
DIGHTON SCHOOL COMMITTEE AND DIGHTON EDUCATORS ASSOCIATION, MUP-4233 (8/26/81).

(60 Prohibited Practices by Employer)
65.22 concerted activity--wearing buttons

Commissioners Participating:

Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

James Jerome Coogan, Esq.	- Counsel for the Dighton School Committee
Gerald P. Dlouhy	- Representing the Dighton Educators Association

DECISION

Statement of the Case

On March 12, 1981, the Dighton Educators Association (Association) filed a charge with the Labor Relations Commission (Commission) alleging that the Dighton School Committee (School Committee) had engaged in prohibited practices within the meaning of Section 10(a)(1) of G.L. c.150E (the Law). Following investigation of the charge, the Commission issued a Complaint of Prohibited Practice on May 15, 1981, alleging that the School Committee had violated Section 10(a)(1) of the Law by ordering certain teachers to remove buttons they were wearing which displayed the slogan "S.O.S." On May 26, 1981, the School Committee filed an Answer in which it substantially admitted the factual allegations of the Complaint but denied that it had violated the Law.

Pursuant to notice, a formal hearing was held on June 15, 1981, before Hearing Officer Robert J. Ambrogio. All parties were given full and fair opportunity to be heard, examine and cross-examine witnesses, and introduce documentary evidence. The parties waived the opportunity to file briefs.

The issue presented is whether the hearing of such buttons during working hours is protected activity. Based upon the record, and for the reasons set forth below, we find that the School Committee violated Section 10(a)(1) of the Law by ordering the removal of the buttons.

Jurisdictional Findings

1. The Town of Dighton is a municipal corporation in the County of Bristol in the Commonwealth of Massachusetts and is a public employer within the meaning of Section 1 of the Law.
2. The School Committee is the representative of the Town for the purpose of dealing with school employees.
3. The Association is an employee organization within the meaning of



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Section 1 of the Law and is the exclusive bargaining representative of certain employees of the School Committee.

Findings of Fact

On March 9, 1981, Association President Raymond J. Madeiros, an eighth grade teacher in Dighton, came to school in the morning wearing a button. The button was 2½" in diameter with a red background and white lettering reading "S.O.S." Two other Association members also wore the button.

At about 9:30 a.m., Madeiros received a phone call from his building principal. The principal said that Dr. Joseph C. Harrington, Superintendent of Schools, had ordered Madeiros and the other two teachers to remove the buttons while they were in the classroom or risk a reprimand for insubordination. Madeiros and the others removed their buttons.

The buttons were worn as part of the Save Our Services (S.O.S.) program of the Massachusetts Teachers Association, which the Dighton Association had voted to adopt in response to Proposition 2½. S.O.S. is a unified statewide effort by teachers to save as many services as possible. Wearing the button was one aspect of that unified effort.

Madeiros testified that his purpose in wearing the button was to show other teachers how he felt about service cuts and to demonstrate unity to other teachers. He did not wear the button with the intention of influencing students, he said. He wore the button in the classroom, he said, for two reasons. First, the button was part of his attire for the day and he wore it everywhere. Second, he remained visible to other teachers while in his classroom. His classroom was centrally located with two glass doors that allowed all passersby to view him. Also, many teachers came into his classroom during the day to borrow something or to discuss some issue.

March 9 was the first and last day the S.O.S. buttons were worn in Dighton. Once during the brief period in which the button was worn, a student in Madeiros' homeroom asked him what the button meant. He responded, "Save Our Services," without further elaboration.

Superintendent Harrington testified that he prohibited wearing of the button in the classroom for two reasons. First, Harrington thought that wearing the button violated the Code of Ethics of the Education Profession which has been adopted by the Dighton School Committee. Principle 1(b) of the Code states that an educator "shall not use professional relationships with students for private advantage." Harrington said this principle prohibits the use of a captive student audience for private advantage or political gain.

Second, Harrington objected to the button because of its subject matter-- Proposition 2½, a very controversial issue in Dighton, he said. Harrington testified that there is a prescribed method by which controversial issues are to be handled for eighth graders. All sides of the controversy must be presented as a teaching tool in the format of a planned lesson. Had buttons been presented to represent all sides of the issue and to be used as teaching tools, they would have been allowed in the classroom, Harrington testified.



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Madeiras testified that on the day after he was told to remove the S.O.S. button, and continuing for another two or three days, he wore a button recommending, "Shape Up For Fitness." A few years ago, according to Madeiros, a teacher wore a button announcing, "I've Quit." Three or four years ago, Madeiros said, a button was worn stating "Save Our Whales." Harrington testified, however, that he was not aware of any buttons previously having been worn in the schools.

Opinion

Employees have the right under Section 2 of the Law to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. As a general rule, wearing union insignia during working hours is lawful, concerted activity protected under Section 2. See, Republic Aviation Corporation v. NLRB, 324 U.S. 793, 16 LRRM 620 (1945). An employer who interferes with an employee's exercise of activity protected under Section 2 violates Section 10(a)(1) of the Law. Lenox School Committee, 7 MLC 1761 (1980). Thus, in the absence of special circumstances, an employer's rule prohibiting the wearing of union insignia violates Section 10(a)(1). St. Joseph's Hospital, 225 NLRB 348, 93 LRRM 1179 (1976).

Whether there are special circumstances justifying a button prohibition can only be determined on a case by case basis. Special circumstances have been found to exist, for example, where a welder was ordered to remove flammable pro-union stickers from his protective helmet for safety reasons, Brown Manufacturing Corp., 235 NLRB No. 189 98 LRRM 1347 (1978); and where an employer had consistently enforced a rule prohibiting adornments on uniforms of nurses who were in direct contact with easily agitated elderly patients, Evergreen Nursing Home, 198 NLRB No. 101, 80 LRRM 1825 (1972).

In this case, we find no proof of special circumstances justifying the School Committee's prohibition of the S.O.S. button. We have recognized in the past that there must be an accommodation made between the traditional authority of school committees over their teaching employees and the exercise by those employees of rights protected under the Law. Lenox School Committee, 7 MLC 1761 (1980). The existence of special circumstances must be determined within the context of this accommodation.

We note especially that here the wearing of the S.O.S. button had none of the characteristics that can make otherwise protected activity unprotected. For example, the message communicated was not profane. Contrast, e.g., City of Boston, 6 MLC 1096 (1979). Nor was there any proof that the button was egregious or that wearing it disrupted the educational process.

We are further convinced that no special circumstances exist to prohibit these buttons by the fact that other buttons were worn both before and after this incident without any kind of interference or comment by the school administration. A rule which is enforced only against union buttons demonstrates the lack of any truly legitimate purpose for the rule. Pay'n Save Corp. v. NLRB, 106 LRRM 3041 (9th Cir. 1981); Baptist Memorial Hospital, 223 NLRB No. 69, 93 LRRM 1290 (1976).

Finally, we do not find the School Committee's defenses persuasive. The



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School Committee argues that wearing of the buttons is prohibited by the Code of Ethics of the Education Profession, a code which, on this record, was unilaterally adopted by the Committee. In addition to the fact that there is no record evidence in support of the proposition that the teachers were wearing the button to gain private advantage, an employer cannot negate an employee's right to engage in protected activity under Chapter 150E by creating its own sets of rules prohibiting such activity. The School Committee's second defense is that Madeiros should have constructed a lesson on the controversial Proposition 2½ and presented all sides of the question. We note the evidence in the record establishing that only one student asked Madeiros what the button meant. When he responded with "Save Our Services" that apparently ended the exchange. In short, the evidence does not support the School Committee's contention that the subject was so controversial among Dighton students. On this record, we also cannot find that the School Committee required the presentation of all sides of any controversial issue except that presented by the S.O.S. button. As noted above, rules enforced only against buttons worn in connection with protected activity cannot be permitted to stand absent special circumstances not present in this case.

Thus, in the absence of proof of special circumstances, the School Committee's prohibition against the wearing of the S.O.S. buttons violated Section 10(a)(1) of the Law.

Order

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. The Dighton school Committee shall cease and desist from restraining, coercing, and interfering with employees represented by the Dighton Educators Association in their exercise of rights protected under the Law.
2. The Dighton School Committee shall take the following affirmative action which will effectuate the purposes of the Law:
 - a. Post in conspicuous places where employees of the School Committee usually congregate and leave posted for not less than thirty (30) days the attached Notice to Employees.
 - b. Notify the Commission within ten (10) days of receipt of this decision and order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JOAN G. DOLAN, Commissioner
GARY D. ALTMAN, Commissioner



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NOTICE TO EMPLOYEES

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

Section 2 of General Laws Chapter 150E provides that public employees shall have the right of self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion.

After a hearing before the Massachusetts Labor Relations Commission, the Dighton School Committee has been found to have violated Section 10(a)(1) of General Laws Chapter 150E by interfering with the Section 2 rights of certain members of the Dighton Educators Association. Specifically, the School Committee violated the Law by prohibiting certain members of the Association from wearing "S.O.S." buttons.

WE WILL NOT, in any like manner, restrain, coerce or intimidate employees in the exercise of their rights guaranteed by Section 2 of Massachusetts General Laws Chapter 150E.

Chairperson, Dighton School Committee

