

PLYMOUTH COUNTY HOUSE OF CORRECTION AND JAIL AND INTERNATIONAL BROTHERHOOD  
OF CORRECTIONAL OFFICERS, MUP-2234, 2429 (12/6/77)

(60 Prohibited Practices by Employer)

- 63.7 union activity and membership or non-membership
- 65. Interference, restraint or coercion
- 65.3 interrogation, polling
- 65.7 surveillance
- 65.71 small plant doctrine

Commissioners Participating: James S. Cooper, Chairman  
Garry J. Wooters, Commissioner  
Joan G. Dolan, Commissioner

Appearances:

William F. Joy, Esq. )	- Counsel for Plymouth County
Alan Kaplan, Esq. )	House of Correction and
William F. Joy, Jr., Esq.)	Jail (Case No. MUP-2234)
Lawrence M. Siskind, Esq.	- Counsel for Plymouth County
	House of Correction and
	Jail (Case No. MUP-2429)
Robert J. Canavan, Esq.	- Counsel for International
	Brotherhood of Correctional
	Officers (Case No. MUP-2234)
Joseph W. Monahan III, Esq.	- Counsel for International
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	Officers (Case No. MUP-2429)

DECISION AND ORDER

Statement of the Case

On April 14, 1975 the International Brotherhood of Correctional Officers (BCO or Union) filed a Complaint of Prohibited Practice with the Labor Relations Commission (Commission) alleging that the Plymouth County House of Correction and Jail (Employer) had committed prohibited practices in violation of General Laws Chapter 150E, (the Law), Sections 10(a)(1), (2), (3) and (4). The Union's charge, docketed as Case No. MUP 2234, alleged the unlawful discharge of Paul A. Ahlborg, unlawful surveillance of a union organizational meeting and intimidating, coercing and threatening employees because of their union activities. The Commission investigated the Union's charges and on June 26, 1975 issued its own Complaint of Prohibited Practices alleging that the Employer unlawfully discharged Paul A. Ahlborg in reprisal for his union activities; that the Employer engaged in unlawful surveillance of a union organizational meeting; and that the Employer unlawfully interrogated employees about the nature and extent of their union activities, and made derogatory remarks to intimidate employees who led the union organizational drive.

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The Employer denied the allegations of the Complaint in its Answer.

On October 2, 10, 17, and 29, 1975 Formal Hearings on the Complaint were held before the Commission. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. The parties have filed briefs.

On January 23, 1976 the Union filed another Complaint of Prohibited Practice alleging that the Employer had committed prohibited practices in violation of General Laws Chapter 150E, Sections 10(a)(1), (2), (3) and (4). The Union's charge, docketed as Case No. MUP 2429, alleged the unlawful discharge of David Benoit, Malcolm Robischeau and Kevin McCormack. The Union further alleged that the Employer unlawfully coerced and intimidated employees by threatening employees with dismissal, by questioning employees concerning their sympathies toward the Union, by questioning employees concerning union activity and by making disparaging remarks toward the Union.

The Commission investigated the Complaint and on May 5, 1976 issued its own Complaint of Prohibited Practice alleging that the Employer unlawfully discharged David Benoit, Malcolm Robischeau and Kevin McCormack. The Employer denied the allegations of the Complaint in its Answer.

Formal Hearings on the Complaint were held on July 13, 14, 19, 21 and 23, 1976; August 6 and 10, 1976 and September 7, 1976. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. The parties have filed briefs.

The Commission consolidated Case Nos. MUP-2234 and MUP-2429 for the purposes of a Decision and Order.

#### Statement of Facts

1. The County of Plymouth is a Public Employer within the meaning of General Laws Chapter 150E, Section 1;
2. Sheriff Linwood H. Snow, head of the Plymouth County House of Correction and Jail, is a representative of the Public Employer within the meaning of General Laws Chapter 150E, Section 1;
3. The International Brotherhood of Correctional Officers is an Employee Organization within the meaning of General Laws Chapter 150E, Section 1.
4. The International Brotherhood of Correctional Officers is the exclusive representative for the purposes of collective bargaining of correction officers employed by the public Employer.



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5. Paul A. Ahlborg, David Benoit, Malcolm Robischeau and Kevin McCormack are employees within the meaning of General Laws Chapter 150E, Section 1.

#### Background

Plymouth County House of Correction and Jail is located on Obery Street in Plymouth, Massachusetts. (2429-6:1)<sup>1</sup> Linwood Snow, the Sheriff of Plymouth County, is Master and Keeper of the Jail. (2429-7:105) Snow was appointed Sheriff on November 17, 1971 by Governor Francis Sargent when the former Sheriff Adner Harlow retired. In November, 1974 Snow was elected to a full term as Sheriff. (2429-7:105)

The jail which consists of a main building and a farm area houses approximately 150 inmates. (2429-6:10) There are about 44 officers in charge of the inmates - 33 correctional officers and 11 senior correctional officers. The correctional officers are responsible to the senior correctional officers who in turn report to the deputy master. The deputy master reports directly to the Sheriff. (2429-6:10)

The standard operating procedure, which is the written personnel policy, consists of various rules relating to officers' working conditions, responsibilities, relationships with inmates and handling of visitors. All officers are required to read the standard operating procedure. (2429-6:15)

#### Union Activity

##### Before March 20, 1975

After discharging four correctional officers during January and February, 1975,<sup>2</sup> Sheriff Snow instructed Deputy Master Ryll on the Tuesday following Washington's Birthday to observe the employees and to see whether he could uncover any union activity in the jail. (2429-2:4-5, 3:6-7) Two days later, Ryll reported to Snow that he had not heard any mention of a union.

At the same time as Ryll was conducting his investigation, Officer Paul Ahlborg approached at least four correctional officers - Barry Bernier, Frank Pjemser, Al Woodward, and David O'Donnell - about forming a union. (2234-1:10-11) He then contacted Stanley Lyman, Vice-President of the National Association of Government Employees. Ahlborg provided Lyman with the names and addresses of approximately 24 employees at the jail, and Lyman promised to send them literature about the International Brotherhood of Correctional Officers.<sup>3</sup> (2234-1:10-11)

<sup>1</sup> All references are to case number, volume number of the transcript, and page number of the transcript.

<sup>2</sup> These four discharges were not the subject of any proceedings before the Commission.

<sup>3</sup> The IBCO is one of the divisions of the National Association of Government Employees.

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On March 3, Lyman sent union literature to the 24 employees designated by Ahlborg. Two days later, some of those who had received literature about IBCO, began talking about the Union. (2234-1:12) Ahlborg, himself, spoke to approximately 32 officers including some who had not been on the mailing list. (2234-1:13)

On March 15,<sup>4</sup> Ahlborg invited Lyman to come to an organizational meeting of the correctional officers which was to be held on March 20 at 72 Sutters Road, Mayflower Village in Plymouth. Ahlborg made ten to twelve diagrams of directions to the meeting and circulated them among the officers. (2234-1:15-16; Union Exhibit #1)

#### The March 20 Meeting

On March 20, Snow told Ryll to fire Ahlborg. (2234-2:7-8) Ahlborg was not at the jail that day since it was his day off. Ryll appeared at Ahlborg's house in early afternoon, but Ahlborg was not at home.<sup>5</sup> Ryll returned to Ahlborg's house at 5:00 p.m., approximately three hours before the scheduled union meeting. Ryll told Ahlborg that he was being discharged because of the LaCroix incident<sup>6</sup> and because he could not make it as a correctional officer. Ahlborg replied that it was "because of the union". Ryll replies, "What union?" (2234-1:19-19; 2:19-19)

At 4 o'clock that same afternoon, Sheriff Snow had a conversation with Correctional Officer Albert Anderson in which Snow informed Anderson that he was firing Ahlborg. (2234-4:13) During that conversation, Snow indicated that he knew about the union meeting.<sup>7</sup> (2234-2:61)

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<sup>4</sup> All dates are to 1975 unless otherwise indicated.

<sup>5</sup> Ryll admitted that he learned that Ahlborg was "in Middleboro" and therefore he drove to Middleboro looking for him. He drove to the home of Robert Shurtleff, one of the correction officers who had been discharged by Snow in February. He did not find Ahlborg. (2234-2:17-18)

<sup>6</sup> The LaCroix incident, which involved the escape of an inmate, occurred almost three years prior to Ahlborg's discharge. See *infra* p.

<sup>7</sup> Correctional Officer Alanson Turner testified that Anderson told him about the conversation when they drove together to the union meeting that evening. (2234-2:61-62) While Anderson was unable to recall during his testimony whether he discussed the subject of a union meeting with Snow, he did not positively deny that the subject was mentioned. His response to the question, "Are you certain that it was not mentioned?" was "I suppose I'm not certain either way there." (2234-2:80) Snow denied that the union meeting was mentioned in their conversation. (2234-4:27) We specifically credit Turner's testimony and find that the topic of the union meeting was discussed. Anderson's equivocation, coupled with his strong desire to avoid testifying in the case, lead us to find that the conversation took place. (2234-2:82-82).





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That evening, the union meeting began at 8:15 p.m. Present at the meeting besides Ahlborg were Lyman and Frank O'Toole, the union steward at the Billerica House of Correction, as well as approximately 20 correctional officers from the jail. (2234-1:21) Bernier entered the meeting at 8:45 p.m. and informed the group that he had just seen Sheriff Snow outside. (2234-1:23) Later on Correction Officers Turner and Anderson left the meeting for awhile and observed the Sheriff in a car driven by Correction Officer George "Buster" Kegler. (2234-2:65) At 10:15 p.m., Ahlborg and a few others observed Snow drive by in a car. (2234-1:23)

At this point, Lyman and O'Toole went outside and walked over to the car which was now parked across the street from the meeting. (2234-1:24; 1:96) Lyman pretended to write down the registration number of the vehicle. He then walked over to the passenger side of the car and said, "Sheriff, do you want to talk to me?" (2234-1:97) Snow did not reply. Lyman and O'Toole returned to the apartment. Snow then turned to Kegler and said, "I guess we've been had."<sup>8</sup> (2234-3:99; 3:102)

According to Snow, he and Kegler went to Mayflower Village that evening as a result of an anonymous telephone call which Snow received between 7:00 and 7:30 p.m. When he picked up the phone a male voice said "You should take a ride up to Mayflower Village; it might be interesting." (2234-3:81) Thinking it could be information on a former escapee by the name of Ditman,<sup>9</sup> Snow called Kegler and asked Kegler to drive him to Mayflower Village. (2234-3:88) Snow never told Kegler until sometime after that evening that Ditman was the reason for their visit to Mayflower Village. (2429-8:6; 4:169)

Snow and Kegler were in Mayflower Village at least three times the evening of March 20. (2234-3:95) At no time did he find any escapees. During the first visit, Snow observed Bernier's pickup truck. (2234-3:97) Upon returning to the area later that evening, Snow saw Turner and Anderson in Turner's yellow Mercury. He then observed Turner and Anderson go into a lighted apartment. (2234-3:98) Snow and Kegler continued to stay where they were until Lyman and O'Toole came over to their car. (2234-3:99)

On March 21, Snow received a copy of the Union's petition from the Massachusetts Labor Relations Commission. (2429-8:18) That same day in Snow's office, he questioned correctional officer Anthony Tambascia about which officers

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<sup>8</sup> When questioned in cross-examination as to what he had meant by that statement, Snow replied, "Well, I followed a lead that I had hoped would pick up an escapee, and instead I got myself involved in a so-called 'spying on a union meeting'." (2429-8:;6; see also 2234-3:105)

<sup>9</sup> Ditman had escaped sometime around October, 1974, when another inmate, Richard Loveday, had been on furlough. At that time, Snow received information that Loveday had taken Ditman to Mayflower Village. In the months following Ditman's escape, Snow had been up to Mayflower Village a few times searching for Ditman. (2234-3:83-84)



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had attended the meeting. Snow specifically asked him why he wanted a union and whether Thomas McCluskey had been at the meeting. (2234-2:97-97; 2234-3:56-57 see also Union Exhibit #10 in 2429)

After Tambascia's conversation with the Sheriff, McCluskey met with Snow since he had heard that Snow knew who had been at the meeting. (2234-2:101) As soon as McCluskey finished telling the Sheriff that he had been at the meeting, Snow replied "How Come?" Then Snow continued, "Never mind, I don't want to get involved." (2234-2:103)

At this time, Charles Studenski had a conversation with Snow at the Plymouth County Court House in Brockton just before Studenski was hired to work at the jail. During their conversation, the Sheriff told him there were some people forming a union at the jail and that it would be better for him to stay away from it because "the union wouldn't help anyway". (2429-4:3)

#### April - May, 1975

On April 4, Snow met in his office with Benoit who had been working at the jail approximately one month. (2429-1:11) In the course of their conversation, Snow asked Benoit whether anyone had approached him about the union. When Benoit answered "no", the Sheriff responded, "That should show you where they think you're going to vote." (2429-1:12) Benoit then inquired about the Sheriff's reasons for firing Ahlborg. Snow mentioned the LaCroix escape and then said, "Well, between you and me, he has a big mouth... Ever since he got back from correction officer's school, he has been trying to start this union."<sup>10</sup> Benoit then said, "I thought he was active in your campaign in the last election." Snow replied, "He was very active in it, but then he started this union crap." (2429-1:17) Benoit then told the Sheriff that he was 100% loyal to him and the Sheriff said, "That's why I'm talking so frank." (2429-1:17-18) As he was leaving Benoit commented, "Some officers seemed upset that you and Officer Kegler were riding by and taking down number plates of the people who were

<sup>10</sup>

In May, 1974, Snow sent Ahlborg to the University of Massachusetts in Amherst for a three-week training program for correctional officers. While attending this course, Ahlborg met O'Toole, the union steward at the Billerica House of Correction, who told Ahlborg about the IBCO.

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attending the union meeting." Snow smiled and said, "Well, we all make mistakes."<sup>11</sup> (2429-1:19)

The union supporters held a second meeting the last week in April at the American Legion Post in Kingston. Malcolm Robischeau attended. (2429-3:11) On April 30, Snow again interrogated Tambascia about who had attended the meeting. He also wanted to know which officers had worn their uniforms. When Tambascia refused to answer the Sheriff's questions, Snow said, "Get out of here."<sup>12</sup> (2234-2:98; 2429-5:95)

At the end of May, a few of the officers were discussing the union. In the course of the conversation, Kevin McCormack made the statement: "I can see why some of you people would want to have a union here." (2429-2:13) A week later, when McCormack spoke with the Sheriff, Snow said to him, "I understand you can see why some of these guys want a union." (2429-2:12) McCormack told the Sheriff that he would not be inclined to vote for the union because no one had approached him on it and snow replied, "Let's keep it like that." (2429-2:13-14)

#### Summer, 1975

Throughout the summer, Benoit and McCormack, along with Robert Torrence, Dana Short, and David Piver, met every other Friday after the 3-11 p.m. shift at McGrath's, a local bar. They discussed who they thought would vote for the union and whom they should approach. (2429-2:13-14)

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<sup>11</sup> While Snow recalls that he had a conversation with Benoit around April 4, he does not remember discussing the union in that particular conversation. He did testify, however, that Benoit brought up the subject of the union in a few conversations. Snow claims he always refused to discuss the union with Benoit. (2429-7:137) On the basis of the record, we credit Benoit's version of the conversation. The Sheriff's convenient lapse of memory in almost every conversation in which the union was allegedly mentioned raises strong suspicions about his credibility. However, the Sheriff's testimony concerning the reasons for appearing outside the union meeting on March 20 (see *supra*. p.7,m.9) and his reasons for failing to suspend Ahlborg in 1974 (see *infra*. p.31,m.36) are so inherently incredible that on the basis of continuing lack of recollection, his incredible explanations of his conduct and the self-serving nature of these denials, we discredit the Sheriff's testimony.

<sup>12</sup> Snow admitted this conversation took place, but testified that he questioned Tambascia because he had recieved a complaint about an officer in uniform misbehaving in the Dunkin' Donut Shop. (2234-3:59-61; 2429-8:81-83)

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At this time, Benoit and McCormack approached Malcolm Robischeau about the union. (2429-1:25) Robischeau and McCormack discussed the subject further at family cookouts. (2429-3:12) Robischeau began to speak about the benefits of and the need for a union and job security with many other officers.<sup>13</sup> (2429-3:13)

During the Fourth of July weekend, McCormack and Snow were talking in front of the Sheriff's office. At the end of their conversation, Snow asked, "how do you think this union vote would go if it happened tomorrow?" McCormack replied that he was not sure but thought it would be close.<sup>14</sup> (2429-2:17)

In the middle of the summer, Robischeau had a conversation with Robert Dickson, a correctional officer who firmly opposed the union. Dickson said that he thought Robischeau was doing a good job and did not need to belong to the union in order to progress. Dickson went on to say that the Sheriff did not want a union and that he would "drop a dime"<sup>15</sup> on anybody so that the Sheriff would know about it.<sup>16</sup> (2429-3:28-30)

By the end of the Summer, Benoit, McCormack, and Robischeau had spoken to Tambascia about the union. (2429-5:72073) Robischeau, himself, spoke to Tambascia numerous times when they were working on the same shift.<sup>17</sup> (2429-5:72-73)

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<sup>13</sup> Robischeau testified that he spoke to Richard Galvin, Robert Torrence, Dana Short, Al Turner, David Piver, Donald Buscemi, Charles Studenski, and Thomas McCluskey.

<sup>14</sup> Snow admitted that they had a conversation but denied that the union was mentioned. (2429-7:160-161) We credit McCormack's version of the conversation. See supra. p.9,n.11.

<sup>15</sup> An expression indicating the use of a pay telephone to report an incident and a term usually used to express actions of an informant, a spy, or a squealer. In this case the synonym most frequently used was "rat". (2429-3:29-30)

<sup>16</sup> Dickson testified that he did not recall making these statements. (2429-5:178) However, the evidence indicates that Dickson went to Ryll's office almost every day after he finished his shift at 2:15 p.m. (2429-1:74; 5:190) There was a joke among the officers that Dickson would be "out front making his afternoon report." (2429-3:31) At no time did Dickson ever make a secret of the fact that he was antagonistic towards the union. (2429-2:109)

<sup>17</sup> Tambascia was quite involved in the union in its incipient stages. He attended both organizational meetings in March and April. As time progressed, however, he appeared to switch sides. (2429-3:29) Tambascia remained privy to most conversations about the union while Benoit, McCormack and Robischeau were still employed at the jail. (2429-2:110)



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Prior to the union election, Benoit, McCormack, and Robischeau actively solicited on behalf of the union, attempting to persuade those who were still undecided. (2429-3:39) They used employee lists to determine which officers had not yet been contacted. (2429-2:74-76) They each spoke to approximately 25 officers. (2429-1:37, 2:19) McCormack also began to discuss his intention to run for steward. (2429-2:77) Robischeau spoke with McCluskey, who was about to resign, and persuaded him to delay leaving until after the election. (2429-3:17)

### The Election

Two days before the election, Deputy Master Ryll handed out two documents to all the employees as they walked by his office. (2429-1:34) The first document (Union Exhibit #1) was a letter dated October 3, 1975 and signed by the Sheriff. In that letter, Snow reviewed his past accomplishments at the jail and urged employees to vote "no" in the coming election. The second document (Union Exhibit #2) consisted of four pages of questions and answers about unions. The final answer urged the employees to vote against the union.

The union election was held on October 8, 1975. The union won 34 to 18. (2429-1:37) Three weeks before the election, Snow had predicted the outcome. He was off by only one vote. (2429-8:43-44)

### October, 1975 to May, 1976

After the election, people openly discussed the union in the jail. (2429-1:45;3-69) McCormack campaigned for the position of the steward and solicited dues cards. (2429-2:22-23;3-69) Benoit tried to persuade everyone to sign dues deduction cards. (2429-1:69) He approached Dickson about joining the union and told him that they wanted to try to get everyone to sign up. Dickson replied, "Well you can't make people sign up." Benoit assured him, "no, you can't be forced to, but we'd like to try to get everyone because there is a thing where you may have to pay dues anyway." (2429-1:74)

On October 8, 1975 McCluskey resigned at Snow's request. (2429-7:113) On October 24, 1975, about two weeks after the election, Studenski resigned at Snow's request.<sup>18</sup> At the end of October, 1975 Snow interviewed Donald Buscemi

<sup>18</sup> Studenski was hired in March, 1975. When Snow interviewed him for the position, he told Studenski to stay away from the union because it would not help him. Although he agreed with Snow at that time, he later became a union supporter. (2429-4:3) After the election, Studenski made a statement at the jail before several correction officers that he had come from Vermont to vote and, "I guess they know the way I voted." (2429-4:5) As the reason for requesting Studenski's resignation, Snow stated to him that he had called in sick and had been paid for the day when he actually had not been sick. Studenski replied he had never claimed to be sick but merely said he would not be in. (2429-4:7) He had in fact taken a civil service exam that day, the Saturday before the election.



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for a job. In the course of this conversation Snow said, "We've got a f—ing union in here." (2429-3:66) Approximately two weeks later, Buscemi and Benoit were discussing the union. When Benoit left, Dickson came over to Buscemi and said, "Well, Don, you can join the union if you want to, but one year after the union is put into effect, it's going to be squashed." (2429-3:70)<sup>19</sup>

In January, 1976 David Piver resigned as a result of constant shift changes by Snow, a total of five such changes in less than a year.<sup>20</sup>

### The Discharges of Ahlborg, Robischeau, McCormack and Benoit

#### Paul Ahlborg

Paul Ahlborg was hired as a correctional officer on May 27, 1972. (2234-1:2) He filled a temporary position during his first few months until a permanent position became available in august, 1972. (2234-1:3;3:9)

After Ahlborg had been working at the jail for approximately two weeks, an inmate by the name of LaCroix escaped from the institution. (2234-1:45) 3:10) Ahlborg was the officer in charge of the back door at the time LaCroix was let out of the building. The Sheriff reprimanded Ahlborg and held him responsible for the escape. (2234-3:12-13)

In 1974, Ahlborg drove up to the jail one day in the Scout (patrol) car and left the keys in the car with the motor running while he picked up something

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<sup>19</sup> Buscemi worked as a regular correction officer until January 1, 1976 when Snow assigned him to do carpentry work. (2429-3:85) After he began working Benoit and Robischeau persuaded him to join the union. (2429-3:67) He signed a dues deduction card in January and the dues were first deducted in his April pay checks. Prior to April, Buscemi had received no criticism from Snow regarding his work. After April, Snow severely criticized his work and eventually discharged him in May.

<sup>20</sup> Piver was hired in March, 1975. In April, 1975 he became a union supporter. (2429-3:119) He discussed the union with Benoit, McCormack and Robischeau and decided to run for steward. (2429-3:120) He discussed running for steward with Benoit, McCormack and Short. (2429-3:131) He actively campaigned for the union beginning in August and talked about it with every correction officer he encountered, including Dickson.

<sup>21</sup> There was a dispute as to the date of this incident. Ahlborg testified that it occurred in April, 1974. (2234-1:4) Snow testified that it occurred in the Fall of 1974. (2234-3:20) For the purposes of this case, the exact date of this incident is unimportant. See discussion infra at pp. 32-33.

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from the switchboard operator. (2234-1:4;2:26) Among the keys were keys to the jail as well as keys to some of the patrol cars. Sheriff Snow, who had observed the car, came running out of his office and told Ahlborg that he would suspend him the first chance he got. Ahlborg was never suspended. (2234-1:5)

Other than these two incidents, there were a few minor misunderstandings between the Sheriff and Ahlborg. One involved the weapons in the gun closet. It was Snow's understanding that Ahlborg would clean these weapons on a monthly basis, but Ahlborg was never aware of this assignment. (2234-1:43;3:14-15) Another involved Ahlborg's defence of a matron who was fired when a female inmate escaped. (2234-1:48;3:21) A third occurred when Ahlborg accidentally cut the Sheriff off in the middle of a telephone conversation when he was working the switchboard. (2234-1:69) The Sheriff also testified that Ahlborg had a "know-it-all" attitude during his training period. (2234-3:8)

In the Fall of 1974, Ahlborg worked for Sheriff Snow's reelection. He put up signs, solicited contributions, and gave a \$25 donation himself. (2234-1:7) After Snow was reelected, Ryll informed Ahlborg that his shift would be changed from 3-11 p.m. to 1-9 p.m. Ahlborg was pleased with the change, and Ryll told him that he was doing an excellent job and deserved better hours. (2234-1:8)<sup>22</sup>

In February, 1975, Ahlborg began to organize the other correctional officers to form a union. (see discussion supra pp. 5 to 7) On March 20, 1975, three hours before the start of the union meeting at Mayflower Village Ryll drove to Ahlborg's house and informed him that he had been discharged. (see discussion supra p.6) (2234-1:18)

#### David Benoit

David Benoit was hired on February 24, 1975. (2429-1:4) During his initial training period, he was supervised by Robert Vecchi, the senior correctional officer in charge of the 7 a.m. to 3 p.m. shift. (2429-1:106-107; 4:42) After Benoit had completed his training, Vecchi verbally reported about Benoit's performance. He rated Benoit as "fair" based upon a few reports that he had received from other correctional officers. (2429-4:44)

One report came from Dickson on April 1, 1975. Dickson had told one of the inmates in the recreation hall that he would have to go to the lock-up.

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<sup>22</sup> Ryll denied making this statement. (2234-4:51) Both Ryll and Snow testified that Ahlborg's shift was changed as a result of complaints from other officers who did not want to work with him. (2234-4:26; 4:51-52) In the absence of any support for the Sheriff's or Ryll's statements, we credit Ahlborg's version of the reasons for the shift change. Ryll's testimony, like the Sheriff's, suffers from its self-serving nature.

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When Dickson went to apprehend him, the inmate broke a cue stick over the edge of the pool table and pointed it at Dickson. Instead of immediately assisting Dickson, Benoit first ran to the door and called for help. Benoit then aided Dickson in taking the inmate away. (2429-1:115-116; 4:44-45, 5:152-153)

A second incident involved Officers Andrews and Moreau when they were attempting to subdue an inmate who was resisting them. Benoit was standing nearby guarding the recreation hall at the time and did not offer to help them. When Andrews later confronted Benoit about this, Benoit replied that it "wasn't his beef." Benoit immediately apologized for making the remark. (2429-4:48; 5:28-29)

After finishing his training, Benoit worked on the 3-11 p.m. shift. The senior correctional officers on that shift were Richard Galvin and Robert Torrance. Galvin saw improvement in Benoit's performance during the time he worked under him. (2429-8:122) Torrance, who supervised Benoit on weekends, never had any problems with him. (2429-3:1810182)

At the end of August, there was an incident in the mess hall where a few inmates were flipping butter onto the ceiling. Benoit did not confront the inmates but instead consulted Senior Officer Torrey. By that time, the inmates were already leaving the mess hall, so Torrey said that he would get someone to clean it up. (2429-1:31)

On September 2, 1975 Officer Tambascia broke up a fight between two inmates in the recreation hall and took both inmates involved to the lock-up. When he returned to the recreation hall, the other inmates, as well as Officers Benoit and McCormack applauded him (2429-5:76-77; 5:100) Tambascia told Ryll about the incident and made a written report at Ryll's request.<sup>23</sup> (2429-5:104)

In the middle of September, Benoit told Ryll that he had received information that a federal prisoner named Venari had a knife in his possession and was planning an escape. Benoit expressed concern because he was working in the area from which Venari was supposed to make his getaway. As a result of this conversation, Ryll made arrangements to transfer Venari out of the institution that evening. (2429-6:43-45) When Venari was moved, he told a federal marshal that the "two long-haired boys from the Cape" were peddling drugs. (2429-7:163) This information got back to Snow who assumed that he meant Benoit and McCormack since they lived on Cape Cod.

Friday, December 19, 1975, was Benoit's last day of work at the jail although he was not officially terminated until December 31. When he arrived

<sup>23</sup> Galvin, who was the senior officer on duty at the time of this incident, had not directed Tambascia to make out an incident report. He testified that incident reports were not written on a regular basis at that time. (2429-5:103)

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at the jail at 7:00 a.m., Benoit inadvertently parked in the lot reserved for the evening shift instead of the one reserved for the morning shift. (2429-1:49) Benoit had been at work for no more than a half hour when Ryll telephoned him from the guard room and informed him that he had violated the standard operating procedure by parking his car in the wrong area.<sup>24</sup> Ryll commanded Benoit in a rather loud voice to move his car. Officer Woodward told Benoit that some of the inmates had heard Ryll yelling at Benoit on the telephone. (2429-1:49) On his way to the parking lot, Benoit stopped by Ryll's office. He apologized for parking improperly but added that he did not appreciate being reprimanded in front of the inmates. (2429-1:49-50; 6:94) An argument ensued between Benoit and Ryll. During the argument, Ryll yelled at Benoit, "That's the thanks I get for bailing you out of the Venari incident when you were scared stiff." (2429-6:95) Ryll also struck Benoit in the chest. (2429-1:50)

Approximately two hours later, Benoit went to see Sheriff Snow. Ryll had already spoken to Snow about the incident by the time Benoit entered the Sheriff's office. (2429-1:52; 6:99) Benoit insisted that Ryll owed him an apology and requested a meeting with both Snow and Ryll. Snow refused to get involved and said that the matter was between Benoit and Ryll. During the meeting, Snow asked Benoit to resign several times and invited Benoit to file criminal charges in District Court.<sup>25</sup> (2429-1:58, Employer Exhibit #2)

Later that day, Benoit went over to the Plymouth District Court and filed a complaint charging Ryll with assault and battery. (2429-1:66) After leaving the Court House, Benoit stopped at the local hospital because of sharp pains in his chest. The following week, Dr. Lawrence Baker examined Benoit and required him to remain home for two weeks because of the injury. (2429-1:71-72, Union Exhibit #4)

On December 31, 1975, Benoit appeared in court to prosecute his case against Ryll. The judge dismissed the charges. (2429-1:74) At the court house, Snow handed Benoit a letter of termination. (2429-1:74-75)

Kevin McCormack

Kevin McCormack began working at the jail on February 17, 1975. (2429-2:5) McCormack obtained the job with the aid of his father who knew Snow. (2429-2:5; 2:89) Like Benoit, McCormack initially trained on the 7 a.m. to 3 p.m. shift.

<sup>24</sup> The purpose of the rule about parking was to facilitate snow removal. The Union submitted evidence that December 19, 1975 was a clear day with probability of precipitation near zero. (Union Exhibits 7, 8 and 9)

<sup>25</sup> Snow offered Benoit time off from work to file the assault charges in Plymouth District Court. (Employer's Exhibit #2, p.2)

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At the end of Mc Cormack's training period, Senior Officer Vecchi rated him as "average". (2429-4:54)

In May, 1975 McCormack was ill one day and due to a miscommunication between him and his wife, neither informed the jail. (2429-2:6) When McCormack failed to appear for work, someone from the jail attempted to telephone his house but apparently reached his parents' house instead. The person who answered the telephone said that Mc Cormack (Kevin's father) had gone to work. (2429-2:44) The Sheriff later spoke to Mc Cormack about this, and Mc Cormack explained what had happened. Snow told him not to let it happen again. (2429-2:7)

In August, Snow and Ryll had a discussion about McCormack. (2429-7:144) Vecchi had told Ryll that Officers Andrews, Moreau, Dickson and Sauer had spoken to him on separate occasions about the smell of liquor on McCormack's breath. (2429-4:54; 4:58) However, the Sheriff took no disciplinary action because of this.<sup>26</sup>

Mc Cormack, along with Benoit, was present in the recreation hall during the Tambascia incident of September 2, 1975. See discussion *supra* pp. 17 to 18. (2429-5:76-77; 5:100) In addition, Snow thought that McCormack was one of the "two long-haired boys from the Cape" who were supposedly selling drugs to inmates. (2429-7:163)

Senior Officer Galvin thought that McCormack was somewhat lackadaisical when he first came on the 3 to 11 p.m. shift, but he thought that Mc Cormack was much more alert by the end of summer. Ryll told Galvin that he thought McCormack had improved. (2429-8:121) Ryll also told McCormack's father in September that Mc Cormack had the potential to be a good correctional officer. (2429-7:36-37)

In the Fall, Sheriff Snow contacted Mc Cormack's father and told him that he wanted McCormack to resign. Mc Cormack's father indicated that he would talk to his son. A few weeks later Snow again spoke with Mc Cormack's father and told him he wanted Kevin to resign, but that he would wait until after the holidays. (2429-7:157) McCormack's father mentioned the Sheriff's statements to him in December. (2429-21:26)

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<sup>26</sup> Apparently, McCormack was not the only officer who occasionally had a drink before coming to work. Andrews, one of the officers who had spoken with Vecchi about Mc Cormack, testified that Mc Cormack probably smelled alcohol on his breath as well. (2429-5:38)



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On December 31, 1975, Mc Cormack went to see the Sheriff<sup>27</sup> and Snow asked him to resign. Snow said, "You're from a political family and you know how the game is played. You're not on my team as far as this union goes."<sup>28</sup> (2429-2:24-25) McCormack told the Sheriff that he would not resign unless Snow gave him a good reason. Snow indicated that he would fire Mc Cormack at his own discretion. (2429-2:24-25; 2:94)

On January 7, 1976, Sheriff Snow called Mc Cormack into his office and asked him again to resign. When McCormack refused, Snow discharged him. (2429-2:27; 7:158)

#### Malcolm Robischeau

Malcolm Robischeau was hired as a correctional officer on February 7, 1975. (2429-3:7) When he first came to work, Robischeau was assigned to the 7 a.m. to 3 p.m. shift. At the end of the initial training period, Vecchi evaluated Robischeau as "above average". (2429-4:43) Vecchi never had any problems with Robischeau (2429-4:43)

All the officers, as well as Sheriff Snow, praised Robischeau's conduct as a correctional officer. (2429-7:191) Vecchi and Tambascia both described him as "excellent". (2429-4:73; 5:114) Andrews called him a "fireplug". (2429-5:60) Ryll thought he was "doing an excellent job" and that he had "tremendous potential". (2429-6:134)

On December 11, 1975, Robischeau attended a Christmas party for the correctional officers. During the party, he slipped on the dance floor and injured his right knee. (2429-3:18; 3:53) Robischeau was unable to report to work the following day and went on sick leave beginning December 12. (2429-6:135) His leg was in a cast until December 24. (2429-3:19-20) Although the doctor said he should not go back to work until January 5, Robischeau went to see Ryll at the jail on December 26 and asked if he could begin working the following Monday.<sup>29</sup> Ryll told Robischeau to stay home until January 5th. (2429-3:31; 3:56)

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<sup>27</sup> Ryll suggested that Mc Cormack make an appointment to speak to Snow. This occurred on December 11 at the Christmas party. (2429-2:24)

<sup>28</sup> Snow admitted that he told Mc Cormack, "You're from a political family and you know how the game is played" but denied that he mentioned the union. He testified that he meant that Mc Cormack was hired only because of his father. (2429-7:159-160)

<sup>29</sup> Robischeau wanted to work at the switchboard temporarily so that he would not have to walk too much.

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By December 26, Robischeau had exhausted his sick leave. (2429-3:57) Snow told Ryll, "Look, if he can't answer the bell when his sick leave is over then he's had it."<sup>30</sup> (2429-7:196)

On December 29, 1975, Ryll handed Robischeau a letter informing him that he had been terminated. (2429-3:22; 3:57) Robischeau then called the Sheriff at his office and requested a meeting. Snow replied, "I have nothing more to say to you. My F— ing mind is made up. My decision is made and that's it." (2429-3:22-23)

### Opinion

#### Statutory Scheme

Section 2 of the Law provides the basic guarantee of protecting employees in exercising their collective rights. It provides, in part:

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 ...and to engage in lawful, concerted activities for the purpose of collective bargaining for other mutual aid or protection, free from interference, restraint, or coercion.

Enforcement of these rights is accomplished through Sections 10 and 11 of the Law. Section 10(a) makes it a prohibited practice for a public employer to:

(1) interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

\* \* \*

93) discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.

<sup>30</sup>

All correctional officers are entitled to 15 sick days a year. Both Snow and Ryll testified that it is the practice of the jail to terminate officers when they have used up their sick days. (2429-7:99; 8:62) In fact, an exception was made in the case of Frederick DeCost who was placed on sick leave without pay in 1973. (2429-7:100) In addition, at the time of the hearing in MUP-2429, an officer by the name of Roberts was on sick leave without pay. (Commission Exhibit No. 1 submitted without objection by the Employer post-hearing and marked as an exhibit by the Commission)



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Section 11 grants the Commission authority to determine whether an employer has violated Section 10 of the Law, if it so finds, the Commission may order the employer to "cease and desist from such prohibited practice" and to take "affirmative action."

The provisions of the State Law follow in many respects the provisions of the National Labor Relations Act, (Federal Act) 29 U.S.C. S.151, et. seq.<sup>31</sup> The Commission has interpreted the protections broadly in order to fulfill the goals of the legislation. City of Boston, 3 MLC 1101 (1976) The courts of the Commonwealth have supported the Commission in its interpretation of the Law. St. Elizabeth's Hospital v. Labor Relations Commission, Mass. App. Ct. Adv. Sh. (1975) 71, 321 N.E. 2d 837; Sullivan v. Labor Relations Commission, Mass. App. Ct. Adv. Sh. (1977) 904, 364 N.E. 2d 1099. Framingham School Committee v. Labor Relations Commission, Norfolk Superior Court, Docket No. 12253 (January 28, 1977). The Commission, in turn, has drawn heavily from the precedents established by the National Labor Relations Board (Board), Town of Danvers, 3 MLC 1559 (1977) and the federal courts. Ronald J. Murphy, 1 MLC 1271 (1975); Southern Worcester County Regional Vocational School District, 2 MLC 1488 (1976).

Section 10(a)(1) of the Law prohibits interference, restraint and or coercion in the exercise of rights protected by the Law. The Board has found interference with rights guaranteed by the Act to include surveillance of union activities by management officials. NLRB v. Bonham Cotton Mills, Inc., 289 F.2d 903, 48 LRRM 2086 (5th Cir., 1961); NLRB v. Dan River Mills, Inc., 274 F.2d 381, 45 LRRM 2539 (5th Cir., 1960); NLRB v. Comfort, Inc., 365 F.2d 867; LRRM 2118 (8th Cir. 1966).

It is well-settled law that the presence of a supervisor in a car outside a union meeting interferes with employees organizational rights. NLRB v. Standard Forge & Axel Co., 420 F.2d 508, 72 LRRM 2617 (5th Cir. 1974). A violation occurs where the supervisor could be viewed by employees entering or leaving the meeting and where the supervisor could recognize employees on their arrival

<sup>31</sup> Section 8 of the Federal Act provides in part:

(a) It shall be an unfair labor practice for an employer-

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

\* \* \*

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

Section 7 of the Federal Act provides in part:

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...

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or departure. NLRB v. Rex Disposables, 494 F.2d 588 (5th Cir., 1974) 86 LRRM 2495. The Board has further held that creating the impression of surveillance is unlawful interference. CBS Records Division, 223 NLRB No. 95, 91 LRRM 1565 (1976). An employer's excuses for a supervisor's presence in an area from which union activities are observed are carefully examined, Montgomery Ward and Co. v. NLRB, 385 F.2d 760 (1st Cir. 1967), 66 LRRM 2689 (supervisors at a public bowling alley) and rejected where they fail to explain conduct inconsistent with the explanation. NLRB v. Standard Forge and Axel Co., *supra*. Of course, open and obvious surveillance of union activities does not diminish the unlawfulness of the conduct. NLRB v. Collins and Aikman, 146 F.2d 454 (4th Cir., 1944), 15 LRRM 826: "Nor does it avail (an employer) to assert that whatever surveillance existed was carried out openly and not surreptitiously. Any real surveillance by the employer over the union activities of employees, whether frankly open or carefully concealed, falls under the prohibitions of the Act."

An employer may not coercively interrogate employees about their union activities or union membership or how an employee would vote in a union election. NLRB v. Midwest Hanger, 474 F.2d 1155, 82 LRRM 2693 (8th Cir. 1973); J.P. Stevens and Co., 217 NLRB No. 90, 89 LRRM 1729 (1975). Unlawful interrogation depends upon the circumstances under which the interrogation is carried out and "interrogation, not itself threatening, is not held to be an unfair labor practice unless it meets certain fairly severe standards." Bourne v. NLRB, 332 F.2d 47, 56 LRRM 2241 (2nd Cir. 1964). As one Court of Appeals has stated:

These standards include, for example, a history of employer hostility and discrimination, the nature of the information sought (e.g., was the interrogator seeking information from he could take action against individual employees) the identity of the questioner (i.e., what was his position in the company), the place and method of interrogation, and the truthfulness of the reply (e.g., did the interrogation inspire fear leading to evasive answers), NLRB v. Ritchie Manufacturing Co., 354 F.2d 90, 61 LRRM 2013 (8th Cir. 1960).

The Board has determined that the discharge of supervisors (non-protected employees) violates Section 8(a)(1) of the Act if the discharge is done to interfere, restrain or coerce rank and file employees in the exercise of their statutory rights. Buddies Super Markets, 223 NLRB No. 137, 92 LRRM 1008 (1976). (Discharge of supervisor who revealed to an employee that the company was building a case against him because of his union activity); Pioneer Drilling Co., Inc. v. NLRB, 391 F.2d 965, 67 LRRM 2956 (10th Cir. 1968) (Discharge of supervisor as a conduit for interfering with rank and file employees). The Board has found that "A restraint on the exercise of employee rights is readily apparent here, as it is here claimed, the supervisor is discharged because she is the wife of an employee who has engaged in union or other protected activities." Golub Brothers Concessions, 140 NLRB 120, 51 LRRM 1575 (1962).

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Turning now to the non-discrimination provisions of the Law, Section 10 (a) (3) of the Law prohibits discriminatory discharges because of such union activity as presenting grievances on behalf of employees, Ronald J. Murphy, 1 MLC 1277 (1975); supporting the union, Town of Somerset, 3 MLC 1618 (1977); vigorously protesting on behalf of an employee, Harwich School Committee, 2 MLC 1095 (1975); or picketing in support of employee safety. City of Boston, 3 MLC 1101 (1976). Discharging an employee for his union organizational efforts is unlawful. Town of Wareham, 3 MLC 1334 (1976). Of course union or concerted activity does not insulate an employee from discharge for cause, Town of Wareham, 2 MLC 1334 (1976); Merrill Transport Co., Inc., 224 NLRB No. 34, 93 LRRM 1079 (1976). But in those instances the reasons for discharge must not be pretextual. Town of Sharon, MLC 1205 (1975), W.T. Grant Co., d/b/a Grant City, 210 NLRB 622 (1974). If the Commission determines the discharge to be pretextual, it will reinstate the unlawfully discharged employee with full back pay; Town of Tewksbury, 2 MLC 1158 (1975); see also The Rushton Co., 158 NLRB 1730, 1737, 62 LRRM 1373 (1966).

In determining whether a discharge or other action was discriminatory, the Commission must determine the "real" reason for the discharge. In making such a determination, the Commission examines the nature of the employees protected activity, City of Boston, *supra*, Town of Wareham, *supra*; the timing of the discharge, Ronald J. Murphy, 1 MLC 1271 (1975); comparative treatment and the triviality of the reasons for the discharge; Town of Wareham, *supra*; shifting, contradictory or inconsistent reasons for the discipline, Town of Sharon, 2 MLC 1205, affirmed 3 MLC 1052 (1976). In all cases, hostility toward the union or anti-union statements are relevant in determining the employer's motivation for the discharge. Town of Halifax, 1 MLC 1486 (1975); Town of Hopkinton, 4 MLC 1072 (H.O. 1977); Ronald J. Murphy, *supra*. See also Minuteman Regional Vocational School District, 2 MLC 1435 (1976). With these general legal principles as background, we apply them to the facts presented in the cases before us.

#### Discharge of Paul Ahlborg

After a series of employee terminations in February of 1975, the Sheriff directed his key assistant, Ryll, to keep his eyes and ears open for the possibility of union activity. Coincidentally, union activity was beginning, although Ryll reported to the Sheriff that he had heard no mention of the union. Officer Paul Ahlborg had contacted the Union and approached at least four correctional officers during February, 1975. Ahlborg provided the Union with mailing addresses of 24 officers and subsequent to March 3 spoke with 32 officers about joining the Union. Ahlborg arranged for an organizational meeting and invited a member of the Union's staff to the meeting. He made maps to the location of the meeting and circulated them among the employees.

On March 20, only a few hours before the planned Union meeting, the Sheriff told Ryll to fire Ahlborg. Although Ahlborg was off duty on March 20, Ryll drove to his home and told him he was fired. When questioned as to the reasons for the discharge, Ryll replied that it was for the LaCroix incident and that





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he could not "make it" as a correctional officer.

We find that Ahlborg's discharge was because of his union activities. We find that the Sheriff knew of Ahlborg's union activity and fired him because of it. Employer knowledge of union activities may be inferred from the surrounding circumstances. Byrds Manufacturing Corp., 140 NLRB 147, 161 (1962). The inference of employer knowledge that the employee in question engaged in union activities may be derived under the "small plant doctrine" as stated by the Tenth Circuit: "In a small plant it is a reasonable inference that evidence of union activity brought to the attention of a subordinate management official will in turn be brought to the attention of higher management officials." Bill's Coal Co. v. NLRB, 493 F.2d 243, 85 LRRM 2742, 2745 (10th Cir. 1974). The smallness of the plant or its staff and the close-knit nature of the operation render it likely that the employer observed, or otherwise learned about the in-plant union activities in question. Joseph Antell, Inc. v. NLRB, 380 F.2d 880, 62 LRRM 2014 (1st Cir. 1966); Famet, Inc. v. NLRB, 490 F.2d 293, 85 LRRM 2223, 224 (1st Cir. 1973). Under the "small plant doctrine", we find that the Sheriff was well aware of the activities of the union adherents at the jail. The Sheriff testified that his "door" is "open every morning" and "There are several officers that come into the office first thing many mornings." (2234:3-56) The Sheriff and his assistant Ryll<sup>32</sup> had such

<sup>32</sup> Ryll was instructed to act as the Sheriff's "eyes and ears". Additionally, the Sheriff's own testimony on the date he learned of the union activity is revealing. The Sheriff claimed that he did not recall when he first learned of the union activity, yet his memory was sufficient to identify the timing of his knowledge. The Sheriff testified as follows:

Q. When was the first time you knew there was union activity going on in the jail?

A. I heard some grumbling.

Q. When did you first hear the grumbling?

A. I don't recall.

Q. Was it prior to Mr. Ahlborg being discharged?

A. No.

Q. Was it prior to Mr. Ahlborg being discharged?

A. Yes.

(2234-3:55)

We find that the Sheriff knew about Ahlborg's union activity prior to the time of his discharge.



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intimate knowledge of even the most minute details which took place at the jail that we may infer knowledge of Ahlborg's union activities.<sup>33</sup>

In addition, actual evidence of the Sheriff's knowledge was presented at the hearing: That on the afternoon in which Ahlborg was fired, the Sheriff told Officer Albert Anderson that he intended to fire Ahlborg and that he knew about the union meeting to be held that same night.<sup>34</sup> The Sheriff's presence across the street from the union meeting is strong evidence of his knowledge of Ahlborg's union activity. See discussion of illegal surveillance, *infra* p.33.

It is clear that Ahlborg was the most vocal advocate of the union and his arrangement to solicit for the union constituted protected activity. NLRB v. Harrah's Club, 362 F.2d 425, 62 LRRM 2507 (9th Cir. 1966) cert. denied 386 U.S. 915, 64 LRRM 2332 (1967).

The reasons for the discharge given on March 20 included an incident which had occurred almost three years earlier for which the Sheriff took no adverse action at that time. Such sudden resurrection of a previously condoned "transgression" as cause for discharging Ahlborg is clearly pretextual. Ronald J. Murphy, 1 MLC 1271, 1276 (1975); NLRB v. Byrds Manufacturing Corp., 324 F.2d 329, 332, 57 LRRM 2621 (8th Cir. 1963). The second reason given for the discharge, that Ahlborg could not "make it" as a correctional officer, flies in the

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<sup>33</sup> A few examples of the level of detail in which the Sheriff demonstrates this conclusion will suffice.

- (1) After the Sheriff terminated Beverly Hoffler, one of the Jail's matrons, the Sheriff heard that Ahlborg had a telephone conversation with her and that he did not think the Sheriff handled the situation correctly; (2234-3:21).
- (2) The Sheriff knew about an incident in a Dunkin's Donut shop involving off duty correction officers. (2234-3:59-60)
- (3) The Sheriff learned about the "butter caper" involving inmates in the mess hall. (2429-7:166) (See discussion *supra* p. 17)
- (4) The Sheriff heard that Kevin Mc Cormack had stated that he could understand why the employees wanted a union. (2429-2:12)

The record is replete with instances and examples of events occurring both within the jail and outside the jail with which the Sheriff was familiar.

<sup>34</sup> Such hearsay evidence, as testified to by Officer Alan Turner, is permitted under Section 11 of the Law and MLRC Rules, Art. III S.21.

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face of Ahlborg's work and his sudden discharge without prior warnings requires a finding that the reasons for discharge were pretextual. Town of Somerset, 3 MLC 1618 (1977); Arbie Mineral Feed Co. v. NLRB, 438 F.2d 940, 942, 76 LRRM 2613 (8th Cir. 1971). At the hearing, the Employer introduced a third reason for Ahlborg's discharge, namely, that he had left the ignition keys in the scout car while he ran into the office for a moment. This event occurred over four months prior to the discharge, and, like the LaCroix incident, represents a shifting and stale reason for the discharge. Ronald J. Murphy, 1 MLC 1271 (1975); Decker and Sons, 223 NLRB No. 13, 92 LRRM 1151 (1976).<sup>36</sup>

Finally, we note that the procedure utilized by the Sheriff in terminating Ahlborg deviated from the Sheriff's normal procedure. Thus, the Sheriff instructed Ryll to drive to Ahlborg's home on Ahlborg's day off in order to inform him of his termination. The action occurring only a few hours prior to the scheduled union meeting demonstrates a discharge calculated to have maximum coercive effect on the employees. See Town of Somerset, 3 MLC 1619 (1977).

In view of the above discussion, we conclude that Ahlborg's employment record had not been significantly questioned before his visible participation in union activities, that all reasons offered by the Employer support an inference of unlawful motivation, and that the Union has sustained its burden of proof that Ahlborg was discriminatorily discharged in violation of Sections 10(a)(3) and (1) of the Law.

### Illegal Surveillance

On the evening of March 20, the Sheriff and one correction officer parked the car outside the union's meeting at the Mayflower apartments. We find the Sheriff's conduct, unless explained, a violation of Section 10(a)(1) of the Law because of its obvious interference and restraint on employee rights. NLRB v. Standard Forge and Axel Co., *supra*; NLRB v. Rex Disposables, *supra*. The Sheriff's defense to the Union's charge of illegal surveillance is two-fold. First, he claims that he was looking for an escapee, Ditman, who was supposedly in the vicinity of the Mayflower apartments.

The Sheriff testified that Ditman's presence at the Mayflower apartments was learned from an anonymous telephone call which he received that night. We find such an explanation strains credulity, especially when the escaped inmate

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<sup>35</sup> Ahlborg had been selected to receive additional training at the University of Massachusetts at Amherst.

<sup>36</sup> The Sheriff's defense that he had not gotten around to suspending Ahlborg for this offense for almost one year because he was short-handed is not credible.

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had been at large for over five months prior to the date in question.<sup>37</sup> In addition, the Sheriff's driver in the search for Ditman was never informed of the name of the escapee or that they were in fact looking for such a person. We find that the Sheriff's reasons for sitting in the parked car outside the union meeting were not credible and that he was engaged in unlawful surveillance of union activities in violation of Section 10(a)(1) of the Law. NLRB v. McGraw-Edison Co., 469 F.2d 189, 81 LRRM 2742 (8th Cir. 1972).

### Unlawful Interrogation

Interrogation as to union sympathy and affiliation is unlawful because of its natural tendency to instill in the minds of employees fear of discrimination on the part of the employer as a result of information gained. NLRB v. West Coast Gasket Co., 205 F.2d 902, 904, 32 LRRM 2353 (9th Cir. 1953). Such interrogation thus interferes with employees rights of self-organization free from interference, restraint or coercion. The test is whether the questioning tends to be coercive or intimidating, NLRB v. Varo, Inc., 425 F.2d 293, 74 LRRM 2096 (5th Cir. 1970) and we may look to the surrounding circumstances, including the time, place, personnel involved, and the know position of the interrogator in order to determine if a violation of the Law occurred. NLRB v. Ritchie Manufacturing Co., supra; Gruber's Food Center, Inc., 159 NLRB 629, 62 LRRM 1271 (1966).

On March 21, 1975, the day after the union meeting at the Mayflower apartments, the Sheriff received a copy of the petition filed with the Commission seeking certification by the Union as bargaining representative of the correction officers employed at the jail. On March 21, (one day after the first union meeting) and April 30, (several days after a second union meeting) the Sheriff questioned Officer Anthony Tambascia in his office about which officers had attended those meetings. The Board has found such questioning places an employee in the position of being an informer regarding union activities and is unlawful. Abex Corp., 162 NLRB 328, 64 LRRM 1004 (1966).

The Sheriff also initiated conversations in his office with new officers David Benoit and Charles Studenski in which he indicated his displeasure with the union, inferred that it would be better to stay away from the Union, and solicited their positions with regard to the Union. A similar initiated conversation took place between the Sheriff and Officer Kevin Mc Cormack in early June in which the Sheriff said "I understand you can see why some of these guys want a union." McCormack replied that he would not be inclined to vote for the

<sup>37</sup> Furthermore, if the Sheriff's testimony were credited, his response to the presence of Union Vice-President Lyman (see supra, p.7, "I guess we've been had") remains unexplained. The only way the Sheriff could speculate that he was tricked into spying on the employees' union activities would be if he knew that there was a union meeting going on. Thus, crediting the Sheriff's own statement requires a finding that he engaged in illegal surveillance.

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union and Snow answered, "Let's keep it like that." During the Fourth of July weekend the Sheriff also asked Mc Cormack how the vote might go if the election were held tomorrow. There numerous interrogations concerning union activities and sympathies accompanied by the Sheriff's expression of opposition to the union, had a coercive impact on all officers at the jail, particularly since they were conducted by the highest ranking officer at the jail, one who has the power to hire, fire and discipline employees. American Commercial Bank, 226 NLRB No. 182, 94 LRRM 1310 (1976); Mayfield's Dairy Farms, Inc., 225 NLRB No. 145, 93 LRRM 1016 (1976).

Furthermore, most of these conversations were initiated by the Sheriff and took place in his office. In most instances, it caused the employee to lie about his sympathies with respect to union activities. Under the strict standards established by NLRB v. Ritchie Manufacturing Co. *supra*,<sup>38</sup> we find the Sheriff's conversations with Benoit, Mc Cormack and Tambascia constituted unlawful interrogation and were in violation of Section 10(a)(1) of the Law.

#### The Discharges of Robischeau, Mc Cormack and Benoit

Within the legal framework discussed above, we must examine the discharges of Robischeau, Mc Cormack, and Benoit to determine whether these actions illegally interfered, coerced, or restrained all correctional officers at the jail in their union support and activity. The Board's test for determining whether an employer has violated Section 8(a)(1) of the Law is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of rights under the Act." American Freightways Co., 124 NLRB 146, 44 LRRM 1302 (1959). See also NLRB v. Illinois Tool Works, 153 F.2d 811, 17 LRRM 841 (7th Cir. 1946); Time-O-Matic, Inc. v. NLRB, 264 F.2d 96, 99 (7th Cir. 1959); Munro Enterprises, Inc., 210 NLRB 403 (1974). In examining the employer's conduct, we are not confined to conduct solely with respect to each individual employee, but may examine the total circumstances surrounding the discharges, including the interrogations and the surveillance. As stated by the Seventh Circuit Court of Appeals, "Each 8(a)(1) [10(a)(1) under State Law] violation contributed to an anti-union pattern which gave color to each." New Alaska Development Corp. v. NLRB, 441 F.2d 491, 76 LRRM 2689 (7th Cir. 1971); see also Wolverine World Wide, Inc., 193 NLRB 441, 78 LRRM 1584 (1971).

During the summer of 1975, the organizational drive intensified and Robischeau, Mc Cormack and Benoit spoke with many officers about supporting the Union. Robischeau testified that he spoke to at least eight officers during that period. McCormack testified that after the election in October, he discussed his intention of running for shop steward with at least eleven officers.

<sup>38</sup>

It must be noted that the Commission does not adopt those standards and may find unlawful interference without meeting each of the items mentioned therein. See NLRB v. Camco, 340 F.2d 803, 58 LRRM 2242 (5th Cir.) *cert. denied*, 382 U.S. 926 (1965). In this case, however, those higher standards are met.





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Benoit solicited officers to sign the Union's dues deduction cards. Testimony of Officers Piver, Torrance and Short confirm such conversations with at least one of the discharged officers.<sup>39</sup>

As we found above in the Ahlborg case, during the early stages of the union campaign, the Sheriff knew about the union activities at the jail. He knew which officers were involved in union organizing. In mid-summer Dickson said to Robischeau that the Sheriff did not want the Union and that he would "drop a dime on anyone "if the Sheriff should know about it." In addition, the record indicates that Dickson<sup>40</sup> went to Ryll's office nearly every day after work and was believed by some officers to be an informer regarding all activities at the jail. (see discussion supra p.11. concerning Dickson's "making his afternoon report"). Based upon the "small plant doctrine,"<sup>41</sup> we find that the Sheriff had a vast grapevine for information via Ryll, Dickson and other correctional officers who were aware of activities in the inmate areas and the guardroom. We conclude that the Sheriff knew the Union adherents and initiators of pro-union conversations at the jail, including Robischeau, McCormack and Benoit.

The Sheriff's course of conduct over a period of one year shows a pattern of coercive and intimidating behavior designed to prevent the employees from organizing and, if organized, to crush the union. This pattern of conduct commenced in February of 1975 when the Sheriff instructed Deputy Master Ryll to "keep his eyes and ears open for the union". During the spring, the Sheriff engaged in illegal interrogation and surveillance designed to discourage employees from engaging in union activity. He fired the leading union advocate at the most critical time in the employees' attempt to organize. During the fall of 1975, the Sheriff campaigned against the Union until the election in October of 1975. After the election, the Sheriff systematically began intimidating those individuals who participated in the Union campaign. His actions consisted of numerous changes in the work schedule of David Piver. This eventually forced Piver to resign his position. Similarly, the Sheriff requested the resignations of Studenski and Mc Clusky, both of whom were active in the Union campaign.

<sup>39</sup> On direct examination, Tambascia made contradictory statements as to the extent of his conversations with the three discharged officers regarding the Union. At first, he stated that the discussions only related to which way the individuals were going to vote; later he testified:

Q. Do you recall seeing Mr. Robischeau there (at McGrath's)?

A. Now, are we talking about when we had these meetings for the Union or trying to get something together?

Our finding of fact indicate that Tambascia withdrew his support for the Union but remained privy to conversations while Benoit, Mc Cormack and Robischeau remained employed at the jail.

<sup>40</sup> Dickson testified that he steadfastly opposed the Union from the very start.

<sup>41</sup> See discussion on the small plant doctrine, supra at pp. 30-31.

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The Sheriff requested the resignation of McCormack when he became active in the Union organization following the election. Ultimately, the Sheriff discharged Benoit, Mc Cormack and Robischeau within a period of approximately two weeks. Unless these discharges are justified by legitimate business reasons, they would tend to intimidate and coerce all employees at the jail. We must now examine the Sheriff's reasons for the discharges.

#### David Benoit

At the hearing the Sheriff proffered two reasons for the discharge of David Benoit. The Sheriff claims that he terminated Benoit because of the altercation between Benoit and Ryall and because of his poor work performance. The Sheriff met with Benoit shortly after the December 19 altercation and offered to allow Benoit time off from work in order to file the criminal complaint against Ryll at the Plymouth District Court. The Sheriff's offer of time off to file the complaint is inconsistent with his claim that such a complaint led to Benoit's dismissal. Even if Benoit's conduct could otherwise have led to discipline, we believe the Sheriff leaped at this opportunity to demonstrate that he controlled these jobs and that no union would or could interfere with his operation of the jail.

Regarding his performance, the record reveals no evidence that Benoit had even been told that his employment record was less than satisfactory; he received no written or oral warnings or reprimands. His performance had never been questioned by his supervisors, the Sheriff or Ryll. Reports by Tambascia and Dickson occurred months before the termination and were stale after-thoughts thrown in by the Sheriff to cover his real reason for the discharge.

#### Kevin Mc Cormack

The Sheriff alleged that he discharged Kevin Mc Cormack because of his poor performance, history of reporting late for work, and excessive use of sick leave. With respect to his poor performance, the Sheriff testified that possible drug peddling on the part of Mc Cormack and Benoit caused him to want "to get them out of my institution." However, he admitted that he never mentioned his suspicion regarding Mc Cormack's possible drug involvement to McCormack's father when requesting that Mc Cormack resign nor gave such a reason for his discharge. There is no evidence that Mc Cormack was confronted, warned, or otherwise disciplined regarding these drug allegations.<sup>42</sup> Further evidence was proffered that Mc Cormack had on occasion arrived at work with the smell of liquor on his breath. There is adequate evidence on the record indicating that other correction officers who occasionally appeared for work with the odor of alcohol on their breaths had not been disciplined. These alleged reasons for McCormack's poor work record are contrary to testimony of his supervisor Senior Officer Galvin.

<sup>42</sup>

We find that the information allegedly obtained by the Sheriff from federal agent Riley occurred many months prior to the Sheriff's raising the issue as a cause for discharging the two men.



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The alleged history of reporting late refers to an incident which occurred seven months prior to Mc Cormack's termination when a miscommunication between Mc Cormack and his wife caused the jail to be unaware of his whereabouts during working hours, when he was in fact home sick. We consider these stale and isolated incidents as reasons for discharge pretextual. Ronald J. Murphy, 1 MLC 1271 (1975).

Malcolm Robisceau

Robisceau had injured his knee in mid-December, 1975. His leg had been in a cast and was removed shortly after Christmas. On December 26, 1974, Robisceau returned to the jail and requested that he be allowed to work "light duty" commencing the following Monday. Ryll urged Robisceau to wait another week to allow his leg to strengthen.

On December 29, without warning and contrary to the express statement of Deputy Master Ryll urging Robisceau to postpone returning to work until January 5, 1976, the Sheriff terminated Robisceau because he had exhausted his sick leave on December 26. The record reveals that the Sheriff took this action without informing Robisceau, who had been willing to return to work right away. Furthermore, on other occasions, the Sheriff had allowed individuals who had exhausted their sick leave to take leave without pay. We find the Sheriff's reason for discharge is pretextual.

The Employer's brief alleges an additional reason for Robisceau's discharge that personnel evaluations of fellow officers and superiors indicate "substantial inadequacies to perform function duties as correction officer."<sup>43</sup> All evidence on the record indicates that Robisceau was an outstanding correction officer. Ryll and Senior Officer Vecchi thought he was doing an excellent job.<sup>44</sup> The sheriff testified that he had no complaints regarding Robisceau's conduct.<sup>44</sup> such testimony is clearly contradictory to this alleged reason for the discharge.

In light of Robisceau's excellent work record, the Sheriff's failure to give Robisceau an opportunity to return to work, and previous exceptions made in the sick-leave policy, we find that the underlying reason for Robisceau's discharge was to intimidate the other correctional officers in the exercise of their statutory rights by showing that even outstanding officers were not immune from the Sheriff's discretion and control, and that the Union would not aid the employees in their conditions of employment.

We are satisfied that, on the basis of this record, the discharges of Benoit, Robisceau and Mc Cormack were intended to intimidate and coerce the other

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<sup>43</sup> An affidavit submitted on April 16, 1976 by the Employer on behalf of the Sheriff and prior to the issuance of a formal complaint makes the identical allegation.

<sup>44</sup> The Sheriff testified that "I believe that his (Robisceau's) first thought was his job as a correction officer, and doing the job right...I had no complaint with Mel Robisceau, his duty, his conduct as an officer." (2429-7:191)

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correctional officers in their support for the IBCO. Dollar General Corporation, 189 NLRB 301, 77 LRRM 1181 (1971) enf'd. 489 F.2d 733, 80 LRRM 2768 (6th Cir. 1972) These discharges, like the Ahlborg discharge, the Sheriff's unlawful surveillance of the union meeting, his unlawful interrogation of employees and disparaging remarks about the Union were designed to intimidate employees into abandoning all union activity. It is our view that an employer violates the law when he discharges an employee as a means of coercing and intimidating all employees in the exercise of their statutory rights. No violation will be found if the employee's discharge was made for reasons which have nothing to do with employee union activity or when there is little or no impact upon employees other than the individual discharged. Buddies Super Markets, *supra*; Golub Brothers Concessions, *supra*. In the Commission's view, the important consideration is whether the employer intended to coerce and intimidate employees and, in fact, did so by terminating employees.<sup>45</sup> Proof of discrimination against the individuals terminated is not necessary.

We find the record is replete with evidence that the Sheriff's actions were intended to intimidate and coerce the employees in their support of the Union. We therefore find that the Sheriff's discharge of Benoit, Mc Cormack and Robischeau violated Section 10(a)(1) of the Law.

#### ORDER

Wherefore, on the basis foregoing, it is hereby ORDERED, pursuant to G.L.c. 150E, S.11, that the Plymouth County House of Correction and Jail shall:

1. Cease and desist from:

- (a) Interfering, restraining or coercing employees in the exercise of their rights under the Law through surveillance of Union or employee meetings.
- (b) Discriminating against Paul A. Ahlborg in regard to any term or condition of employment;
- (c) Interfering, restraining or coercing employees in the exercise of their rights under the Law through interrogation of employees;

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<sup>45</sup> There may be instances where, despite the coercive or intimidating effect, the Employer presents evidence that the employee's discharge was for such egregious and serious behavior that the relatively slight interference and coercion in other employees' rights is outweighed by the reasons for discharge. In the present case, no such reasons for the discharges were presented. The Sheriff scrounged up frivolous and pretextual reasons for the discharges.

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- (d) Interfering, restraining or coercing employees in the exercise of their rights under the Law by discharging Paul A. Ahlborg, David Benoit, Kevin Mc Cormack and Malcolm Robischeau.

2. Take the following affirmative action which it is found will effectuate the policies of G.L.c.150E:

- (a) Offer Paul A. Ahlborg, David Benoit, Kevin McCormack and Malcolm Robischeau reinstatement to their prior positions or a substantial equivalent thereof and make each of them whole for loss of earnings, if any, suffered as a result of the unlawful discharge by payment to each a sum of money equal to that which each of them would have earned from their date of discharge to the date of the Employer's offer of reinstatement with backpay computed on a quarterly basis plus interest at the rate of seven (7) percent interest per annum;
- (b) Preserve and, upon request, make available to the Commission or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Pay to the International Brotherhood of Correctional Officers an amount of money equal to the amount of dues which would have been paid by Paul A. Ahlborg, David Benoit, Kevin McCormack and Malcolm Robischeau from the date of each of their discharges to the date of the Employer's offer of reinstatement with said sum computed on a quarterly basis plus interest at the rate of seven (7) percent per annum;
- (d) Pay to Paul A. Ahlborg, David Benoit, Kevin McCormack and Malcolm Robischeau a sum of money equal to out of pocket expenses which each of them incurred in the pursuit of these cases;
- (e) Post in four (4) conspicuous places in the Plymouth County House of Correction and Jail, and maintain for a period of thirty (30) days





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thereafter, copies of the attached Notice to Employees;

- (f) Notify the Commission in writing within ten (10) days of the date of this Decision and Order of the steps taken to comply therewith.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

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James S. Cooper, Chairman

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Garry J. Wooters, Commissioner

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Joan G. Dolan, Commissioner

