

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

	*	
In the Matter of	*	
	*	
CITY OF SOMERVILLE	*	Case No. MUP-17-5980
	*	
and	*	Date Issued: May 4, 2020
	*	
SOMERVILLE POLICE	*	
EMPLOYEES ASSOCIATION	*	
	*	

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Shannon T. Phillips, Esq.	-	Representing the City of Somerville
Jack J. Canzoneri, Esq.	-	Representing the Somerville Police Employees Association

HEARING OFFICER'S DECISION

1 SUMMARY

2 The issue in this case is whether the City of Somerville (City) independently violated
3 Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: a) requiring
4 the former vice-president of the Somerville Police Employees Union (Union) to disclose
5 certain communications with the Union's president; b) prohibiting the president and former
6 vice-president from communicating with other employees about an internal affairs
7 investigation and from discussing and engaging in certain other Union activities; and c)
8 questioning them about those communications during an internal affairs interview. For the
9 reasons explained below, I find that the City violated the Law regarding the forced

1 disclosure of the Union communications and the internal affairs interviews about those
2 communications. Further, I find that the City violated the Law by issuing an overly broad
3 order prohibiting those employees from communicating with most other employees about
4 an internal investigation. However, I dismiss the allegation that the City prohibited the
5 president and vice-president from discussing and engaging in other activities.

6 Statement of the Case

7 On May 9, 2017, the Union filed a charge of prohibited practice with the Department
8 of Labor Relations (DLR), alleging that the City violated Sections 10(a)(1), (3), and (5) of
9 the Law. A DLR investigator investigated the charge¹ on September 7, 2017.² On July 6,
10 2018, the investigator issued a three-count complaint alleging that the City violated
11 Sections 10(a)(1) and (5) of the Law.³ Count I alleged that the City required the Union's
12 former vice-president Alan Monaco (Monaco) to disclose certain internal communications
13 with the Union's president Michael McGrath (McGrath) in violation of Section 10(a)(1) of
14 the Law. Count II alleged that the City violated Section 10(a)(5) and, derivatively, Section
15 10(a)(1) of the Law by not providing the Union with requested information that was relevant
16 and reasonably necessary to the Union's role as the exclusive bargaining representative.

¹ At the in-person investigation, the Union amended the charge to include an allegation that the City violated Section 10(a)(4) of the Law.

² On September 13, 2017, the investigator referred the matter to mediation. The Union and the City met with a DLR mediator on December 7, 2017, February 1, 2018, February 26, 2018, and April 5, 2018. On or about April 5, 2018, the parties informed the mediator that they were unable to settle the dispute through mediation and requested that the investigator issue a probable cause determination in the matter.

³ The investigator dismissed the remaining allegations in the case alleging that the City violated Sections 10(a)(3) and 10(a)(4) of the Law. The Union did not file a request for review pursuant to 456 CMR 15.05(9) of the portions of the charge that the investigator dismissed.

1 Count III alleged that the City independently violated Section 10(a)(1) of the Law when the
2 City: prohibited Monaco and McGrath from communicating with other employees during a
3 pending internal investigation, prohibited them from discussing and engaging in certain
4 Union activities, and conducted internal affairs interviews with Monaco and McGrath about
5 the communications referenced in Count I. The City filed an answer to the complaint on
6 July 6, 2018.

7 I conducted a hearing on March 29, 2019.⁴ Both parties had an opportunity to be
8 heard, to call witnesses and to introduce evidence. The parties submitted their post-
9 hearing briefs on October 21, 2019. Upon review of the entire record, including my
10 observation of the demeanor of the witnesses, I make the following findings of fact and
11 render the following opinion.

12 Stipulated Facts

- 13 1. The City of Somerville ("City" or "Employer") is a public employer within the
14 meaning of Section 1 of M.G.L. c.150E ("the Law"). At times material, David Fallon
15 has served as Chief of Police and Paul Trant has served as Deputy Chief of Police
16 of the Somerville Police Department ("Department").
17
- 18 2. The Somerville Police Employees Association ("Union" or "SPEA") is an employee
19 organization within the meaning of Section 1 of the Law. In that capacity, SPEA
20 serves as the exclusive bargaining agent for all patrol officers employed by the City
21 within its Police Department ("Department"). At times material, Michael McGrath
22 has served as President of the Union and Alan Monaco was the Vice-President
23 until he resigned as set forth below.
24
- 25 3. In March 2017 the City by way of email notified Somerville Police Department
26 sworn personnel, consisting of both members and non-unit members of the SPEA,
27 of the opportunity to volunteer to attend maritime trainings offered by the
28 Massachusetts Port Authority Fire Department and the Boston Police Department.
29
- 30 4. Following receipt of this email, on March 21, 2017 Union President Michael
31 McGrath sent a letter to Chief Fallon stating concerns that the maritime training

⁴ At the commencement of the hearing, the Union withdrew Count II of the Complaint.

1 and opportunities for this training constituted or impacted mandatory subjects of
2 bargaining. In this letter he requested the Department postpone the selection of
3 officers for the training until bargaining was completed.
4

- 5 5. Chief Fallon responded by letter to President McGrath on March 22, 2017. In this
6 letter he stated the Department was not creating new positions to staff a Maritime
7 Unit, but rather the email sent by Deputy Trant, was only notifying sworn officers
8 of training opportunities should they be interested in volunteering to attend. He
9 disagreed with the Union's contentions and stated that he saw "no reason why
10 simply providing notification of a voluntary training opportunity to sworn officers
11 through the attached email and indicating how many would be approved to attend,
12 in any way concerns a mandatory subject of bargaining." He agreed to meet with
13 the Union to discuss, but stated he would not hold off on the decision concerning
14 officers attending the training should they volunteer to do so.
15
- 16 6. On September 19, 2017 the Union filed a charge relating to the City's offering of
17 this voluntary training with the DLR, and the legal issue between the parties of the
18 City offering and approving officers to attend this voluntary training is not part of
19 this case, and will be heard separately under DLR Case No. MUP-17-6231.
20
- 21 7. Following receipt of the March 20, 2017 email sent by Deputy Trant, sworn
22 personnel of the Department, both unit and non-unit members of the SPEA
23 volunteered to attend this training.
24
- 25 8. SPEA Vice-President Monaco was one of the individuals who volunteered for and
26 was approved by the Department to attend this maritime training, to begin on
27 Monday April 3, 2017.
28
- 29 9. Monaco attended this training as scheduled the week of April 3, 2017. Around this
30 time as well Monaco also resigned from his position as Vice-President with the
31 Union.
32
- 33 10. On April 6, 2017, Deputy Chief Trant sent Chief Fallon an email reporting a phone
34 conversation he said he had with Alan Monaco on that date, as follows:
35

36 I just received a very disturbing phone call minutes ago from Officer
37 Alan Monaco. Officer Monaco stated to me that he has resigned
38 from his vice president position on the Somerville Police Employees
39 Association. The reason Officer Monaco stated he resigned is
40 because union president Michael McGrath spoke to him and stated
41 it would be devastating to the union if an executive board member
42 volunteered for this maritime training. Officer Monaco stated
43 President McGrath wanted him to call me, Sunday April 2, after 8
44 PM and tell me that he wanted to back out of this training. President
45 McGrath stated to wait 'til late at night, the night before this training was

1 to begin, so as to burn the spot and not leave me time to find a
2 replacement.

3
4 This very important training is for basic crew member maritime
5 training and is being provided thru the Metro Boston Homeland
6 Security Region/Urban Area Security Initiative. We are conducting
7 this training to assist Boston Police with upcoming Sail Boston. Sail
8 Boston is a Priority 1 Homeland Security event.

9
10 Officer McGrath's actions is [sic] detrimental to the Somerville Police
11 efforts to providing assistance to Boston and undermining public
12 safety.

13
14 I request to follow up with you to discuss this.

15
16 A true and accurate copy of the email is included with the joint
17 exhibits as Joint Exhibit 1.

18
19 11. Chief Fallon ordered an investigation relative to Deputy Trant's report of the phone
20 conversation, described in his email, between he and Monaco on April 6, 2017.
21 More specifically, Chief Fallon sought an investigation into the aspect of Deputy
22 Trant's report that indicated that, during the conversation in question, Monaco
23 stated to Trant that McGrath had asked him to wait until Sunday April 2 after
24 8:00p.m. to inform Deputy Trant (who was scheduling and approving officers to
25 attend the training in question) that he (Monaco) wanted to withdraw from the
26 maritime training and that when McGrath stated this to Monaco he said that the
27 late notice to the Deputy Trant (i.e. waiting until later that night) was so as to "burn
28 the spot" to not leave the Department time to find a replacement.

29
30 12. By letter dated April 19, 2017 from Internal Affairs Lieutenant Timothy Mitsakis
31 to Detective Alan Monaco, on behalf of the Police Chief, Lt. Mitsakis posed
32 questions to Det. Monaco to answer in writing relative to the investigation. A true
33 and accurate copy of the April 19 letter is included among the joint exhibits as
34 Joint Exhibit 2.

35
36 13. In addition, the investigation included letters issued by Chief Fallon to McGrath
37 and Monaco ordering them to attend investigative interviews and providing other
38 orders relating the same. The letters are dated May 3 (to McGrath) and May 4 (to
39 Monaco), a true and accurate copy of each included among the joint exhibits as Joint
40 Exhibits 3 and 4 respectively.

41
42 14. On May 11 investigative interviews were conducted pursuant to the letters sent to
43 McGrath on May 3rd, and Monaco on May 4th, referenced above. A true and
44 accurate copy of audio recordings of those interviews are included among the joint
45 exhibits as Joint Exhibits 5 and 6.

1 Findings of Fact⁵

2 The City is one of nine communities that comprise the metro Boston Urban Area
3 Security Initiative (UASI). UASI promotes regional preparedness for major metropolitan
4 areas at risk for security threats. The nine communities' public safety departments share
5 federal funds, which they receive from the Metro Boston Homeland Security Region
6 (Homeland Security).⁶ Those federal funds pay for training exercises and planning to
7 ensure security at upcoming events.

8 March and April 2017 Maritime Training Opportunities

9 In June 2017, Boston was scheduled to host a regatta of tall sailing ships, referred
10 to as the Sail One Boston event (Sail One Boston). Large crowds of people were expected
11 to attend, and Homeland Security designated Sail One Boston as being at high risk for
12 terrorist activity, a so-called Tier One threat event.⁷ In preparation for the need to have
13 boats in the water securing the harbor at Sail One Boston, UASI notified its member
14 communities in March 2017 that it would pay for a certain number of spots in classes for
15 basic crew member training.⁸ The basic crew member training was the first segment in a
16 three part maritime training, which also included boat operator search and rescue
17 (BOSAR) training and a third topic, whose subject matter was not identified in the hearing
18 record. In order to complete the maritime training, attendees needed to take all three

⁵ The DLR's jurisdiction in this matter is uncontested.

⁶ The federal funding is distributed through Boston's Office of Emergency Management.

⁷ Other Tier One threat events in 2017 included the Super Bowl and the presidential election.

⁸ Basic crew member training essentially was training as a deck hand.

1 segments in order. Both the Massachusetts Port Authority Fire Department (Massport
2 Fire) and the Boston Police Department (Boston Police) were conducting the basic crew
3 member training classes but on different weeks. The classes were held five days per week
4 for a total of thirty-five hours. UASI initially offered the City two seats in each class, but
5 subsequently increased it to three seats when certain other member communities declined
6 to use seats that UASI had offered to them.

7 After UASI made its training offer, Chief David Fallon (Chief Fallon) in consultation
8 with Deputy Chief Paul Trant (Trant)⁹ and Deputy Chief Stephen Carrabino (Carrabino)¹⁰
9 decided to offer the training as voluntary professional development training to all sworn
10 members of the Police Department rather than scheduling certain police officers for the
11 training.¹¹ The sworn members included patrol officers, who were members of the
12 Association's bargaining unit, sergeants, lieutenants and captains, who were members of
13 the superior officers' bargaining unit, deputy chiefs and the police chief. On March 20,
14 2017, Trant sent the following email message with the subject maritime training to all sworn
15 members of the Police Department:

16 The department is looking for volunteers to attend basic crew member
17 training. We received short notice of two training opportunities at Massport
18 Fire and Boston Police
19
20 BCM Basic Crew Member 35-hour Certificate Program Boat handling,
21 docking, deck work, basic navigation.
22 March 27-31 at Massport Fire

⁹ Trant oversaw support services which includes criminal investigations and administration. Administration includes oversight for details, payroll and the homeland security division.

¹⁰ Carrabino oversaw the patrol division, which includes traffic and community policing.

¹¹ For several years, the Police Department had explored the possibility of creating a maritime unit.

1 April 03-07, 2017 at Boston Police
2

3 We will send two officers to each course. Officers interested in attending,
4 please email Christine Masiello.
5

6 Please email by Wednesday March 22nd at 4 PM for Massport Fire and
7 Wednesday, March 29th at 4 PM for Boston Police training.
8

9 This is voluntary training, please read attached Training and Career
10 Development for voluntary training requests.

11 In response to Trant's email message, McGrath sent a letter to Chief Fallon on
12 March 21, 2017 expressing concerns that the maritime training and opportunities for this
13 training constituted or impacted mandatory subjects of bargaining. Also, McGrath
14 requested that the Police Department postpone the selection of officers for the training
15 until bargaining was completed, a request to which the City did not agree. On March 22,
16 2017, Chief Fallon responded in a letter where he disagreed with the Union's contentions
17 and stated that he saw no reason why providing voluntary opportunities to sworn officers
18 and indicating how many would be approved to attend implicated a mandatory subject of
19 bargaining. Although Chief Fallon agreed to meet with the Union, he declined to forego
20 the selection of police officers to attend the training.

21 Approximately twenty to twenty-five members of the patrol officers' and the superior
22 officers' bargaining units applied for the basic crew member training¹², which included
23 patrol officers, sergeants, lieutenants and captains. Chief Fallon, Trant and Carrabino
24 then met and examined the applicants' prior maritime or military training and their length
25 of service with the police department, including whether an applicant was nearing the

¹² Most of the police officers who applied for the training were patrol officers.

1 mandatory retirement age and thus, would be unavailable for future maritime assignments,
2 as well as the operational needs of the police department. They selected four patrol
3 officers, one sergeant and one lieutenant for the training.¹³ For the April 3-7 classes,¹⁴ the
4 City selected Monaco, who was a detective and the Union vice-president,¹⁵ Officer Pat
5 Canty, and Sergeant Michael Kiely (Kiely)¹⁶ for the April 3-7 classes. In a March 29, 2017
6 email to them, Trant stated:

7 Your request to attend this training course has been approved. The
8 information on where and when to arrive is below. The Quincy Police
9 [D]epartment is providing you PFD (personal floatation device) and
10 equipment. The On Duty has been marked to assign you to school training
11 in lieu of your normal work shifts. Please feel free to connect me with any
12 questions and thank you again for volunteering to attend this training.

13
14 April 3-7, 2017

15 BCM040717

16 Boston Police Harbor Unit South, 9 Terminal St. Boston, MA 02210
17 Dry Dock Av adjacent to dry dock and parking garage. Class starts 0800
18 sharp. Should be done around 1430-1500 Monday through Thursday
19 Friday

20 0800-1300 Bring PFD and cold weather appropriate attire Monday
21 through Thursday as each day is split morning classroom afternoon
22 underway.

23 Uniforms not required,

24 Anti-slip footwear suggested.

25 Helmets not required for this low speed training.

26

27 All 35 hours must be attended to receive certificate. ...

¹³ Chief Fallon, Trant and Carrabino did not select any alternates for the training or rank the remaining applicants who were not selected.

¹⁴ The City also selected Officers Kevin Goulart and Eli Kim and an unidentified lieutenant for March 27-31 training.

¹⁵ Monaco previously had served in the United States Coast Guard (Coast Guard).

¹⁶ Kiely also had served in the Coast Guard, was the Police Department's contact person with UASI and a member of its Homeland Security Division.

1 Trant also made changes to the work calendars of the six police officers who were
2 selected, if they were scheduled to work on dates when the basic crew member training
3 also was scheduled.

4 On April 3, 2017, Monaco, Canty and Kiely began the basic crew member training
5 and continued to attend classes throughout that week. On or about April 3, 2017, Monaco
6 resigned from his position as vice-president with the Union.

7 Trant's April 6, 2017 Email and the Subsequent Investigation

8 On April 6, 2017, Trant sent an email to Chief Fallon stating in part:

9 I just received a very disturbing phone call minutes ago from Officer Alan
10 Monaco. Officer Monaco stated to me that he has resigned from his vice
11 president position on the Somerville Police Employees Association. The
12 reason Officer Monaco stated he resigned is because union president
13 Michael McGrath spoke to him and stated it would be devastating to the
14 union if an executive board member volunteered for the maritime training.
15 Officer Monaco stated President McGrath wanted him to call me, Sunday
16 night, April 2, after 8 PM and tell me that he wanted to back out of this
17 volunteer training. President McGrath stated to wait till late at night, the
18 night before this training was to begin, so as to burn the spot and not leave
19 me time to find a replacement.¹⁷

20
21 This very important training is for basic crew member maritime training
22 and is being provided thru the Metro Boston Homeland Security
23 Region/Urban Area Security Initiative. We are conducting this training to
24 assist the Boston Police with upcoming Sail Boston. Sail Boston is a Priority
25 1 Homeland Security event.
26

¹⁷ Trant, who is now retired, did not typically work Sunday evenings unless an urgent matter arose. He did not have the paperwork concerning the police officers who had applied for the basic crew member training at his home. At hearing, he indicated that if Monaco had cancelled on the evening of Sunday, April 2, 2017, he would have needed to return to the office and review the other candidates' work schedules to see if anyone else was available, which included not being on vacation or having already accepted an overtime or detail assignment. If Trant had waited until Monday morning at 8 AM, his usual start time, he would not have been to secure a replacement for Monaco because the training also commenced at 8 AM.

1 Officer McGrath's actions [are] detrimental to the Somerville Police efforts
2 to provid[e] assistance to Boston and undermining public safety.
3 I request to follow up with you to discuss this.¹⁸

4 Chief Fallon then spoke with both Trant and Carrabino about Trant's April 6, 2017 email.
5 The Police Chief was concerned that the City's reputation as a "good partner" in UASI
6 would be harmed if one of its patrol officers who had volunteered for federally funded
7 training did not show up, and that it also could potentially impact public safety as the
8 necessary number of officers might not be available to work Sail Boston. He ordered the
9 Police Department's Office of Professional Standards to conduct an internal investigation
10 based upon the description in Trant's email about his conversation with Monaco in which
11 Monaco described how McGrath had asked him to wait until Sunday April 2 after 8:00 PM
12 to inform Trant that he wanted to withdraw from the maritime training and that McGrath
13 had commented that the late notice to Trant was to "burn the spot" and not leave the police
14 department time to find a replacement.

15 On April 19, 2017, Lieutenant Timothy Mitsakis (Mitsakis) from the Office of
16 Professional Standards sent a letter to Monaco stating in relevant part:

17 I am conducting an investigation relative to the subject and contents of a phone
18 conversation that took place between you and Deputy Chief Paul Trant on Thursday,
19 April 6, 2017.

20
21 This is an official department investigation and it is your duty as an employee
22 of the Somerville Police Department to answer questions asked of you truthfully,
23 directly and to the best of your knowledge. Failure to answer questions directly
24 or honestly or intentional vagueness, intentional omissions of significant facts or
25 misleading answers will be considered to be untruthful answers and will be treated
26 as such. If at any time you believe that the answers you are required to give to a
27 question tend to incriminate you in a criminal matter you may invoke your right
28 against self-incrimination under Article 12 of the Massachusetts Bill of Rights or
29 under the 5th Amendment to the United States Constitution. However, this
30 invocation must be done on a question by question basis. Take as long as you

1 need to answer these questions, but deliver your report to me via department
2 email before the end of your scheduled shift tonight.

- 3
4 1. Did you call Deputy Chief Trant on Thursday, April 6, 2017 at or about 4 PM relative
5 to your having agreed to attend Basic Crew Member (BCM) training during the
6 week of April 3-7, 2017?
7
8 2. If so, please describe the contents and duration of your conversation, and
9 specifically answer the following questions:

10
11 a. During this phone conversation, did you state to Deputy Trant that you
12 had resigned from your position on the SPEA executive board?
13

14 b. During this phone conversation, did you state to Deputy Trant that SPEA
15 President Michael McGrath contacted you on Sunday, April 2, 2017?
16

17 c. If answer to question 2(b) is yes, during this phone conversation
18 with President McGrath, did President McGrath ask you, despite having
19 volunteered and been accepted into the BCM training, not to attend this
20 training?
21

22
23 d. During your phone conversation with President McGrath, did President
24 McGrath encourage you to wait till later in the evening on Sunday to notify
25 Deputy Trant that you were withdrawing from this training?

26 The hearing record does not contain Monaco's response to Mitsakis' email.

27 On May 2, 2017, in response to a request from Chief Fallon, Trant submitted a
28 report (May 2, 2017 report) concerning his April 6, 2017 telephone conversation with
29 Monaco. Trant in his May 2, 2017 report stated in pertinent part:

30 On Wednesday, March 29, 2017 at 4:08 PM, I sent [an] email to SPD
31 sworn all email group notifying officers that Sergeant Kiely, Detective
32 Monaco and Officer Canty have been approved to attend basic crew
33 member training at Boston Police Harbor Unit on April 3-7, 2017. I assigned
34 and scheduled these three officers work schedule to attend this training.
35 Detective Monaco was scheduled to attend this training on two of his days
36 off without compensation on April 5th and 6th, 2017. Detective Monaco would
37 have been working eight straight days while attending this training, so to
38 provide him a day of rest, I removed him from his work schedule on Sunday,
39 April 2, 2017 in the detective bureau.
40

41 On Thursday, April 6, 2017 at 3:38PM, Detective Monaco called me on my
42 department issued cell phone and we had a three[-]minute phone

1 conversation. Detective Monaco began the conversation by thanking me for
2 selecting him to attend this training. I told him that I appreciated the fact that
3 he and other officers volunteered to attend this training. Detective Monaco
4 further stated that he and the other officers were really enjoying this
5 training. Detective Monaco then went on and asked me if I heard that he
6 had resigned from his position as vice president of the Somerville Police
7 Employees Association (SPEA). I told him that I had not heard. Detective
8 Monaco said the official reason he had stepped down was for family reasons
9 but he stated to me that the real reason he had stepped down was because
10 SPEA President Michael McGrath had called him on Sunday, April 2, 2017
11 about noontime¹⁹ and stated to him that it would be devastating to the union
12 if an executive board member volunteered for this maritime training.
13 Detective Monaco further stated to me that SPEA President McGrath stated
14 to him that he should wait til later on Sunday evening about 8PM to contact
15 me and inform me that he was withdrawing from this voluntary training.
16 Detective Monaco stated that President McGrath stated by notifying me late
17 in the evening that I would then be unable to schedule another officer to
18 replace Detective Monaco to attend this training. Detective Monaco stated
19 to me that he told President McGrath that he would not do as he ask[ed]
20 and withdraw and that he wanted to attend this maritime training. Detective
21 Monaco then stated to me that this was the last straw for him dealing with
22 President McGrath and that he resigned from his vice president position.

23
24 This basic crew member training that Detective Monaco attended was
25 provided thru the Metro Boston Homeland Security Region/Urban Area
26 Security Initiative. The Somerville Police participated in this training to
27 lend assistance to the Boston Police with the upcoming Sail Boston event
28 in June 2017. Sail Boston is a Priority 1 Homeland Security event. It is my
29 understanding that there are only three Level 1 security events scheduled
30 in the United States this year: [t]he [p]residential [i]ninauguration, Super
31 Bowl and Sail Boston. All other homeland security events, including Boston
32 Marathon, [W]orld [S]eries and other events are lower level events. This
33 maritime training was very important to have Somerville Police officers
34 trained to assist the City of Boston and greater Boston region. President
35 McGrath's actions by stating to Detective Monaco to withdraw from this training
36 and notify me late in the evening the night before training commenced
37 is detrimental to the Somerville Police efforts to provide assistance to
38 Boston Police and undermine public safety.

39 Also, on May 2, 2017, Mitsakis sent a letter to Kiely that stated in pertinent part:

¹⁹ I conclude that Monaco and McGrath were off duty when their alleged conversation took place on Sunday, April 2, 2017 at noon because the City had given Monaco that day off, and McGrath was assigned to the 3PM to 11 PM shift, even if he was scheduled to work that Sunday.

1 This is a formal investigation based on an allegation that Officer Michael
2 McGrath encouraged Detective Alan Monaco to withdraw from BCN
3 Training at the last minute so that the Department would be unable to find
4 another officer to replace him.

5
6 Your involvement pertains to any conversation you have had with
7 Detective Alan Monaco regarding his participation in that training.

8
9 This is an official departmental investigation and it is your duty as an
10 employee of the Somerville Police Department to answer questions asked
11 of you truthfully, directly and to the best of your knowledge. Failure to
12 answer questions directly and honestly or intentional vagueness,
13 intentional omissions of significant facts or misleading answers will be
14 considered to be untruthful answers and will be treated as such. If at any
15 time you believe that the answers that you are required to give to a
16 question tend to incriminate you in a criminal matter you may invoke your
17 right against self-incrimination under Article 12 of the Massachusetts Bill
18 of Rights or under the 5th Amendment to the United States Constitution.
19 However, this invocation must be done on a question by question basis.
20 Take as long as you need to answer these questions, but deliver your
21 report to me via the department email before the end of your scheduled
22 shift tonight.

- 23
24 1. What was your role in April's BCM Training?
25 2. With whom from the Department did you attend this training?
26 3. Did Detective Monaco speak with you about any conversation he had with
27 Officer McGrath concerning Detective Monaco's participation in the BCM
28 Training?
29 4. If he did, with specificity, document this conversation. Include information
30 about:
31 ○ Where the conversation occurred.
32 ○ When the conversation occurred,
33 ○ Whether anyone else was present.
34
35 5. During the week of training, did you hear Detective Monaco discuss this
36 subject with any other participants of the training?
37
38 6. If yes, with whom?

39 On that same date, Kiely submitted a report (May 2, 2017 report) with the following
40 answers to Mitsakis' six above questions:

- 41 1. I was assigned to training for Boat Crew Member (BCM) at the
42 Boston Police Marine Harbor Unit in South Boston from April 3rd-April 7th,

1 2017. I was refreshing my maritime skills. As for the training, I had been
2 and continue to organize, particip[ate] and assist in locating trainings for
3 a potential maritime build out. I had worked closely with Deputy Trant to
4 authorize and allow several officers to apply for an[d] attend several
5 weeks of maritime training.

6
7 2. Officers Monaco and Canty

8
9 3. Yes, on Tuesday, April 4th, 2017

10
11 4. Officer Bell (QPD) was the skipper and training officer of the boat.
12 Officer Monaco and I were on the stern of the 25 foot Quincy Police SAFE
13 Boat conducting training. The weather was heavy rain. Officer Monaco
14 and I had gone to the stern and started to talk about the maritime buildout.
15 We continued to talk and Officer Monaco told me he had resigned his
16 position with the SPEA [Union] to attend the maritime training. I asked
17 why he needed to resign from the union in order to attend the training. I
18 told him we all volunteered and the SPD nor I was intending to create a
19 new unit. Officer Monaco stated that Officer McGrath had called him
20 Thursday afternoon and told him he could not take this training as the SPD
21 had not bargained this out and as the [U]nion Vice President it would look
22 bad. Officer Monaco stated he told McGrath "he was attending the
23 training". Officer Monaco further told me that McGrath had called him
24 again Sunday afternoon and told him to "[u]nvolunteer" for the training and
25 to call Trant later on Sunday and tell him he wasn't going and this would
26 ja[m] the department up as they wouldn't have enough time to fill the
27 spot. I advised Officer Monaco to seriously think about leaving the union
28 E-Board. Officer Monaco and I were the only 2 people having this
29 conversation.

30
31 5. I do not know the answer.

32
33 6. N/A

34 May 2017 Interviews

35 Thereafter, the City also engaged the services of an outside investigator Alfred P.
36 Donovan (Donovan) from A.P.D. Management Inc. to conduct interviews as part of the
37 investigation into McGrath's alleged April 2, 2017 comments to Monaco. On May 3, 2017,
38 Chief Fallon sent a (May 3, 2017) letter to McGrath stating in part:

1 This department is conducting an investigation regarding your conduct in
2 regards to a conversation between you and Officer Monaco on Sunday, April
3 2, 2017 about whether he should participate in weekday specialized training
4 for Sail Boston scheduled to begin April 3.
5

6 On Thursday, April 6, 2017 I received an email report from Deputy Chief
7 Paul Trant reporting a conversation between Deputy Trant and Officer
8 Monaco where Officer Monaco is alleged to have reported this incident to
9 Deputy Trant. The Department is investigating whether you made
10 statements to discourage or dissuade Officer Monaco from participating in
11 that training, and/or to suggest to him how and when he should withdraw
12 from that training. Therefore, I require your presence, participation and
13 cooperation in an interview to be conducted at the Somerville Police
14 Department on Thursday May 11, 2017 at 11:00 am in the lower level
15 conference room. You have been reassigned from a first half shift to a day
16 shift on May 11th, to attend this interview. The interview will be solely
17 administrative in nature. Its purpose will be to discover facts and offer you
18 an opportunity to explain events regarding the incident.
19

20 Lieutenant Mitsakis assigned to the Office of Professional Standards is in
21 charge of this investigation. The interview will be conducted by Alfred P.
22 Donovan from A.P.D. Management Inc. who has been directed by me to
23 conduct the inquiry. You are ordered to participate and cooperate with Mr.
24 Donovan as he has been authorized to act as my agent concerning this
25 matter. He can be reached at [phone number] or [email address].
26

27 Please be advised that you have all the rights and privileges guaranteed by
28 the laws of the Commonwealth of Massachusetts and the Constitution of this
29 state and of the United States, including the right to the union representation
30 of your choice at the inquiry. The investigation does not involve any
31 allegations of criminal conduct. If it did, you would and will not be disciplined
32 for invoking your right against self-incrimination at any time during this
33 process.
34

35 The Department takes this allegation very seriously and until this
36 allegation is fully -explored and investigated, I am ordering you not to discuss
37 the investigation or the issues surrounding the investigation and/or allegations
38 with any other persons with the exception of your duly authorized union
39 representative and/or legal counsel. Violation of this order will be considered
40 insubordination and will result in discipline with my specific recommendation
41 of discharge from service.
42

43 Failure to appear at the interview or answer questions that are material and
44 relevant to this investigation that would not tend to incriminate you may
45 result in disciplinary action by the Police Department in the form of discharge.

1 As you are aware as a law enforcement officer, you are held to a high
2 standard of ethical conduct and behavior. You are required to answer
3 questions that would not tend to incriminate you directly, truthfully and to the
4 best of your knowledge and recollection. The intentional omission of
5 significant and pertinent facts will be considered untruthfulness. The
6 intentional making of untruthful statements or answers to questions could
7 result in my recommendation for discipline, including discharge from service.
8

9 Also be advised that no rescheduling of the interview will be allowed unless it
10 is approved by me in writing 24 hours prior to the time of the interview.

11 The next day on May 4, 2017, Chief Fallon sent a letter to Monaco stating in part:

12 This department is conducting an interview regarding your conduct in
13 regards to a conversation between you and Officer McGrath on Sunday,
14 April 2, 2017 about whether you should participate in weekday specialized
15 training for Sail Boston scheduled to begin April 3.
16

17 On Thursday, April 6, 2017 I received an email report from Deputy Chief
18 Paul Trant reporting a conversation between Deputy Trant and you where
19 you were alleged to have reported this incident to Deputy Trant. The
20 Department is investigating whether Officer McGrath made statements to
21 discourage or dissuade you from participating in that training, and/or
22 suggest to you how and when you should withdraw from that training.
23 Therefore, I require your presence, participation and cooperation in an
24 interview to be conducted at the Somerville Police Department on Thursday
25 May 11th at 11:00 am in the lower level conference room. You will be
26 compensated with overtime to attend this interview. Please report to the
27 Professional Standards Office. The interview will be solely administrative in
28 nature. Its purpose will be to discover facts and offer you an opportunity to
29 explain events regarding the incident.
30

31 Lieutenant Mitsakis is assigned to the Office of Professional Standards is in
32 charge of this investigation. The interview will be conducted by Alfred P.
33 Donovan from A.P.D. Management Inc. who has been directed by me to
34 conduct the inquiry. You are ordered to participate and cooperate with Mr.
35 Donovan as he has been authorized to act as my agent concerning this
36 matter. He can be reached at [phone number] or [email address].
37

38 Please be advised that you have all the rights and privileges guaranteed by
39 the laws of the Commonwealth of Massachusetts and the Constitution of this
40 state and of the United States, including the right to union representation
41 of your choice at the inquiry. The investigation does not involve any
42 allegations of criminal conduct. If it did, you would and will not be disciplined
43 for invoking your right against self-incrimination at any time during this
44 process.

1 The Department takes this allegation very seriously and until this allegation
2 is fully explored and investigated, I am ordering you not to discuss the
3 investigation or the issues surrounding the investigation with any other
4 persons with the exception of a duly authorized union representative,
5 who is not involved in this matter, and/or legal counsel.²⁰ Violation of this
6 order will be considered insubordination and will result in discipline with
7 my recommendations of discharge from service.
8

9 Failure to appear at the interview or answer questions that are material
10 and relevant to this investigation that would not tend to incriminate you
11 may result in disciplinary action by the Police Department in the form of
12 discharge.
13

14 As you aware as a law enforcement officer, you are held to a high
15 standard of ethical conduct and behavior. You are required to answer
16 questions that would not tend to incriminate you directly, truthfully and to
17 the best of knowledge and recollection. The intentional omission of
18 significant and pertinent facts will be considered untruthfulness. The
19 intentional making of untruthful statements or answers to questions could
20 result in recommendation for discipline, including discharge from service.
21

22 Also be advised that no rescheduling of the interview will be allowed unless
23 it is approved by me in writing 24 hours prior to the time of the interview.

24 Also, on May 4, 2017, Chief Fallon sent letters to Kiely and Trant notifying them that
25 Donovan would interview them on May 11, 2017. Chief Fallon's letter to Kiely stated in
26 pertinent part:

27 This department is conducting an investigation regarding your conduct in
28 regards to a conversation between you and Officer Monaco on Tuesday, April
29 4, 2017 about whether he should participate in weekday specialized training
30 for Sail Boston scheduled to begin April 3.
31

32 On Thursday, April 6, 2017, I received an email report from Deputy Chief
33 Paul Trant reporting a conversation between Deputy Trant and Officer
34 Monaco where Officer Monaco is alleged to have reported this incident to
35 Deputy Trant. The Department is investigating whether you had any
36 conversation with Officer Monaco concerning statements made by Officer
37 McGrath to Officer Monaco to discourage or dissuade him from participating

²⁰ Chief Fallon testified that he most likely adopted the language in this paragraph from a recommendation that Donovan had made. The Police Chief stated that the purpose of the language was to preserve the integrity of the investigation.

1 in that training, and/or to suggest to him how and when he should withdraw
2 from that training. Therefore, I require your presence, participation and
3 cooperation in an interview to be conducted at the Somerville Police
4 Department on Thursday May 11th, 2017 at 10:00 am in the lower level
5 conference room. You are already assigned to work a day shift on May 11th,
6 2017. The interview will be solely administrative in nature. Its purpose will
7 be to discover facts and offer you an opportunity to explain events regarding
8 the incident.²¹

9 Chief Fallon's letter to Trant stated in pertinent part:

10 This department is conducting an investigation regarding your conduct in
11 regards to a conversation between Officer McGrath and Officer Monaco on
12 Tuesday, April 4, 2017 about whether he should participate in weekday
13 specialized training for Sail Boston scheduled to begin April 3.

14
15 On Thursday, April 6, 2017, I received an email report from you reporting a
16 conversation between you and Officer Monaco where Officer Monaco is
17 alleged to have reported this incident to you. The Department is investigating
18 whether you had any conversation with Officer Monaco concerning
19 statements made by Officer McGrath to Officer Monaco to discourage or
20 dissuade him from participating in that training, and/or to suggest to him
21 how and when he should withdraw from training. Therefore, I require
22 your presence, participation and cooperation in an interview to be
23 conducted at the Somerville Police Department on Thursday, May 11th,
24 2017 at 10:00 am in the lower level conference room. You are already
25 assigned to work a day shift on May 11th, 2017. The interview will be
26 solely administrative in nature. Its purpose will be to discover facts and
27 offer you an opportunity to explain events regarding the incident.²²
28

²¹ The remaining five paragraphs of Chief Fallon's May 4, 2017 letter to Kiely were the same as the final five paragraphs in Chief Fallon's May 3, 2017 letter to McGrath and his May 4, 2017 letter to Monaco, including the order not to discuss the investigation or the issues surrounding the investigation and/or allegations with any other persons with the exception of your duly authorized union representative and/or legal counsel.

²² The remaining five paragraphs of Chief Fallon's May 4, 2017 letter to Trant were the same as the final five paragraphs of Chief Fallon's May 3, 2007 letter to McGrath and May 4, 2017 letters to Monaco and Kiely, including Chief Fallon's order referenced in footnote 13 above.

1 May 11 Interviews with Kiely and Trant

2 On May 11, 2017, Donovan interviewed Kiely with Mistakis and Carrabino present.
3 Most of the information that Kiely provided during his interview is also present in his May
4 2, 2017 report. The only other pertinent information that Kiely provided during the
5 interview, which was not addressed in his report, was that the day after he spoke with
6 Monaco, he contacted Carrabino about selecting an alternate police officer for this training
7 or any future training, if one of the police officers, who originally was selected to attend a
8 training, cancelled.²³

9 Also, on May 11, 2017, Donovan interviewed Trant. Most of the information that
10 Trant provided during his interview is also present in his May 2, 2017 report and his April
11 6, 2017 email. However, he provided background information in the interview as to why
12 Monaco called him on April 6, 2017. Earlier that day, Trant and Monaco had exchanged
13 text messages in which Monaco had asked permission to use a vacation day on the
14 following Sunday, May 9, 2017, which was a workday for Monaco. Monaco was
15 scheduled to begin BOSAR training on Monday, May 10, 2017. Trant approved the
16 request. Monaco then called Trant to thank him and noted how much he was enjoying
17 the maritime training.²⁴

²³ Kiely did not testify at the hearing, but the City introduced a copy of the transcript of his interview as City Exhibit 5.

²⁴ I decline to make other findings based on Donovan's May 11, 2017 interview with Trant, because a copy of the transcript of his interview was introduced into the record as City Exhibit #5 rather than as a joint exhibit. Instead, I have relied on Trant's testimony at hearing, where he was subject to cross-examination and under oath, to make other findings in this decision.

1 May 12th Interviews with Monaco and McGrath²⁵

2 On May 12, 2017, Donovan interviewed Monaco and McGrath separately.²⁶
3 Mitsakis, Carrabino, Jack Canzoneri, Esq. (Canzoneri) representing McGrath and
4 Monaco, and Julie McKenzie, Esq. representing the City were present for both interviews.
5 During Monaco's interview, Donovan asked him whether he had a phone conversation
6 with McGrath after Monaco was selected for the basic crew member training on Friday,
7 March 29, 2017. Monaco confirmed that on March 31, 2017, he had a phone conversation
8 with McGrath but stated that McGrath had "not directly" asked him not to attend the
9 training. When Donovan asked Monaco to explain what he meant, Monaco stated that
10 McGrath informed him that it would be detrimental to the Union for an executive board
11 member, which Monaco was, to attend the maritime training if the Union had to fight the
12 matter in the future.

13 Monaco also indicated that he had a second conversation with McGrath on
14 Sunday, April 2, 2017. When Donovan asked Monaco whether McGrath tried to convince
15 him not to attend the training, Monaco replied that McGrath told him that it was voluntary,
16 and that Monaco still could call and back out. Monaco added that he had already resigned
17 as vice-president and that he wanted to attend the training. Donovan then inquired
18 whether McGrath had asked Monaco to call in and withdraw from the training after a
19 certain time because the City would not be able to fill the training spot, i.e. "jam" the City.

²⁵ Neither Monaco nor McGrath testified at the hearing, but the parties introduced copies of the transcripts of their interviews into the record as joint exhibits.

²⁶ The parties stipulated that Donovan's interviews with Monaco and McGrath took place on May 12, 2017 despite the proposed May 11, 2017 date in Chief Fallon's May 3 and May 4, 2017 letters and despite the dates listed on Joint Exhibits 5 and 6, the transcripts of Donovan's interviews with McGrath and Monaco respectively.

1 Monaco replied that McGrath told him that Monaco could back out because it was
2 voluntary. Monaco then stated that he told McGrath that he was not going to call Trant,
3 his department head, at 9 o'clock at night.

4 Regarding the conversation with Kiely, Monaco admitted that they had a
5 conversation although he was unsure whether it took place on the training boat as Kiely
6 previously noted. However, Monaco challenged Kiely's description of what Monaco told
7 him about McGrath's comments concerning jamming up the spot. Monaco stated that he
8 had repeated to Kiely how McGrath had told him that he could back out of the training
9 and that Monaco refused to do so.

10 Also, Monaco confirmed that he had called Trant to thank him for allowing him to
11 take a vacation day on Sunday, April 9, 2017. When Donovan asked Monaco if he had
12 told Trant that McGrath asked him to call after 8 PM and cancel his attendance at the
13 training to burn the spot, Monaco replied that what he recalled saying to Trant was that
14 McGrath told him that he could back out and that Monaco was not going to do so. In
15 response to a clarifying question from Donovan, Monaco replied that he could not recall
16 his own exact words to Trant, but that Monaco knew what he said to Trant. In response
17 to another inquiry from Donovan, Monaco maintained that McGrath never said the
18 "specific words" that Monaco should call in at a certain time and cancel in order that the
19 City could not fill the spot.

1 McGrath²⁷

2 McGrath confirmed that he had spoken with Monaco on March 31, 2017 and April
3 2, 2017. He stated that he did not speak about the same subject matter with Monaco on
4 both days. In response to an inquiry from Donovan, McGrath denied that he asked or
5 suggested to Monaco during either conversation that Monaco not attend the training.
6 McGrath stated that he told Monaco that the Union would probably file a grievance over
7 the training. He added that because Monaco was an executive board member, his
8 participation in the training might jeopardize the grievance.²⁸ Monaco denied telling
9 Monaco to call in late and cancel his attendance at training in order that the City could
10 not fill the spot. When questioned by Donovan about the phrase “jam the spot”, he stated
11 that he did not know what the phrase meant and did not use it during his conversation
12 with Monaco.²⁹

13 The record before me does not reveal that the City took any further action as a
14 result of the interviews of Kiely, Trant, Monaco or McGrath.

15 Sail Boston 2017

16 Sail Boston took place in June 2017. The patrol officers, who attended the
17 maritime training referenced above, worked as crew members on boats from other UASI

²⁷ Canzoneri noted the Union’s objection to the interview and affirmed that McGrath’s presence at the interview was not a waiver of any of the Union’s rights under Chapter 150E.

²⁸ McGrath indicated that other than Monaco, he did not speak with any other patrol officers that the City had selected to attend the maritime training,

²⁹ Both the Union and the City agreed that I need not decide whether McGrath made the comments on March 31 and April 2, 2017, which were the subject of Donovan’s investigation. Thus, I make no finding as to what McGrath actually said.

1 member communities. It is unclear whether all the patrol officers were assigned to the
2 same boat each day or even on the same boat on consecutive days.

3 Opinion

4 Count I-April 19, 2017 Letter to Monaco

5 A public employer violates Section 10(a)(1) of the Law when it engages in conduct
6 that may reasonably be said to interfere with, restrain or coerce employees in the exercise
7 of their rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91, MUP-
8 1986 (December 8, 2000); Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11, 1999);
9 Town of Winchester, 19 MLC 1591, 1595, MUP-7514 (December 12, 1992); Groton-
10 Dunstable Regional School Committee, 15 MLC 1551, 1555, MUP-6748 (March 20, 1989).
11 The focus of a Section 10(a)(1) analysis is the effect of the employer's conduct on
12 reasonable employees' exercise of their Section 2 rights. Town of Winchester, 19 MLC at
13 1596. The Commonwealth Employment Relations Board (Board) does not analyze either
14 the motivation behind the conduct or whether the coercion succeeded or failed. Groton-
15 Dunstable Regional School Committee, 15 MLC at 1555-1556. The Board's inquiry
16 focuses on the objective impact that the employer's conduct would have on a reasonable
17 employee under the circumstances. Quincy School Committee, 27 MLC at 91. The
18 subjective impact of the employer's conduct is not determinative. City of Fitchburg, 22 MLC
19 1286, 1292, MUP-9843 (November 28, 1995). Section 2 of the Law provides:

20 Employees shall have the right of self-organization and the right to form,
21 join, or assist an employee organization for the purpose of bargaining
22 collectively through representatives of their own choosing on questions of
23 wages, hours, and other terms and conditions of employment, and to
24 engage in lawful concerted activities for the purpose of collective bargaining
25 or other mutual aid or protection, free from interference, restraint or
26 coercion. An employee shall have the right to refrain from any or all such
27 activities ...

1 The issue in Count I is whether the City independently violated Section 10(a)(1) of
2 the Law when in an April 19, 2017 letter, it required Monaco to answer certain questions
3 in writing about his communications with McGrath. The questions included whether he
4 had a Sunday, April 2, 2017 telephone conversation with McGrath in which McGrath asked
5 him to withdraw from the basic crew member training for which Monaco previously had
6 volunteered, and whether McGrath had encouraged him to wait until later that evening to
7 withdraw. As a threshold matter, I must determine whether Monaco's conversation with
8 McGrath was concerted activity protected by Section 2 of the Law. The conversation was
9 an off-duty discussion between the Union president and vice-president regarding the issue
10 of maritime training over which the Union had requested to bargain with the City, was
11 considering filing a grievance, and thereafter filed a charge of prohibited practice in Case
12 No. MUP-17-6231. A discussion between the Union president and vice-president about
13 an issue that was the subject of a bargaining demand and other contemplated action was
14 concerted activity protected by Section 2 of the Law. The Supreme Judicial Court noted
15 in Nancy Chadwick vs. Duxbury Public Schools, 475 Mass. 645 (2016), that consistent
16 with the statutory emphasis on protecting the right to collective bargaining, the Board has
17 interpreted Section 10(a)(1) of the Law as protecting the confidentiality of communications
18 between a union and its members in labor disputes. 475 Mass. at 651 (declining to find a
19 privilege protecting communications between a union member and a union representative
20 applicable in a civil action alleging employment discrimination).

21 However, the City contends that the April 2, 2017 discussion between Monaco and
22 McGrath lost its protected status under the Law because of the nature of McGrath's
23 alleged comments during the discussion. Concerted activity can lose its protected status

1 if it is unlawful, violent, in breach of contract in certain circumstances, disruptive or
2 indefensibly disloyal to the employer. City of Lawrence, 15 MLC 1162, 1167, MUP-6986
3 (September 13, 1988) (citations omitted). Here, the City argues that once Monaco had
4 volunteered for the training and had been accepted,³⁰ McGrath's alleged entreaty to
5 Monaco to withdraw from the training late on Sunday evening in order to make it difficult
6 for the City to replace Monaco was disruptive and indefensibly disloyal.

7 The City cited to two cases, Town of Bolton, 32 MLC 13 MUP-01-3255 (June 27,
8 2005) and Commonwealth of Massachusetts, 8 MLC 1462, SUP-2328 (November 4,
9 1981), in support of its argument that McGrath's April 2, 2017 comments lost their statutory
10 protection because he exhorted Monaco to withhold services by withdrawing from the
11 training. However, both cases involved Union officials whose unprotected actions caused
12 individuals, without permission, either to leave their posts, see Town of Bolton, 32 MLC at
13 18, or not to perform their assigned duties, see Commonwealth of Massachusetts, 8 MLC
14 at 1464-1465. Those cases can be distinguished from the facts here because Monaco
15 immediately rejected McGrath's alleged suggestion that he withdraw from the training, and
16 thus, there was no actual withholding of services.

17 Additionally, the Union points to several prior Board cases in which the Board
18 declined to find that conduct was disruptive and lost its protected status in the absence of
19 a showing of actual disruption. See City of Haverhill, 8 MLC 1690, 1692, MUP-4204
20 (December 16, 1981) (in the absence of evidence, declining to assume disruption resulted
21 from police union president's letter to the editor about the poor condition of police cruisers);

³⁰ The City acknowledges that because the maritime training was voluntary, McGrath's speech would have been statutorily protected if McGrath had encouraged patrol officers not to volunteer for the maritime training when the training was posted.

1 Southeastern Regional School District Committee, 7 MLC 1801, 1808, MUP-2970
2 (February 2, 1981) (finding teachers' boycott of employer-sponsored parents' night and
3 holding of their own alternative parents' night to be concerted, protected activity that did
4 not substantially disrupt the employer's programs). Here, even if McGrath made the
5 alleged statements, which pursuant to the parties' agreement at hearing, I make no finding
6 as to whether he did, Monaco immediately rejected McGrath's suggestion. The City sent
7 the same number of police officers for basic crew member training on the week of April 3,
8 2017 and for BOSAR training on the week of April 10, 2017 that it previously notified USAI
9 that it would send. The Union is correct that the City experienced no actual disruption.
10 Additionally, the City's reputation with UASI was not harmed, which Chief Fallon expressed
11 concerns about in his testimony, because the City supplied UASI with the promised
12 number of police officers for maritime training. Thus, the City's reputation was not harmed
13 in a manner consonant with prior Board precedent addressing loss of protected status
14 because of indefensible disloyalty. See City of Lawrence, 15 MLC at 1166 (rejecting
15 argument that union's effort to include superior officers in no confidence vote was a
16 disloyal attempt to undermine the police chief's authority); and Southeastern Regional
17 School District Committee, 7 MLC at 1809 (holding alternative parents' night cannot be
18 considered disloyal disparagement of the employer's 'brand' because it does not challenge
19 the school committee's educational judgment as to what forms of parent-teacher
20 communication were appropriate).

21 However, there are differences in the present case and the cases to which the
22 Union cited above, notably that the underlying allegation here is that the Union president,
23 sought to encourage the vice-president to withhold his services as a police officer in a

1 manner that negatively could have impacted public safety. The City's right to inquire about
2 a potential for disruption of public safety services may need to be balanced against union
3 officials' right to discuss controversial and provocative ideas amongst themselves. See
4 generally, City of Holyoke, 9 MLC 1876, 1881, MUP-4955 (May 27, 1983) (noting that
5 police union president's proposed letter to outside paid detail users was protected, in part,
6 because he did not intend to disrupt services). However, were I to do such a balancing
7 test here, the City still would not prevail. When the City sent the April 19, 2017 letter to
8 Monaco, it was aware that there was no potential for a disruption of public safety. If
9 Monaco had not made his statements to Trant, the City would have been unaware that
10 McGrath had even allegedly proposed to Monaco that he withdraw from the training late
11 on Sunday night. Monaco reported his April 2, 2017 conversation with Trant five days
12 after it took place, and after he had rejected McGrath's supposed suggestion. As noted
13 above, the requisite number of police officers already had attended four out of five days of
14 basic crew member training when Monaco made his alleged comments to Trant, and
15 Monaco informed Trant that he fully intended to go to BOSAR training the following week.
16 Also, the record contains no evidence showing that after April 2, 2017, McGrath made any
17 further effort to discourage Monaco from attending the training. Finally, the record does
18 not show that either McGrath or Monaco ever told other unit members about their April 2,
19 2017 discussion. Rather, based upon the reference in Kiely's May 2, 2017 report, Monaco
20 had cited personal matters to other Union members as the reason for his resignation from
21 the Union's executive board. Also, McGrath, at his May 12, 2017 internal affairs interview,
22 denied contacting any other unit members about withdrawing from the training after they
23 had volunteered, and the City presented no evidence to the contrary at hearing. Absent

1 any showing that the City reasonably could have concluded that there was a potential for
2 disruption of public safety, and in light of the fact that exactly what McGrath said was
3 unresolved, I decline to find that McGrath's alleged April 2, 2017 statements were not
4 protected. The statutory protection for discussions between Union officials should not be
5 stripped away solely based on speculation.

6 Because I have determined that the April 2, 2017 conversation between McGrath
7 and Monaco was concerted activity that was statutorily protected, the City's April 19, 2017
8 letter to Monaco compelling him to answer questions would have a chilling effect on a
9 reasonable employee. See City of Lawrence, 15 MLC at 1166 (conducting an inquiry into
10 unit members who held a no confidence vote in the police chief would have a chilling effect
11 on reasonable employees). As in the City of Lawrence case, pursuant to the Police Chief's
12 order, a superior officer, a lieutenant in the Office of Professional Standards, sent the April
13 19, 2017 letter to Monaco. Also, the April 19, 2017 letter noted that a failure to answer
14 questions directly or any intentional omission would be treated as untruthfulness.
15 Therefore, the City in Count I of the complaint independently violated Section 10(a)(1) of
16 the Law.

17 Count III³¹

18 The issues in Count III of the Complaint are whether the City independently violated
19 Section 10(a)(1) of the Law by: a) issuing the May 3 and 4, 2017 letters to Monaco and
20 McGrath respectively notifying them of an investigation into their April 2, 2017 discussion
21 and ordering them not to discuss the investigation with other employees with the exception
22 of their duly authorized union representatives, who were not involved in this matter, and/or

³¹ As noted in the statement of the case, the Union withdrew Count II of the case at hearing.

1 legal counsel; b) prohibiting Monaco and McGrath from discussing and engaging in certain
2 union activities with each other, including an ongoing “work to rule” campaign and the
3 mobilization of unit members to refrain from accepting voluntary training opportunities or
4 overtime assignments; and c) conducting internal affairs interviews with Monaco and
5 McGrath on May 12, 2017. I examine each of the allegations in seriatim.

6 Restriction on Discussion About Investigations

7 I turn first to consider whether the orders in the May 3 and May 4, 2017 letters
8 restricting Monaco’s and McGrath’s rights to communicate about the internal investigation
9 or the underlying allegations with other employees, with the exception of union
10 representatives or legal counsel, violated the Law. The City in its post-hearing brief argues
11 that it needed to impose the restrictions on Monaco’s and McGrath’s communications in
12 order to preserve the integrity of the investigation. Chief Fallon’s testified similarly as to
13 why he believed that Donovan, the investigator that the City had hired, recommended that
14 the language be included in the May 3 and May 4, 2017 letters to McGrath and Monaco.
15 While there may be circumstances under which an employer can restrict employee
16 communications about an internal investigation in order to protect the integrity of the
17 investigation, those circumstances do not exist here. The hearing record is devoid of any
18 information showing why the City needed to restrict Monaco or McGrath’s communications
19 with almost all other bargaining unit members or even other police department employees.
20 The only participants in the April 2, 2017 telephone call were Monaco and McGrath and
21 no evidence shows that other unit members were even aware of the conversation. Further,
22 the City made no effort to address its concerns with a narrowly tailored order potentially
23 restricting communications between Monaco and McGrath about the investigation or

1 between them and Kiely and Trant, the other interview subjects, regarding the
2 investigation. Finally, contrary to the City's claim, its inclusion of similarly over broad
3 language in the May 4, 2017 letters to Kiely and Trant does not make it lawful.

4 Section 2 of the Law protects employees' rights to come together for the purposes
5 of mutual aid or protection. Here, the City's order, with no objective basis to support it,
6 was overly broad and interfered with Monaco's and McGrath's exercise of their rights
7 under the Law. See generally Bristol County Sheriff's Department, 31 MLC 6, 17, MUP-
8 2872 (July 15, 2014) (speaking at roll call prior to union's informational picketing, sheriff's
9 criticism of troublemakers and employees who lowered morale was overly broad because
10 it failed to make a distinction between permissible union activity and employee actions that
11 were outside the realm of protected activity); Commonwealth of Massachusetts, 8 MLC at
12 1465 (ordering tax examiner to refrain from visiting the assessing department unless
13 absolutely necessary to perform his assigned duties, on its face, overly limits the rights of
14 a union steward and employee to engage in discussions of union business during non-
15 working time). Therefore, the City's conduct independently violated Section 10(a)(1) of
16 the Law.

17 Prohibitions in the May 3 and May 4, 2017 Letters That Allegedly Restricted Monaco and
18 McGrath from Discussing and Engaging in a Work to Rule Campaign and a Mobilization
19 of Unit Members Not to Accept Voluntary Training Opportunities or Overtime Assignments

20 Here, paragraph 22 of the Complaint also alleges that as a result of the restrictions
21 on communications in the May 3 and May 4, 2017 letters, Monaco and McGrath were
22 prohibited from discussing certain union activities with each other including a work to rule
23 campaign and a mobilization of unit members from accepting voluntary training
24 opportunities or overtime assignments in violation of Section 10(a)(1) of the Law.

1 However, the hearing record contains no evidence showing that that the Union and, in
2 particular Monaco and McGrath, both of whom did not testify at the hearing, were engaged
3 in a work to rule campaign or a mobilization effort of unit members not to accept voluntary
4 training opportunities or overtime assignments. In the absence of any showing that
5 Monaco or McGrath were engaged in those protected activities, I decline to find that the
6 City's May 3 and May 4, 2017 letters interfered, restrained or coerced them in the exercise
7 of those activities. Thus, I dismiss this portion of the Complaint alleging an independent
8 Section 10(a)(1) violation.

9 May 12, 2017 Interviews of Monaco and McGrath

10 In City of Boston, 10 MLC 1120, 1134-35, MUP-4907, MUP-4759 (August 23,
11 1983), the Board noted that "[i]nterrogation of an employee is susceptible of abuse, and a
12 point may be reached where it can be said that such a technique is undertaken not to
13 further the employer's legitimate objectives, but rather to harass, coerce and interfere with
14 an employee's protected actions." 10 MLC at 1135, n.14. Here, the City had its agent
15 Donovan conduct separate internal affairs interviews of Monaco and McGrath on May 12,
16 2017, both of which were recorded. The two deputy chiefs, Carrabino and Trant, were
17 present as well as counsel for both employees and the City. The City contends that the
18 interviews were lawful because they were narrowly tailored with a purpose of discovering
19 exactly what Monaco and McGrath talked about in their April 2, 2017 conversation and
20 whether Monaco subsequently made certain comments about that conversation to Kiely
21 and Trant. In Bristol County Sheriff's Dep't, 31 MLC at 6, the Board, in part, considered
22 two different allegations regarding internal affairs interviews and whether those interviews
23 independently violated Section 10(a)(1) of the Law. In one of the interviews, the employer

1 posed questions about the means and methods by which the union was organizing a lawful
2 informational picket. Id. at 17. Because the sole focus of the employer's questions at the
3 interview was the employees' concerted, protected activity, i.e. the informational picket,
4 the Board determined that the manner and types of questions posed to the employees
5 violated Section 10(a)(1) of the Law. Id. The second allegation in the case involved internal
6 affairs interviews that were conducted about whether a corrections officer and union
7 supporter had left his assigned post to address roll call and whether he had threatened
8 other officers in some way if they refused to picket. Id. at 18. However, because the Board
9 determined that the employer had legitimate concerns about whether the corrections
10 officer had abandoned his post to address roll call and whether he had threatened
11 employees during that roll call, the Board concluded that the questions to him during the
12 interviews were not unlawful. Id.

13 Upon review, the facts of the present case are more closely aligned with the first
14 allegation in the Bristol County Sheriff's Dep't case. Here, the City did not have a separate,
15 legitimate concern that it was investigating as part of Monaco's and McGrath's May 12th
16 interviews. Rather, the only issue that the City inquired about was whether Monaco and
17 McGrath had spoken on April 2, 2017 and what was the content of their conversation, a
18 conversation that I already have determined was concerted, protected activity. Although
19 Donovan also asked Monaco whether he had spoken with Kiely and Trant, those inquiries
20 were intertwined with the statutorily protected April 2nd conversation, specifically what
21 Monaco told Kiely and Trant about that conversation. Accordingly, the City's questions to
22 Monaco and McGrath at the May 12th interviews violated Section 10(a)(1) of the Law.

1 Conclusion

2 Based on the record and for the reasons stated above, I conclude that the City
3 independently violated Section 10(a)(1) of the Law in the manner alleged in Count I of the
4 complaint. Also, the City independently violated Section 10(a)(1) of the Law regarding
5 those allegations in Count III of the Complaint pertaining to the overly broad restrictions in
6 the May 3 and May 4, 2017 letters regarding Monaco's and McGrath's communications
7 with other employees and to their May 12, 2017 internal affairs interviews. I dismiss the
8 allegation in Count III of the Complaint that those restrictions on communications
9 prohibited Monaco and McGrath from discussing and engaging in certain Union activities
10 including a work to rule campaign and a mobilization of unit members to discourage them
11 from accepting voluntary training opportunities or overtime assignments in violation of
12 Section 10(a)(1) of the Law.

13 Order

14 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City
15 shall:

16 1. Cease and desist from:

17

18 a) Interfering with, restraining or coercing employees in the exercise of
19 their rights under the Law by requiring a former union official to
20 answer certain questions about his internal union communications
21 that constituted concerted, protected activity.

22

23 b) Interfering with, restraining or coercing employees in the exercise of
24 their rights by imposing overly broad restrictions upon employee
25 communications.

26

27 c) Interfering, restraining or coercing bargaining unit members in the
28 exercise of their rights under the Law by unlawfully interrogating
29 them regarding activities protected under Section 2 of the Law.

- 1 d) In the same or similar manner interfering with, restraining or coercing
- 2 employees in the exercise of their rights guaranteed under the Law.
- 3
- 4 2. Take the following action that will effectuate the purposes of the Law:
- 5
- 6 a) Refrain from interfering with, restraining or coercing employees in the
- 7 exercise of their rights under Section 2 of the Law.
- 8
- 9 b) Immediately post signed copies of the attached Notice to Employees
- 10 in all conspicuous places where members of the Union's bargaining
- 11 unit usually congregate, or where notices are usually posted,
- 12 including electronically, if the City customarily communicates with
- 13 these unit members via intranet or email and display for a period of
- 14 thirty (30) days thereafter, signed copies of the attached Notice to
- 15 Employees.
- 16
- 17 c) Notify the DLR in writing of the steps taken to comply with this
- 18 decision within ten (10) days of receipt of this decision.

SO ORDERED.

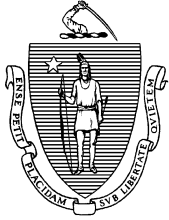
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall be final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the City of Somerville (City) independently violated Section 10(a)(1) of M.G.L. c.150E (the Law) pursuant to a charge of prohibited practice in Case No. MUP-17-5980 that the Somerville Police Employee Association filed on May 9, 2017.

Section 2 of the Law gives public employees the following rights:

to engage in self-organization to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights under the Law by requiring a former union official to answer certain questions about internal union communications, which constituted concerted activity protected under Section 2 of the Law.

WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights by imposing overly broad restrictions upon employee discussions.

WE WILL NOT interfere, restrain or coerce bargaining unit members in the exercise of their rights under the Law by unlawfully interrogating them regarding activities protected under Section 2 of the Law.

WE WILL NOT in the same or similar manner interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL take the following affirmative that will effectuate the purposes of the Law:

Refrain from interfering with, restraining or coercing employees in the exercise of their rights under Section 2 of the Law.

City of Somerville

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).