 8-hour increments as every other detail is taken care of. We did let the fair committee know of the acceptance of the 1-year bypass due to the new letter being accepted around fair time. Do you think that the State road construction project on Rt. 117, which by the way was a VOLUNTARY detail as well, should have been a "forced" assignment? Although the detail at the fair was only 3 days, the 117-project impact was years. We did run short on officers many²² times through out this project but no concern to forcing manpower in was ever brought up. How about the miles of back up during rush hours and the many complaints you listened to? The need for cruisers at the nighttime hours for safety reasons which were denied by the Chief (even though it's in the contract). I would have loved to receive a new vehicle from the town due to mine being totaled from an accident or one of the officers getting hit due to a driver not paying attention. We did try to make the motoring public not inconvenienced as much as we could (along with the residents of the work areas affected). All the officers did above and beyond in what they were expected to do at some point in time while working this project. There were MANY other road jobs going on this past year and also around the "FAIR WEEK-END". Did you ever hear of BURNT OUT and need a break? But forbid me to bend for the mighty fair but you²³ can't please everyone.

My personal opinion is that you have serious problems within this place and by putting the blinders continuously on is not going to solve anything. You can only "Broom" so much. There have been issues going on for quite some time and by delaying them even longer will only hurt how the employees look at you for results, but seeing that the way the turn-around of employees in this department is going for the past 2 years, I don't blame anyone. If you think the Union is at fault here, I believe that we have done very well in making every member in good standing comfortable in thinking that they

DO feel protected and try to do well in their job. The Chief and her "interpretations" are constantly testing the contract, which was accepted by the union and the town. Did you discuss this contract with everyone on management's side? I can't continue to challenge the document which should have settled a lot of things with the Chief's own Interpretation Contract with Local 286. The only respect in question I can see in losing is that you will not have it from the members if something is not done. We do our job and we expect you to do yours as well.

This is how I feel and I wanted you to understand the level of my dismay.

Sincerely,

s/

Michael J. Barry

Finally, Barry could not recall whether he had filed any grievances after Troup issued his September 18, 2001 letter but before Wilcox succeeded him as president. However, he opined that Troup's letter would not have dissuaded him from filing a grievance.

Opinion

A public employer violates Section 10(a)(1) of the Law when it engages in conduct that may reasonably be said to tend to interfere with, restrain, or coerce employees in the exercise of their rights under the Law. *Quincy School Committee*, 27 MLC 83, 91 (2000); *Town of Athol*, 25 MLC 208, 212 (1999); *Town of Winchester*, 19 MLC 1591, 1595 (1992); *Groton-Dunstable Regional School Committee*, 15 MLC 1551, 1555 (1989). The focus of a Section 10(a)(1) analysis is the effect of the employer's conduct on reasonable employees exercising their Section 2 rights. *Town of Winchester*, 19 MLC at 1596. The Commission does not analyze either the motivation behind the conduct, *Town of Chelmsford*, 8 MLC 1913, 1916 (1982), *aff'd sub nom. Town of Chelmsford v. Labor Relations Commission*, 15 Mass. App. Ct. 1107 (1983), or whether the coercion succeeded or failed. *Groton-Dunstable Regional School Committee*, 15 MLC at 1555-1556. The Commission considers the objective impact that the employer's conduct would have on a reasonable employee under the circumstances. *Quincy School Committee*, 27 MLC at 91. The subjective impact of the employer's conduct is not determinative. *City of Fitchburg*, 22 MLC 1286, 1292 (1995). Even without a direct threat of adverse consequences, the Commission has found a violation when an employer makes disparaging remarks about an employee's exercise of protected activities. *Athol-Royalston School Committee*, 26 MLC 55, 56 (1999).

Section 2 of the Law gives employees the following rights: to organize, to form, join or assist any union, to bargain collectively through representatives of their own choice, to act together for other mutual aid or protection, and to choose not to engage in any of these protected concerted activities.²⁴ The Commission previously has found that filing and processing grievances constitute

22. In response to the Association's challenge, we amend this finding to correct a typographical error.

23. In response to the Association's challenge, we amend this finding to correct a typographical error.

24. Section 2 of the Law provides:

Employees shall have the right of self-organization and 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

concerted, protected activities under Section 2 of the Law. See *Quincy School Committee*, 27 MLC at 91; *Boston City Hospital*, 11 MLC 1065 (1984). Public protests about working conditions are similarly protected. See *City of Holyoke*, 9 MLC 1876, 1879 (1983); *City of Haverhill*, 8 MLC 1690, 1694 (1981). In particular, the Commission has held that union officials who draft and distribute letters to make the public aware of concerns about certain working conditions are engaged in concerted, protected activity. See *Town of Winchester*, 19 MLC at 1596.

Troup's September 18, 2001 letter

We first must consider, as the Town contends, whether Troup's letter was merely an expression of his personal opinion as a private citizen, or whether employees could form a reasonable belief that Troup was speaking on behalf of the employer. The Commission previously has found that the authority to act for and speak on behalf of the employer is governed by the principles of agency, and the authority to do so may be actual, implied, or apparent. *Town of Chelmsford*, 8 MLC at 1916. The issue of agency may be gauged from the point of view of employees. *Id.*, citing *J.S. Abercrombie Co.*, 83 NLRB 524, *enf'd* 180 F.2d 750 (5th Cir. 1950).

In support of its argument, the Town points out that Troup's letter clearly stated that it was from him personally rather than from the Board of Selectmen. Additionally, the Town asserts that Troup did not discuss the letter with the other members of the Board of Selectmen, and that letter did not necessarily reflect their views. However, based on the facts before us, we find that it was reasonable for employees to conclude that Troup spoke on behalf of the Town, despite his statements to the contrary. Troup requested that Chief Hyde post his letter on the police department's bulletin board, which she did. The record contains no evidence that private citizens in the Town have any right to request that letters be posted on the bulletin board at the police station. Further, Troup acted on behalf of the Town in prior dealings with the Union. Specifically, Troup organized and attended a meeting the previous summer during which the parties attempted to resolve certain ongoing disputes. Troup also offered to pay for the new gun belts and helped to establish timetables concerning the construction of the new communications tower. Troup referenced these dealings in his September 18, 2001 letter.

The Union next argues that Troup's letter made disparaging remarks directed at unit members' protected activities, including the Union's grievance concerning the gun belts, the Union's letter to the *Bolton Common*, and the employees' purportedly concerted refusal to accept paid details at the Bolton Fair.²⁵ A public employer risks violating the Law when it criticizes the method selected by a union official to arouse public sentiment about an issue affecting employees' wages, hours, and terms and conditions of employment. *Town of Winchester*, 19 MLC at 1597. However, the prohi-

bition against making statements that would tend to interfere with employees in the exercise of their rights under the Law does not impose a broad "gag rule" that restricts employers from publicly expressing their opinion about matters of public concern. *City of Lowell*, 29 MLC 30, 33 (2002); *Town of Winchester*, 19 MLC at 1597. The ultimate test remains whether the employer's statements would chill a reasonable employee's right to engage in activity protected by Section 2 of the Law. *Commonwealth of Massachusetts*, 28 MLC 250, 253 (2002).

Although Troup's letter is critical of the Union and uses certain troublesome phrases like "petty bickering" and "callous" to describe the employees' actions, the letter does not demean or ridicule the Union or employees or contain expressions of anger. See *Town of Winchester*, 19 MLC at 1597. Moreover, it does not effectuate the purposes of the Law to subject each phrase in Troup's letter to a litmus test of permissibility, as the Union urges us to do, rather than to consider the tone of the letter as a whole. *Id.* at n. 9. After considering the entire letter, including its context and tone, we conclude that a reasonable employee's right to engage in concerted, protected activity was not chilled.

Chief Hyde's September 26, 2001 letter

In contrast to Troup's letter, Chief Hyde's letter contains expressions of anger and ridicule as well as threatening remarks directed at unit members' complaints concerning the detail rate at the Bolton Fair and their failure to sign up for those paid details. The Chief disparagingly noted that unit members had foregone the public interest and safety for self-interest, greed, and power. She indicated that they had failed miserably as law enforcers due to their desire to receive the four and eight-hour minimums. Chief Hyde shamed them and stated that they had shown an indifferent attitude. She also stated that she would re-evaluate the job performance of all police officers and re-assess their dedication to the Town in light of the employees' failure to volunteer to perform paid details at the Bolton Fair. See *Town of Dennis*, 29 MLC 79, 83 (2002) (a remark clearly connecting adverse employment action to protected activity would tend to discourage and intimidate a reasonable employee from engaging protected activity).

The Town, however, argues that Chief Hyde's comments do not violate Section 10(a)(1) of the Law, because she directed her criticism to employee conduct that was outside or beyond the protection of Section 2 of the Law. Specifically, the Town contends that unit members engaged in a concerted refusal to perform paid details at the Bolton Fair in violation of Section 9(A) of the Law. Even assuming that unit members did so, overtime work that is merely offered, rather than required, directed or ordered, remains voluntary. See *Town of Danvers*, 31 MLC 76, 81-82 (2004); *Town of Plymouth*, 18 MLC 1191, 1193 (1991); *City of Newton*, 13 MLC 1463, 1465 (1987). Under those circumstances, employees

wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion. An employee shall have the right to refrain from any or all such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in Section 12.

25. The Union denies that its members engaged in a concerted refusal to accept paid details at the Bolton Fair.

may individually or concertedly refuse voluntary overtime without transgressing Section 9(A) of the Law. *Id.* Further, although concerted activity can lose its protected status if it is unlawful, violent, disruptive or indefensibly disloyal to the employer, *City of Haverhill*, 8 MLC at 1694, the Town has failed to establish that the employees' conduct here rises to that level.

Nevertheless, we need not decide whether unit members were engaged in a concerted refusal to perform paid details, because Chief Hyde's disparaging comments also were directed towards the parties' dispute over the payment of four and eight-hour minimums for paid details. Here, unit members exercised their rights under Section 2 of the Law when they collectively bargained contractual language regarding the payment of those minimums and when they sought to enforce that language. It is reasonable to conclude that Chief Hyde's threatening and disparaging comments in her September 26, 2001 letter would interfere with, restrain, and coerce reasonable employees in the exercise of their rights under Section 2 of the Law. Accordingly, by those statements, we find that the Town has violated Section 10(a)(1) of the Law.

Conclusion

Based on the record and for the reasons stated above, we conclude that, by the conduct of its agent Chief Hyde, the Town violated Section 10(a)(1) of the Law. However, we dismiss the allegation that, by the conduct of its agent Troup, the Town violated Section 10(a)(1) of the Law.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town shall:

1. Cease and desist from:

- a) Making statements that would tend to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.
- b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed under Section 2 of the Law.

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

- a) Refrain from making statements that would tend to interfere with, restrain, and coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.
- b) Post immediately in all 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 thereafter, signed copies of the attached Notice to Employees.
- c) Notify the Commission in writing of the steps taken to comply with this Decision within ten (10) days of receipt of this decision.

SO ORDERED.

NOTICE TO EMPLOYEES

The Labor Relations Commission has issued a decision finding that the Town of Bolton violated Section 10(a)(1) of the Massa-

chusetts General Laws, Chapter 150E (the Law) by interfering with, restraining and coercing employees in the exercise of their rights guaranteed by Section 2 of the Law when its agent, Police Chief Celia Hyde, in a September 26, 2001 letter made disparaging and threatening comments directed towards employees' exercise of their concerted protected activities. The Town posts this Notice to Employees in compliance with the Labor Relations Commission's order.

Section 2 of the Law gives public employees the following rights:

- To organize,
- To form, join, or assist any union,
- To bargain collectively through representatives of their own choice,
- To act together for other mutual aid or protection,
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT make statements that would tend to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT in any like or similar manner, interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL refrain from making statements that would tend to interfere with, restrain and coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

[signed]
Town of Bolton

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