BRISTOL COUNTY HOUSE OF CORRECTION AND JAIL AND AFSCME, COUNCIL 93, MUP-3126 (11/15/79). Decision on Appeal of Hearing Officer's Decision.

(60 Prohibited Practices by Employer)
63.7 discrimination - union activity and membership or non-membership
65. Interference, Restraint or Coercion
(90 Commission Practice and Procedure)
92.51 appeals to full commission

Commissioners participating:

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

Appearances:

Ronald J. Lowenstein, Esq. - Counsel for the Bristol County House of Correction and Jail

David Farrell - Representing the American Federation of State, County and Municipal Employees, Council 93

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

On February 14, 1979, Hearing Officer Robert McCormack issued his decision in the above-entitled matter. He found that the County of Bristol (Employer) had committed certain prohibited practices in violation of Section 10(a)(1) of General Laws Chapter 150E (the Law).[1]

The County filed a timely Notice of Appeal pursuant to Commission Rules and Regulations 402 CMR 13.13 and all of the Law and filed a supplementary statement objecting to the legal conclusions of the Hearing Officer.

Findings of Fact

The findings of fact are set forth fully in the Decision of the hearing officer. Bristol County House of Correction and Jail, 5 MLC 1647 (1979). Because the appellant does not challenge them, the Commission adopts the hearing ofifcer's findings of fact. We summarize those facts as follows:

Shirley Sullivan has been employed by the County at the House of Correction and Jail for approximately 18 years, primarily in administrative positions. Before her promotion to correction officer she had been the chief administrative clerk. Over the years she organized parties for the employees, solicited donations for gifts in honor of their birthdays and other occasions, and typed their college term papers. She also became a close friend of the deputy master of the jail, Donald Bardsley; the two have dated since 1977.

[1] For the full text of the Hearing Officer's Decision, see 5 MLC 1647 (1979).

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In April, 1978 the American Federation of State, County and Municipal Employees, Council 93 (the Union) filed two grievances pursuant to its collective bargaining agreement with the Employer protesting the promotion of Shirley Sullivan to the position of correction officer.[2] Sullivan became upset about being the center of controversy as the subject of Union grievances, and she told Bardsley of her distress.

Sullivan and Bardsley met on Friday evening, April 28, 1979--one week after Bardsley and other representatives of the jail's management learned of the Union's request to arbitrate the Sullivan grievance. Sullivan collapsed twice that night and Bardsley rushed her to a hospital emergency ward and remained there with her until 2:30 a.m.

On the morning after Sullivan's collapse Bardsley visited the jail where he saw Union President Raymond Destremps and two other correction officers. Bardsley told Destremps what had happened to Sullivan the night before and accused Destremps and the Union of causing her collapse. Destremps replied that the grievance was not a personal matter. Bardsley, in the presence of the other correction officers, said, "Not personal, my ass; I ought to punch you in the mouth." Destremps was shaken by the encounter and a physician prescribed medication for him and counseled him to stay home for several days.

Since the incident between Bardsley and Destremps the Union has filed approximately 12 greivances and three charges of prohibited practice.

Opinion

Chairman Cooper and Commissioner Wooters

The Employer argues that the hearing officer erred when he concluded that Bardsley's outburst at Destremps violated Section 10(a)(1) of the Law. While acknowledging that the incident was "unfortunate," the Employer claims that Bardsley's statements could not properly be found to violate the Law in the absence of a finding of improper motivation. We disagree.

Unlike the Section 10(a)(3) violation in which proof of illegal motivation is an element of a charging party's case, a Section 10(a)(1) violation need not, as a general principle, be premised on a finding of improper motivation. Don's Catering Service, 5 MLC 1179, 1182-83 (H.O. 1978). Motivation may be an element in a Section 10(a)(1) case where, for example, an employee alleges that an ostensibly neutral employer action is, in reality, prompted by the motive of intimidating, coercing, or interfering with employees in the exercise of their rights under Section 2 of the Law. See Commonwealth of Massachusetts, Commissioner of Administration and Finance, 6 MLC 1397, 1400 (1979). In the case before us, however, a finding of illegal motivation is not a necessary component, and thus the Section 10(a)(3) cases cited to us in the Employer's brief on appeal are inapposite.

[2] One grievance did not progress past the first step. The Union sought arbitration of the other.

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We have previously noted that our focus in these cases is not on employer motivation. Trustees of Forbes Library, 6 MLC 1216, 1232-33 (1979). The Seventh Circuit Court of Appeals has enunciated the standard:

> ...the test of interference, restraint and coercion under section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. (Citations omitted.) The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act. Illinois Tool Works, 153 F.2d 811, 17 LRRM 841, 843 (1946).

In this case we find that Bardsley's statements that Destremps' filing of the Sullivan grievance was "not personal, my ass" and "I ought to punch you in the mouth" constitute threats which tend to restrain and coerce reasonable employees from filing grievances in the future. Employees could reasonably believe that representatives of the Employer are displeased by grievances and might even resort to violence when they are filed.

As we have stated above, and as the Employer concedes in his supplementary statement, actual coercive effect need not occur in order to establish a Section 10(a)(1) violation. Nevertheless, the Employer argues that no violation can be found in this case because there has been no coercive effect. We reject the underlying premise that the lack of coercive effect precludes a finding of a Section 10(a)(1) violation and further reject the inference of no coercive effect drawn by the Employer from the fact that in this case employees continued to file grievances after Bardsley's outburst. We do not know how many or what type of grievances employees might have filed or with how much vigor the grievances might have been pursued had Bardsley not made the threatening statements. We find a violation in that these threats were inherently coercive and interfered with with employees' protected rights.

Commissioner Dolan, concurring

Were Master Bardsley's outburst of April 29, 1978 the sole incident involved in this case, I would reverse the hearing officer and find no violation. My rationale for so doing would be that this was an isolated burst of temper from a tense and exhausted individual which arose out of a unique personal relationship, the significance and extent of which were well known to the employees of the Jail. But for the history of this matter, I would conclude that Bardsley's statements to Destremps were in the nature of excited expletives or statements which could only reasonably be understood by the employees to be of a character other than Section 10(a)(1) misconduct. See Murray Products, 228 NLRB 268, 94 LRRM 1723 (1977) and George Byers Sons, Inc., 111 NLRB 304, 35 LRRM 1471, 1472 (1955).

There are situations where the speech of an employer or his agent may be inherently coercive. See Don's Catering Service, supra at 1184. (Employer statement that employees would be taken off their routes if they "persisted in this union stuff.") I do not believe, however, that the speech and actions of Mr. Bardsley during the incident in question were, on their face, a violation of Section 10(a)(1). I am troubled by an Illinois Tool analysis

which leads to the situation, as in the majority's opinion, that we look at neither motive nor effect but simply to the words themselves without a thorough examination of the facts on which we find that the events in question would, judged by a standard of reasonableness, interfere with employees' exercise of their rights under the Law. I agree with the Employer's argument that we should look closely at all of the facts surrounding the disputed speech or actions.

The facts of this case lead me to concur with the majority's result of a finding of a Section 10(a)(1) violation. A review of the hearing officer's findings of fact indicates that the subject of the Sullivan grievance had been a sore point with Mr. Bardsley for some time prior to the incident which gave rise to this case. It was an issue in both the bargaining process for a contract and also during mediation. It provoked an angry outburst by Bardsley at several of the clerical employees. The Union's complaint to the Employer about Bardsley's attitude in connection with this grievance drew no response. There was no evidence that Destremps' illness after the Bardsley outburst of April 28, 1978 was caused by anything other than the events of April 28. A letter to the Employer detailing Bardsley's actions was never answered.

Based on the facts of this case, I reject the Employer's argument that Bardsley's outburst was a merely unfortunate, but not illegal, isolated display of temper. Standing alone, the words and actions of the deputy master do not, without more, establish the violation in my view. What does establish it is that the course of events in this case could well lead reasonable employees to conclude that particular types of grievances could be filed only at the risk of a course of verbal and physical abuse by their superior which the Employer ratified and would take no steps to remedy. I agree with the majority that employees do not have the burden of proving what they might have done but for the atmosphere of threat and intimidation created by the Employer.

ORDER

WHEREFORE, on the basis of the foregoing, and pursuant to Section 11 of the Law, IT IS HEREBY ORDERED that the Bristol County House of Correction and Jail shall:

1. Cease and desist from interfering with, coercing, and restraining union officers and members who file grievances.

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

   a. Post in conspicuous places, where notices to employees are usually posted, the appended Notice to Employees which shall remain posted for a period of thirty (30) days;

   b. Notify the Commission within ten (10) days of the service of this Decision and Order of the steps taken to comply herewith.

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COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman
GARRY J. WOOTERS, Commissioner
JOAN G. DOLAN, Commissioner

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Massachusetts Public Employees Bargaining Law (Chapter 150E) gives all employees these rights:

To engage in self-organization;

To form, join, or assist unions;

To bargain collectively through representatives of their own choosing;

To act together for collective bargaining or other mutual aid or protection;

To refrain from any and all of these activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interfere with, coerce, or restrain union officers and members who file grievances.

EDWARD K. DABROWSKI
Sheriff, Bristol County

DONALD BARDSLEY
Deputy Master, Bristol County House of Correction and Jail