

BOSTON POLICE PATROLMEN'S ASSOCIATION, INC. AND PAUL JOHNSTON, MUPL-2049 (2/23/82)
and BOSTON POLICE PATROLMEN'S ASSOCIATION AND JOSEPH McNULTY, MUPL-2050 (3/23/82).

- (20 Jurisdiction)
 - 27.12 jurisdiction over internal union matters
- (30 Bargaining Unit Determination)
 - 32. Binding effect of a unit determination
- (70 Union Administration and Prohibited Practices)
 - 75.3 expulsion and suspension from membership
- (80 Commission Decisions and Remedial Orders)
 - 82.12 other affirmative action
 - 82.122 expenses, counsel fees
 - 82.123 emotional distress damages

Commissioners participating:

Phillips Axten, Chairman
Joan G. Dolan, Commissioner

Appearances:

Frank J. McGee, Esq.	- For the Boston Police Patrolmen's Association, Inc.
Jeanne Baker, Esq.	- For Paul Johnston and Joseph McNulty

DECISION

Statement of the Case

This case involves allegations that the Boston Police Patrolmen's Association, Inc. (BPPA or Association) interfered with, restrained and coerced Paul Johnston and Joseph McNulty by denying them union membership because of an arbitrary and bad faith determination that they were not members of the BPPA bargaining unit. The case commenced on November 20, 1975, when Johnston filed a charge with the Labor Relations Commission (Commission) alleging that the BPPA had violated G.L. Chapter 150E (the Law). It was docketed as Case No. MUPL-2049. On December 2, 1975, McNulty filed a similar charge against the BPPA which was docketed as Case No. MUPL-2050. The Commission investigated the charges pursuant to its authority under Section 11 of the Law and on September 29, 1978 issued a consolidated Complaint of Prohibited Practice alleging that the BPPA had violated Section 10(b)(1) of the Law with respect to certain actions taken against Johnston and McNulty.¹ Hearings were held on December 4, 1978, and February 28, March 1, April 19, May 22 and July 13, 1979. All parties had full and fair opportunity to

¹ The charges filed by Johnston and McNulty were held in abeyance pending the Commission's disposition of a clarification petition filed by the BPPA on March 6, 1976 and docketed as Case No. CAS-2109. See the discussion of that matter, infra.

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be heard, to examine and cross-examine witnesses and to introduce evidence. We have considered the parties' post-hearing briefs together with the rest of the record.²

Based upon the entire record, we make the following findings of fact and conclude that the BPPA has violated the Law.

Jurisdictional Findings

Paul Johnston and Joseph McNulty are, and at all times relevant to this proceeding were, employees within the meaning of Section 1 of the Law.

The BPPA is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative for purposes of collective bargaining of police patrolmen in the City of Boston, including employees of the Planning and Research Division of the Boston Police Department.

Findings of Fact

In 1967, the BPPA was certified as the exclusive representative of a bargaining unit composed of all patrolmen in the City of Boston (Case No. MCR-313). On August 26, 1974, the BPPA filed a petition with the Commission seeking to exclude patrolmen working in the Planning and Research Division (P & R) and the Special Investigations Unit (SIU) from the certified bargaining unit (Case No. CAS-2009) on the ground that they were managerial or confidential and hence not "employees" entitled to coverage of the Law. P & R provides research and analytical backup to the department for use in both long and short-term planning. The SIU is a branch of the department responsible for investigation and disposition of charges of police corruption and misconduct. During the pendency of Case No. CAS-2009, which sought to exclude the entire class of patrolmen working for P & R and SIU, certain of the events relating to Johnston and McNulty which prompted these charges took place.

Both Johnston and McNulty were assigned to P & R during 1974.³ Sometime during the summer of 1975, the BPPA received some computer-printed overtime lists during the course of an arbitration proceeding involving overtime payments. Both Johnston and McNulty were listed on some of these print-outs as performing overtime for the SIU. At the time, there was speculation in the department that the SIU had what amounted to undercover agents working on every shift. Association with the SIU can cause an officer considerable difficulty within the bargaining unit. At one of the police district stations, a copy of the print-out with Johnston's and McNulty's names on it was posted on a bulletin board. The copy had the words "SIU Rats" printed across the top. The leadership of the BPPA also

²The record in Case No. CAS-2109 (see fn.1) was incorporated into this proceeding.

³In March of 1976, Johnston was re-assigned to the Tactical Patrol Force and, in November of 1978, to the Personnel Division.



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strongly objected to patrolmen serving in any capacity in the SIU.

BPPA officers, including Chairman Chester Broderick and Vice-Chairman John Bilodeau, discussed the computer lists and kept copies in the BPPA files. Bilodeau also kept a copy of the list in his jacket pocket for some time.

At a membership meeting in August or September of 1975 Broderick made reference to the fact that the Association had obtained lists of patrolmen associated with the SIU. Members asked that the names be read, and Bilodeau produced and read from a copy of the list. Copies were also made available along with other material which could be picked up by attendees of the meeting. The names of Johnston and McNulty were among those read as being employed within the SIU. However, the computer error had already been corrected and overtime lists issued since November 29, 1974 had correctly showed Johnston and McNulty as assigned to the Commissioner's office in P & R and not the SIU.

Johnston and McNulty learned that they had been labeled as SIU employees, and immediately took steps to correct the situation. They discovered that the error was the result of a computer mislabeling and on September 18, 1975 they met with other officers also erroneously on the list. Later that day, BPPA representative Flannagan also met with Broderick. On each occasion Johnston and McNulty indicated that the list was in error, and that they had no association with the SIU. They also indicated that the circulation of the false information was damaging to their reputations and effectiveness within the department. At Broderick's suggestion, both Johnston and McNulty appeared before a meeting of the Association's House of District Representatives, a representative body of the BPPA which was meeting that night. At that meeting both patrolmen explained the computer error, stressing that they were not involved with the SIU. They distributed about 30 copies of a "packet" of materials containing various overtime lists to show how a correct list printed out all the names in a unit in alphabetical order and how the list indicating that Johnston and McNulty and other P & R officers had performed overtime for the SIU differed from those.⁴ They were then questioned extensively by the representatives on their duties with P & R. Later that night, Flannagan called and informally told them that the House had decided to request Johnston and McNulty to file grievances against the City protesting the erroneous computer list. Subsequently, each officer received the BPPA's formal notification of the House's action, which was a copy of the following letter dated September 22, 1975 over the signature of Association counsel Frank J. McGee:

The House of Representatives of the Boston Police Patrolmen's Assn., Inc. at its regular scheduled monthly meeting held on September 18, 1975 has instructed me to inform you that you are assigned to the Special Investigative Unit. The House of Representatives has further instructed me to request that you come

⁴The erroneous overtime list contained a heading that indicated that all named individuals had performed overtime for the SIU.

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to the Association and converse with me for the purpose of discussing whether you will go to the Massachusetts Labor Commission for the purpose of disputing the fact that you are assigned to or detailed to the Special Investigative Unit. Further, the House of Representatives has requested that you take this action within seven (7) days from your receipt of this letter.

I wish to advise you that at an earlier meeting of the House of Representatives it was voted⁵ that members of the Special Investigative Unit are not only managerial employees but also confidential employees and therefore not members in good standing of the Boston Police Patrolmen's Assn., Inc.

Trusting that you will contact me at the earliest possible time,
I am

/s/ Frank J. McGee

After several unsuccessful attempts to contact McGee by phone and in person, Johnston wrote him the following letter.

Dear Mr. McGee:

I am writing in response to your certified letter #003759, dated September 22, 1975. Immediately following its receipt, I made several attempts to contact you to discuss this matter, but was unable to reach you. During the early part of the week of September 28, 1975 I went to the B.P.P.A. office, but was informed by the secretary that you were tied up in an arbitration hearing. Chairman Broderick was also unavailable at that time. I left my home and work phone number then and on three other occasions to assist you in contacting me. At the time of this writing I have not received a return call or any other communication from you.

Realizing that there appears to be considerable difficulty in reaching you, I have decided it might be more efficient for all concerned to deal with this matter by mail.

I do not understand the statement contained in your letter indicating that the House of Representatives decided that I am assigned to the Special Investigative Unit. To begin with, I was unaware that such a decision was made and secondly, and what perplexes me most, is that this decision was made after I had presented to the House documents which I believed cleared the suspicions surrounding the controversial Computer Print-out.

⁵The minutes of the House meeting entered into evidence do not indicate when such a vote was taken.

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As I remember, you attended the monthly House of Representative's meeting on September 18, 1975 and had the opportunity to hear my presentation as well as that of Joseph McNulty's. You may also remember that both Joseph McNulty and I requested the time to address the House not only on our behalf, but also as spokesmen for the other officers assigned to Planning and Research, and Informational Services who were listed on the print-out. Although it was decided by the House that we could only speak for ourselves, we both stressed the danger of allowing unsubstantiated documents to be circulated throughout the department.

In this particular "Print-Out Incident" the reputations of 11 police officers, all members of the B.P.P.A. have been severely impaired because this print-out implied that they were members of the S.I.U. When McNulty and I went out to the Union Administrators for help we did so with documents, which clearly demonstrated the print-out in question was nothing more than an error in programming. If your letter is to be taken as an indication of the Union Administration's help, then I am safe in assuming both McNulty's and my efforts were in vain.

Your letter makes reference to you and me discussing whether I will go to the Massachusetts Labor Commission for the purpose of disputing the "fact" that I am assigned or detailed to the S.I.U. I believe I have already established that I am not a member of this unit and therefore, Mr. McGee there is, in my opinion, no need for me to take this action; or for the Union funds to be expended in this fashion.

Sincerely,
Paul A. Johnston

Johnston received no response to this letter.

On September 30, 1975 McNulty wrote to the BPPA indicating his intent to run for treasurer. He was informed by letter dated October 1, 1975 over the signature of BPPA Secretary Paul Whalen that he was ineligible to run for office as he was not a BPPA member in good standing as required by the Association's by-laws.⁶

⁶The BPPA constitution and by-laws provide procedures for discipline of members, including expulsion. The by-laws provide that discipline shall occur only upon written charges signed by the complainant and after a trial before the Executive Board and a three-quarters vote of the members. The by-laws further provide that only five specific offenses may be grounds for a charge. Two of the offenses relate to financial abuses, one to advocating dual organization or secession, one to failing to make statutorily required reports, and the last to willful destruction of records. The Association did not comply with these procedures with respect to Johnston and McNulty. There is no record in the minutes of any vote or other official action to expel them.

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On October 3, 1975 Broderick wrote to Johnston and McNulty suggesting that they meet him and Attorney McGee at the Labor Relations Commission on October 16 so that they (Johnston and McNulty) could petition the Commission to clarify their "status as a member of this bargaining unit." Neither officer appeared, but three other officers whose names were also erroneously listed on the computer print-outs did come to the Commission. At that time Broderick telephoned Superintendent Paul Russell, who confirmed that the print-out listing Johnston and McNulty and the other officers as part of the SIU was an error. Broderick told Russell that it was probably true but asked Russell to write a letter confirming this fact, which Russell did the following day. However, the BPPA took no action to restore Johnston and McNulty to union membership and did not file a petition to clarify their bargaining unit status until March of 1976. (See CAS-2109). When Johnston appeared to vote in the Association elections on October 29, 1975 he was shown a list by an Association representative which included his name, McNulty's name and the names of eleven other officers as ineligible to vote because they were confidential employees.

On February 9, 1976, the Commission issued its decision in Case No. CAS-2009. City of Boston, 2 MLC 1353. The Commission held that SIU employees should be excluded from the BPPA bargaining unit but that P & R employees properly belonged within it. On March 9, 1976, the BPPA filed Case No. CAS-2109, a petition seeking to exclude Johnston and McNulty from the unit on the ground that they were SIU employees. The two officers were allowed to intervene in the extensive litigation which followed. On March 11, 1978, the Commission issued a decision holding that Johnston and McNulty were not then, nor had they ever been, employed by the SIU in any capacity. City of Boston, 4 MLC 1855.

Neither Johnston nor McNulty was allowed to vote in any BPPA election between August 1975 and September 1978. It was not until August of 1978, after inquiry by Johnston, that the BPPA's secretary Nolan informed the officers that they had been reinstated. Their reinstatement occurred approximately three months after the Commission issued its decision in Case No. CAS-2109, supra, finding that Johnston and McNulty were not and never had been in any way connected with the SIU.

In the interim the issue of their reinstatement had been discussed at several BPPA meetings. At an April 19, 1978 BPPA meeting the following occurred, as reflected in the minutes:

There was a great deal of discussion regarding this particular subject, from the fact that if we didn't let them back are we open to a civil suit, and/or shall the Association appeal to the courts in the Johnston, McNulty SLRB decision.

Chairman Broderick went into a dissertation regarding the SIU personnel, and the fact that opportunities had been presented to those individuals to submit "clarification of their status," but that only one had been received. Further, McNulty and Johnston have appeared in person, before the House of District Representatives and presented



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their case -- as a result, they were asked to submit a "declaratory statement" which they refused to do. At this time, Attorney McGee stated, "This case, McNulty and Johnston, was heard by a single Hearing Officer at the SLRB, the Association has right of appeal before the entire Commission (Board) which ever. In the final analysis, MOTION by Flannagan, second by Murphy to REINSTATE THE AFOREMENTIONED AGENCY FEE MEMBERS TO MEMBERS IN GOOD STANDING. At this time, Hurley made a MOTION, TO TABLE. PASSED. He stated "too much controversy [sic]."

At this time, Chairman remarked, "if there is any evidence to IT, it should be presented, as a result of Flannagan's remarks, and the dissension regarding reinstatement."

At the May 17, 1978 meeting a motion was made to remove the prior motion regarding reinstatement of Johnston and McNulty from the table. After some discussion, which included comments to the effect that P & R was "a cover" for the SIU, a motion was made and seconded to retable the matter.⁷

Finally, at a July 19, 1978 meeting a motion to reinstate Johnston and McNulty was passed,⁸ although neither of them was officially informed until August 4, 1978 after Johnston had heard about the vote and wrote to Broderick about it. Later that month, when Johnston notified the BPPA that he planned to seek office as a BPPA representative for the Tactical Patrol Force, he was informed that he was ineligible to run because he had not been a member in good standing for 12 months, as required by the BPPA's by-laws.

During the time period when Johnston and McNulty were not "in good standing" with the Association, they were subject to difficulties with other officers. McNulty was reluctant to do details or take overtime and testified that he refused a "great deal" of overtime because of several incidents. In September, 1976 one officer refused to work with McNulty on an overtime assignment because of McNulty's "affiliation with the SIU," and in three other instances officers were warned to watch out for him because he was in the SIU.

Opinion

The BPPA argues that the Commission lacks jurisdiction to hear and determine this case inasmuch as it involves what are traditionally viewed as "internal" union concerns not affecting the employer-employee relationship. Although we agree that there is no provision in the Law which suggests that we should become

⁷ The minutes do not indicate that any vote was taken on this motion.

⁸ Minutes of a November 29, 1978 House meeting indicate that this motion was not passed unanimously "particularly from the Chairman, and the Secretary," although the August 4, 1978 letter does state that the motion was unanimous.

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involved in overseeing purely internal affairs, the BPPA's actions in this case were, in several respects, far from those normally termed "internal."

First, its action intruded upon statutory policy governing the determination of bargaining units. We have recently had the opportunity to address an analogous issue. In Allen and Robinson, 8 MLC 1518 (1981), we held that a union rule conditioning eligibility for office upon participation in a strike impaired a clear statutory policy.⁹ Therefore, the union rule was not within the otherwise legitimate domain of internal union affairs. This conclusion was consistent with cases decided under the National Labor Relations Act (NLRA). See Scofield v. NLRB, 394 U.S. 423, 70 LRRM 3105 (1969) (if a union rule invades or frustrates an overriding policy it may not be enforced, even by fine or expulsion); Local 12419, Mine Workers, 176 NLRB No. 89, 71 LRRM 1311 (1969) (union could not fine members for failing to cross a picket line in violation of a contractual no-strike clause). In the private sector, where there is a statutory policy in the NLRA the National Labor Relations Board (NLRB) is not ousted from jurisdiction because of the existence of a separate avenue of redress under the Labor Management Reporting and Disclosure Act (Landrum-Griffin).¹⁰ This basic principle, which we adopt in enforcing G.L. c. 150E, is made even stronger by the absence of a Massachusetts Landrum-Griffin as an alternate avenue of redress.

The statutory policy affected in the instant case is that set forth in Section 3 of the Law. Section 3 provides in part that the Commission:

shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation.

By its actions, the BPPA has attempted to decide for itself the scope of its appropriate bargaining unit. It has done so by informing Johnston and McNulty that they were assigned to the SIU and that the BPPA had determined that SIU employees were "managerial and confidential." Even after the Commission determined that Johnston and McNulty were not and never had been members of the SIU, the BPPA failed to immediately reinstate them. The BPPA's 1975 determination that Johnston and McNulty were members of the SIU and therefore not in the unit was clearly in derogation of the CPPA's certification, under which, in that year, it was obligated to represent all patrolmen employed by the City of Boston, including those in the SIU. The certified representative is without authority to determine

⁹Section 9A(a) of the Law provides "no public employee or employee organization shall induce, encourage or condone any strike... ."

¹⁰The relationship between the NLRA and Landrum-Griffin is discussed more fully in Allen and Robinson, *supra*.



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that it will not represent employees whom it is required by its certification to represent.

It is not a defense that the BPPA was then challenging the inclusion of employees of the SIU and P & R in the bargaining unit in City of Boston, CAS-2009, supra. The employees were in the bargaining unit until the unit was lawfully amended by either Commission action or a proper modification of the contractual recognition clause.¹¹ That the intent of the BPPA was to avoid its responsibilities to these employees under its certification is made abundantly clear by its actions following the Commission decision in Case No. CAS-2009. By February of 1976 it had been made clear to Association officers that neither Johnston nor McNulty had ever been employed within the SIU. The only evidence in support of this proposition, the computer print-out, had long since been demonstrated to be erroneous. Yet, the BPPA continued to refuse Johnston and McNulty membership on the grounds that they were not employees within the meaning of the Law, a contention disposed of in the CAS-2009 holding that P & R employees were bargaining unit members. Such conduct was an attempt to evade the impact of the Commission decision, and the BPPA's responsibilities as bargaining agent. During the litigation of Case No. CAS-2109, dealing specifically with the issue of Johnston's and McNulty's employment in SIU, the BPPA advanced not a shred of credible evidence in support of its position that they were employed in the SIU.

Second, other factors persuade us that in finding a violation here we do not invade any area of legitimate internal union discretion. Despite the BPPA's argument that the action it took related purely to membership in the union, the facts indicate otherwise. BPPA chairman Broderick invited the officers to file a clarification petition to clarify their status "as members of the bargaining unit." We note that it has been a Commission rule for many years that individual employees do not have standing to file clarification petitions.¹² It is crystal clear on this record that the Association's course of action toward these employees did not relate solely to union membership, but rather to bargaining unit membership. The BPPA threatened Johnston's and McNulty's contract coverage and their basic right to representation under the Law.

Additionally, on October 16, 1975, Broderick spoke to Superintendent Russell, a man respected by the Association, and stated it was "probably true" that the print-out was in error. Nonetheless, he allowed the actions with regard to Johnston and McNulty to stand. Moreover, the BPPA failed to follow its own rules on expulsion of members. We are not therefore concerned that we are interfering with the legitimate administration of a union's internal policies on membership.

¹¹ We make no comment as to the validity of employer/union agreements to exclude individuals from bargaining units certified by the Commission. Such cases, if they arise, will be examined on their individual merits.

¹² At the time material to this case, the Commission rule was Article 11, section 17. It is now 402 CMR 14.14.

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The Association argument that Johnston and McNulty were expelled for not following the legitimate procedures of the BPPA (appearing as told at the Commission offices to file a CAS petition they had no standing to file under our rules) is so clearly an afterthought that it is entitled to little serious consideration. In numerous prior conversations and correspondence, the BPPA had clearly indicated the reasons on which it relied in removing Johnston and McNulty -- the stated belief that they were employed within the SIU. The justification that they failed to follow reasonable union procedures is a pretext and we reject it out of hand.

The Remedy

The charging parties have sought a broad range of sanctions against the BPPA including a cease and desist order; expunging of their records; individual notices to each member of the bargaining unit; compensation for loss of overtime; refund of union dues; costs and attorneys' fees; and damages for injury to reputation and severe mental and emotional distress.

Once a violation of the Law has been found, the Commission has broad discretion in fashioning a remedy calculated to effectuate the purposes of the Law and to vitiate the effects of the violation. Board of Regional Community Colleges v. Labor Relations Commission, 388 N.E. 2d 1185, Mass. Adv. Sh. (1979) 1080. Such remedial orders may not, however, be punitive or wholly speculative in nature.

Under these general guidelines, we believe that certain of the relief requested by the charging parties is appropriate. A cease and desist order is incorporated in every Commission remedial order, and may be required by statute. See Section 11. In addition, we believe that the refund of dues (or agency fees) for that period when the employees were illegally deemed outside the bargaining unit and therefore unrepresented is nothing more than a make whole order, and its appropriateness may not be seriously doubted. Similarly, the expunging of any records which would indicate that Johnston and McNulty were ever not in "good standing" or otherwise not entitled to be treated as full Association members for any purposes is consistent with a make whole order.

On the facts of this case, we also find it appropriate that copies of this Decision and Notice to Employees be mailed to each member of the bargaining unit. The NLRB has employed such notices where the effects of the discrimination are widespread, and posting or other methods of publicizing the agency decision will be ineffective. Steelworkers Local 937, 200 NLRB 40, 81 LRRM 1445 (1972); Teamsters Local 294, 193 NLRB 920, 78 LRRM 1479 (1971) (involving unlawful suspension from membership). The Commission and the NLRB have also required wide distribution of notices in cases of employer prohibited practices. Commonwealth of Massachusetts (Commissioner of Administration), 4 MLC 1869, 1879 (1978); J.P. Stevens Co., 157 NLRB 869, 878, 61 LRRM 1437 (1966). In this case there is evidence that the damage to the reputations of both Johnston and McNulty is widespread. The allegations against them were discussed at meetings of the House of Delegates, and disseminated widely within the bargaining unit. Such misinformation caused them to be subjected to some abuse from fellow officers. It is, therefore, appropriate that



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each member of the bargaining unit be informed, at the BPPA's expense, of the injustice done.

Compensation for lost overtime is not as simple an issue, however. Johnston and McNulty argue that they are entitled to approximately \$4,000 each in lost overtime. They based this figure on essentially two facts. First, overtime records for September and October, 1974 (the erroneous print-outs) show an average of about \$250 a month in overtime for Johnston and McNulty (overtime actually performed for P&R). Second, McNulty was reluctant to do details or take overtime and refused "a great deal" of it because of four incidents, three of which involved other officers warned to watch out for him because he was "SIU" and one in September, 1976 where an officer refused to work with McNulty on an overtime assignment because of his "affiliation" with the SIU. Based on these facts, Johnston and McNulty argue that they lost about \$1,000 per year in overtime. We think that the evidence is insufficient to substantiate lost overtime as a proximate result of the BPPA's actions and that an award of the overtime sought would be impermissibly speculative.

An additional remedy which Johnston and McNulty seek is an order for costs and attorneys' fees. We have awarded costs and attorneys' fees for litigating before the Commission only in rare instances. See City of Boston and Local 285, 8 MLC 1113, 1116 (1981) and City of Quincy, 7 MLC 1081, aff'd. 7 MLC 1391 (1980) (hearing officer's award of attorneys' fees not appealed; award not found to be an error of law). It must be taken to be a basic principle of both Commission and NLRB practice that parties cannot, absent extraordinary circumstances, expect to recover their costs and attorney's fees incurred in prosecuting the agency litigation.¹³

Both we and the NLRB have departed from the basic principle in rare cases when a respondent's defenses can be said to be "frivolous." NLRB v. Food Store Employees, Local 347 (Heck's, Inc.), 417 U.S. 1, 86 LRRM 2209, 2211 (1974). On remand in Heck's, the NLRB found that, even if the respondent was engaged in clearly aggravated and pervasive misconduct, it would not assess attorneys' fees

¹³ Framingham School Committee, 4 MLC 1908 (1978), cited by Johnston and McNulty in support of their argument for attorney's fees, is inapposite. There, the union was awarded a make whole remedy covering bargaining costs incurred because of the employer's unfair labor practices. Among these were an attorney's representation at fruitless bargaining sessions. The remedy did not include an award of attorneys' fees for litigation before the Commission. In another case, we awarded an employee the costs of a private attorney to represent him in an arbitration his union had refused to prosecute. Although the union was required as a make whole matter to pay costs of the employee's arbitration, it was not required to pay attorneys' fees involved in the employee's prosecution of his unfair labor practice charge before the Commission. Local 195, Independent Public Employees Association, 8 MLC 1222 (1981).

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and litigation expenses if the defenses raised were not frivolous, but "debatable." 215 NLRB No. 142, 88 LRRM 1049, 1051-1052 (1974). Although we need not adopt or reject such an approach here we note that our decisions in City of Boston, supra and City of Quincy, supra are compatible with the NLRB's standard.

In the case before use, Johnston and McNulty argue that the BPPA's "blatant bad faith" in this matter requires the imposition of the extraordinary remedy of attorneys' fees. Even if the Association's actions can properly be so characterized, blatant bad faith alone is insufficient to lead to the award of attorneys' fees. On the basis of the relevant legal principles and the record in this case, we cannot describe the BPPA's defense as "frivolous" within the meaning of the very strict standard applied when the issue is an award of attorney's fees. Unlike the City of Boston and City of Quincy cases cited above, the defense in this matter, that the Commission lacks statutory authority to regulate purely internal union affairs, raised a difficult issue. Had we found these matters to be purely internal, as opposed to a derogation of both the BPPA's certification and a violation of statutory policies, the BPPA's defense would have prevailed. Thus, we do not find an award of attorneys' fees to be appropriate in this case.

Finally, we cannot under our statute award damages for emotional distress in this case. The BPPA's action regarding Johnston and McNulty were unwarranted and a violation of the Law. As an administrative agency we are empowered to redress such a violation within the statutory framework of Chapter 150E. Under Section 11 of the Law it is within our power to provide relief for the damage to reputation suffered by Johnston and McNulty by requiring that each and every member of the BPPA bargaining unit receive a copy of this decision. It appears to us, however, to be in the province of the courts to deal with the issues involved in an action for infliction of emotional distress, and we decline to attempt compensation in this unfair labor practice proceeding.

Conclusion

Based upon the foregoing, we conclude that the Boston Police Patrolmen's Association, Inc. has interfered with, restrained, and coerced Paul Johnston and Joseph McNulty by determining that they were not employees who were members of the bargaining unit which the Association was obliged to represent and were therefore not members of the Association.

ORDER

WHEREFORE, pursuant to the authority vested in the Commission by Section 11 of the Law, IT IS HEREBY ORDERED that the Boston Police Patrolmen's Association, Inc. shall:

1. Cease and desist from:
 - a. Interfering with, restraining, or coercing Paul Johnston and Joseph McNulty by denying them membership or the benefits and



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privileges of membership in the BPPA by alleging that they are not members of the bargaining unit represented by the BPPA;

- b. In any like or similar manner, interfering with, restraining, or coercing any employees in the exercise of their rights guaranteed under General Laws Chapter 150E.
2. Take the following affirmative action which we find will effectuate the policies of the Law:
- a. Refund to Paul Johnston and Joseph McNulty any and all dues or agency fees paid by them to the BPPA during the period of September 18, 1975 up to and including July 19, 1978 with interest at ten percent (10%) compounded quarterly from September 18, 1975;
 - b. Remove from any BPPA records any information which would indicate that either Paul Johnston or Joseph McNulty were at any time period covered by this decision not members in good standing or otherwise not members entitled to all rights and privileges of membership in the BPPA;
 - c. Mail copies of this decision and attached Notice first class, postage prepaid to each current member of the bargaining unit represented by the BPPA, and to each individual formerly a member of the bargaining unit at any time during the period September 18, 1975 through July 19, 1978; said mailing to be accomplished within thirty (30) days of receipt of this decision.
 - d. Post in conspicuous places where employees represented by the BPPA usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;
 - e. Notify the Commission in writing within ten (10) days of the service of this decision and order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman

JOAN G. DOLAN, Commissioner



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

After a hearing, the Massachusetts Labor Relations Commission has determined that the Boston Police Patrolmen's Association, Inc. has violated Massachusetts General Laws Chapter 150E, the Public Employee Collective Bargaining Law, by determining that Paul Johnston and Joseph McNulty were not members of the bargaining unit represented by the BPPA and therefore were not entitled to the full benefits and privileges of BPPA membership.

WE WILL NOT interfere with, restrain, or coerce Paul Johnston and Joseph McNulty or any member of the bargaining unit represented by the BPPA by denying them the benefits or privileges of membership on the ground that they are not members of the BPPA bargaining unit.

WE WILL refund all dues or agency fees paid by Paul Johnston and Joseph McNulty for the period September 18, 1975 through July 19, 1978 plus ten percent (10%) interest compounded quarterly.

WE WILL expunge any information from any BPPA records which would indicate that either Paul Johnston or Joseph McNulty were not members in good standing of the BPPA.

WE WILL within thirty (30) days mail copies of the Commission's decision and this Notice to all current members of the BPPA bargaining unit as well as those who were members between September 18, 1975 and July 19, 1978.

BOSTON POLICE PATROLMEN'S ASSN., INC.

JOHN BILODEAU

CHESTER BRODERICK

