

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

CITY OF BOSTON

and

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 888

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Case No. MUP-15-4877

Date issued:

February 17, 2017

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Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Robert J. Boyle, Jr., Esq. - Representing the City of Boston

Maureen Medeiros, Esq. - Representing the Service Employees  
International Union, Local 888

**HEARING OFFICER'S DECISION**

**SUMMARY**

1           The issue in this case is whether the City of Boston (City) violated Section  
2 10(a)(1) of M.G.L. c.150E (the Law) by interfering with, restraining and coercing  
3 bargaining unit member Lana Gayle (Gayle) in the exercise of her rights when it denied  
4 her representation by Service Employees International Union, Local 888 (Union) at  
5 investigatory meetings in October of 2015. For the reasons explained below, I find that  
6 the City did not violate Section 10(a)(1) of the Law as alleged.

STATEMENT OF THE CASE

1

2 On October 16, 2015, the Union filed a Charge of Prohibited Practice (Charge)

3 with the Department of Labor Relations (DLR), alleging that the City had engaged in

4 prohibited practices within the meaning of Section 10(a)(5) and 10(a)(1) of the Law. On

5 January 26, 2016, a duly-designated DLR Investigator conducted an investigation into

6 the Charge, at which time the Union withdrew its Section 10(a)(5) allegations. On

7 February 3, 2016, the Investigator issued a Complaint of Prohibited Practice

8 (Complaint) alleging that the City unlawfully denied bargaining unit member Gayle her

9 right to Union representation at an investigation that she reasonably believed would

10 lead to discipline, thereby interfering with, restraining and coercing Gayle in the exercise

11 of her rights under Section 10(a)(1) of the Law. On February 25, 2016, the City filed its

12 Answer.

13 On November 15, 2016, I conducted a hearing at which both parties had a full

14 opportunity to be heard, to examine and cross-examine witnesses and to introduce

15 evidence. The City and the Union filed their post-hearing briefs on December 16, 2016.

ADMISSIONS OF FACT

17 The City admitted to the following facts:

- 18 1. The City is a public employer within the meaning of Section 1 of the Law.
- 19
- 20 2. The Union is an employee organization within the meaning of Section 1 of the
- 21 Law.
- 22
- 23 3. The Union is the exclusive bargaining representative for certain employees
- 24 employed by the City's Centers for Youth and Families.
- 25

STIPULATIONS OF FACT

- 26
- 27
- 28 1. This matter results from the attempts on October 14 and 15, 2015, of the
- 29 management of Boston Centers for Youth and Families to interview Lana Gayle.

- 1  
2 2. Michael Sulprizio (Sulprizio) and Hector Alvarez (Alvarez) attempted to interview  
3 Gayle on October 14, 2015. She refused to answer questions and the interview  
4 was suspended. The interview was rescheduled for the next day.  
5  
6 3. Sulprizio and Alvarez interviewed Gayle on October 15, 2015.  
7  
8 4. On October 15, 2015, Union representative Ronald Patenaude (Patenaude)  
9 informed Sulprizio that he would file a charge.  
10  
11 5. To date, Gayle did not receive any discipline as a result of the events of October  
12 14 and 15, 2015.

13  
14 FINDINGS OF FACT  
15

16 For the past 20 years, Gayle has been employed by the City's Centers for Youth  
17 and Families (CYF), at the Roxbury location. At all relevant times Gayle was a CYF  
18 Building Manager in Roxbury. For the past five years, Gayle has also served as Union  
19 Steward, where she attends investigatory meetings at the request of other unit  
20 members who believe that the meetings will result in their discipline.

21 **The October 14, 2015 Meeting**

22 By telephone on October 14, 2015, Gayle's supervisor instructed her to  
23 immediately report to CYF's central office in Boston. When Gayle arrived, she went into  
24 a room where Deputy Commissioner Sulprizio and Director of Operations Alvarez  
25 informed her that they wanted to ask her questions about a co-worker. Sulprizio and  
26 Alvarez also reassured Gayle that she was not the subject of their investigation but  
27 cautioned that if she answered any questions untruthfully she could face discipline.  
28 Sulprizio and Alvarez then read aloud from a prepared set of investigatory interview  
29 questions, beginning with a preamble that stated in full:

- 30 • We are conducting an investigation regarding potential misconduct  
31 to determine whether there is just cause for discipline.

- 1           • We expect and ask you to be complete and truthful when  
2           answering our questions.  
3           • Retaliation based on participating in or relative to a complaint or an  
4           investigation is a serious separate additional infraction. If you feel  
5           that you experience or become aware of retaliation you need to  
6           contact the Department immediately.  
7           • Please keep what is discussed in this room today confidential.

8  
9           After listening to the preamble, Gayle informed Sulprizio and Alvarez that she felt  
10          uncomfortable and wanted to have her Union representative present before proceeding  
11          with the interview. Sulprizio and Alvarez responded that Gayle was not entitled to have  
12          a union representative present during the interview. Gayle disagreed and repeated  
13          multiple times that she felt uncomfortable. At that point Sulprizio terminated the  
14          meeting. By e-mail later that day, Sulprizio notified CYF's Labor Relations attorney  
15          Restilda Dhroso (Dhroso) that he had suspended Gayle's interview to confirm whether  
16          she had any right to union representation. Later that same day, Gayle contacted Union  
17          representative Patenaude and explained to him what had happened at CYF's central  
18          office with Sulprizio and Alvarez. Patenaude then informed Gayle that he would go with  
19          her to the next meeting.

#### 20          **The October 15, 2015 Meeting**

21                 By text message on October 15, 2015, Gayle's supervisor instructed her to return  
22          to CYF's central office to continue the investigatory meeting. Gayle then contacted  
23          Patenaude who stated that he would accompany her to the meeting. At CYF's central  
24          office, Patenaude and Gayle spoke briefly and then walked into the meeting room  
25          together. After they had entered the room, Sulprizio and Alvarez walked in and asked  
26          Patenaude to step outside into the hallway to discuss the purpose of the meeting.  
27          During that discussion, Sulprizio told Patenaude that Gayle was not entitled to union

1 representation during the investigatory interview because she was not the subject of the  
2 investigation. Patenaude disagreed and reiterated Gayle's concern about her feeling  
3 uncomfortable about being possibly disciplined. In response, Sulprizio reiterated that  
4 Gayle did not have a right to union representation during the interview, and if she  
5 refused to meet without a union representative, then he would discipline her. At that  
6 point, Patenaude informed Sulprizio that he would investigate filing an unfair labor  
7 practice charge against the City. Patenaude then returned to the meeting room where  
8 he informed Gayle that while he would not be able to accompany her during the  
9 meeting, she should answer the questions truthfully.

10 After Patenaude left the room, Sulprizio and Alvarez proceeded to interview  
11 Gayle, reminding her that if she answered any questions untruthfully she could be  
12 disciplined. By e-mail on October 16, 2015, Sulprizio notified Dhroso that he and  
13 Alvarez had completed Gayle's investigatory interview, and that she had fully  
14 cooperated by answering all of their questions. The City never disciplined Gayle.

#### 15 DECISION

16 A public employer violates Section 10(a)(1) of the Law when it engages in  
17 conduct that tends to interfere with, restrain or coerce employees in the exercise of their  
18 rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91, MUP-  
19 1986 (Dec. 29, 2000). The test for unlawful interference, restraint, or coercion does not  
20 turn on the employer's motive or the subjective impact of the employer's conduct on a  
21 particular employee. Id. at 91. Rather, the Commonwealth Employment Relations  
22 Board (Board) applies an objective test that focuses on the impact that the employer's  
23 conduct would have on reasonable employees' exercise of Section 2 rights. Town of

1 Winchester, 19 MLC 1591, 1595-96, MUP-7514 (Dec. 22, 1992). Thus, a public  
2 employer that denies an employee the right to union representation at an investigatory  
3 interview that the employee reasonably believes will result in discipline interferes with  
4 the employee's Section 2 rights in violation of Section 10(a)(1) of the  
5 Law. Commonwealth of Massachusetts, 26 MLC 139, 141, SUP-4301 (March 9, 2000).

6 The right to union representation arises when the employee reasonably believes  
7 that the investigation will result in discipline and the employee makes a valid request for  
8 union representation. Commonwealth of Massachusetts, 22 MLC 1741, 1747, SUP-  
9 4105 (May 16, 1996) (citing Commonwealth of Massachusetts, 4 MLC 1415, 1417-  
10 1418, SUP-2067 (March 9, 1977)). In determining the reasonableness of an  
11 employee's belief that discipline will occur, the Board tests whether a reasonable person  
12 in the employee's situation would have believed that adverse action would follow.  
13 Board of Trustees, 40 MLC 426, 427-28, SUP-10-5601 (June 27, 2014);  
14 Commonwealth of Massachusetts, 8 MLC 1287, 1289, SUP-2443 (Aug. 20, 1981).

15 The Union argues that Gayle had a Weingarten right to Union representation in  
16 October of 2015 because she reasonably believed that her investigatory interviews with  
17 Sulprizio and Alavarez on October 14 and 15 would result in discipline if she answered  
18 their questions untruthfully. The Union also argues that the City violated Section  
19 10(a)(1) when Sulprizio and Alavarez denied Gayle's request for Union representation  
20 because they ignored the "reasonableness" standard which places possession of a  
21 Weingarten right with the employee, not with the employer.

22 The City argues that it did not violate the Law when it interviewed Gayle without  
23 Union representation in October of 2015 because it made repeated assurances to her

1 that she was not the subject of the investigation and would not be subjected to  
2 discipline. Relying on Cape Cod Regional Technical H.S. District Committee, 28 MLC  
3 332, 336 (2002), the City contends that Gayle's belief that she could be disciplined was  
4 unreasonable because Weingarten rights attach only when a person is the subject of an  
5 investigatory interview or has committed prior misconduct and believes that discipline  
6 that could result from the interview. Also relying on Commonwealth of Massachusetts,  
7 22 MLC at 1748, the City asserts that because Gayle was not the subject of the City's  
8 investigation, and because Sulprizio made repeated assurances that she would not be  
9 disciplined as a result of her meetings on October 14 and 15, 2015, this shows that  
10 Gayle had no reasonable basis on which to fear discipline or invoke a Weingarten right.  
11 Last, the City argues that Sulprizio's recitation of the preamble was standard practice  
12 during witness interviews and therefore when he and Alvarez warned Gayle against  
13 untruthful answering, the warning could not have triggered a Weingarten right because  
14 Gayle had not committed any misconduct which required discipline.

15 Here, Gayle's belief that the investigatory interviews on October 14 and 15, 2017  
16 would result in discipline was unreasonable. First, although the City had interviewed  
17 Gayle as a witness, the record shows that the interviews were not investigatory as  
18 applied to her because she was not the subject of the investigation. Commonwealth of  
19 Massachusetts, 8 MLC at 1289; NLRB v. Weingarten, 420 U.S. 251, 262-63 (1975).  
20 Additionally, nothing in the record shows that Gayle had committed any prior  
21 misconduct that would lead her to believe that the City could discipline her on October  
22 14 and 15, 2015 for participating in the interviews. Commonwealth of Massachusetts,  
23 22 MLC at 1747 (the right to union representation arises when the employee reasonably

1 believes that the investigation will result in discipline). Rather, the City made repeated  
2 assurances that she was neither the target of the investigation nor the subject of any  
3 discipline.

4         Despite the Union's contention that the City created a Weingarten right when it  
5 warned Gayle that she could be disciplined for giving untruthful answers, I find that this  
6 warning did not create such a right based on Sulprizio's recitation of the preamble as  
7 standard practice for investigatory interviews coupled with his stated reason for  
8 interviewing Gayle solely as a witness, not as a subject, and his assurances that the  
9 purpose of the interview was not to seek discipline against Gayle. Commonwealth of  
10 Massachusetts, 26 MLC at 141 (citing Commonwealth of Massachusetts, 8 MLC at  
11 1289). Based on this evidence, Gayle could not have possessed a reasonable belief  
12 that she was being investigated for alleged misconduct that could have led to her being  
13 disciplined because the City never targeted her as the subject of any investigatory  
14 interview. See Commonwealth of Massachusetts, 8 MLC at 1289 (to determine  
15 reasonableness, the standard is not the disputed employee's subjective belief but  
16 whether a reasonable person in the employee's situation would have believed adverse  
17 action would follow); contrast Board of Trustees, 40 MLC at 427 (unit member  
18 reasonably believed that discipline would result from her meeting with the manager  
19 based on her past disciplinary history, thus causing her to view the manager's request  
20 differently from employees with no disciplinary history at all).

21         Consequently, because there is no evidence that the City violated Gayle's  
22 Section 2 rights by denying her Union representation during the October 14 and 15,



1 2015 interviews, I must dismiss the Complaint. Commonwealth of Massachusetts, 26  
2 MLC 139, 141 (2000).

3 CONCLUSION

4 For the reasons stated above, I conclude that the City did not violate  
5 Section 10(a)(1) of the Law when it denied Gayle Union representation at the October 14  
6 and 15, 2015 investigatory meetings.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
KENDRAH DAVIS, ESQ. HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.09, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.