



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
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March 5, 2015

Ferruccio Romeo
Winthrop Police, MassCOP Local 421
9 Hitching Hill Road
Saugus, MA 01906

Howard Greenspan, Esq.
220 Broadway, #204
Lynnfield, MA 01940

RE: MUP-14-4210, Town of Winthrop

Dear Mr. Romeo and Mr. Greenspan:

On December 12, 2014, the Winthrop Police, MassCOP Local 421 (Union) filed a charge of prohibited practice with the Department of Labor Relations (Department), alleging that the Town of Winthrop (Town) had engaged in prohibited practices within the meaning of Sections 10(a)(1), 10(a)(2), 10(a)(3), and 10(a)(4) of Massachusetts General Laws, Chapter 150E (the Law). Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04 of the Department's Rules, I conducted an in-person investigation of the allegations contained in the charge on January 14, 2015. Based on the evidence presented during the investigation, I have decided to dismiss the charge for the reasons explained below.

BACKGROUND

Ferruccio Romeo (Romeo) has served as Union President for eleven years. During his time as Union President, he has reviewed, filed, and supported numerous grievances and filings against the Town.¹ Romeo made a practice of posting Union grievances and responses from Town Manager James McKenna (TM) or Chief of Police Terry Delehanty (Chief) to a bulletin board.

¹ The Union submitted into evidence a series of grievances that include various allegations of violations of the collective bargaining agreement between the parties and filings at the Massachusetts Commission Against Discrimination.

One of these grievances was filed on August 15, 2014, and concerned Officer Judy Racow (Racow). Romeo posted a response to the grievance by the Chief dated August 21, 2014. On or about September 8, 2014, Racow sent a letter to the TM stating that the Chief's response included unnecessary comments and caused her embarrassment and humiliation. Racow requested that her grievance be moved to step two of the grievance procedure. On September 11, 2014, Town Human Resources Director Stacy DiChiara (DiChiara) sent Romeo an email stating:

Judy Racow has come to us saying she is being harassed by her co-workers due to the chief's response to her grievance being hanged on a bulletin board in the station. I have spoken to the Chief as well as [TM] and it has been concluded that neither of them hanged the response. We would like to request the response be taken down to avoid Officer Racow feeling harassed or uncomfortable in her place of work.

On September 12, 2014, Romeo responded to DiChiara stating that he would not take down the response, and that this request and any future similar requests may be considered a violation of Section 10(a)(1) of the Law.

On November 20, 2014, the Chief sent an email to Romeo stating:

On November 19th, 2014, I noticed on the shared Bulletin Board between the Union and the Department dated November 18th, 2014 a letter from Officer Racow to [TM]. This letter is not in compliance with Article VII Section 2 of the Collective Bargaining Agreement and therefore should be removed. We also express concern that this posting is not in compliance with above-mentioned provisions of the collective bargaining agreement as it is not from the union and is not a notice of routine nature according to the terms of our collective bargaining agreement.

As you are further aware that your member has expressed concern that my grievance response dated August 21, 2014 was posted on the same bulletin board and you should honor her request to have that response removed as well.

On November 22, 2014, Romeo emailed the Chief and stated that the letter to the TM and his response would not be removed from the bulletin board.

On or about November 24, 2014, Romeo was assigned to work a detail with the Department of Conservation and Recreation (DCR) from 7:00 AM until 3:00 PM. Romeo had completed this same detail on other occasions. The Union argues that DCR representatives told Romeo that he only needed to be "on call" and available in case he was needed during his detail. That same day, Romeo spent from approximately 10:00 AM until 3:00 PM attending a mediation session held between the Town and the Union for a successor collective bargaining agreement under the auspices of the Joint Labor Management Committee.

On or about November 25, 2014, the Chief reviewed outside detail records to be submitted for payment and found a detail slip submitted by Romeo for payment for eight hours of detail work between 7:00 AM and 3:00 PM on November 24, 2014.

On or about December 1, 2014, the Town placed Romeo on paid administrative leave pending an investigation regarding the paid detail on November 24, 2014.

The Union argues that the Town treated Romeo differently than another employee who attended the November 24 meeting when he was assigned to a detail but was not investigated or disciplined. The Town responded that this employee also did not submit a pay slip for the hours that he attended the meeting.

On or about December 18, the Town held a discipline hearing for Officer Romeo. The Town argues that it held the hearing was because Romeo submitted a false detail slip, was untruthful in his statements during a discipline investigation, and violated rules and regulations of the Police Department.

On or about January 7, 2015, the TM called Romeo and told him that the Town had drafted a termination letter and wanted to discuss settling the case. During this conversation, TM asked Romeo to meet with the Chief the following day.

On January 8, 2015, the TM called Romeo and set a meeting for 4:00 P.M. later that day. Romeo went to the meeting but the Chief and TM did not attend. That evening, Romeo saw two emails from Union counsel, Joe Sandulli, regarding a settlement offer and a forwarded email from Town counsel, Howard Greenspan, confirming the 4:00 P.M. meeting.

The Town issued a letter dated January 9, 2015 to Romeo notifying him that he was dismissed from his position as a police officer with the Town.

Analysis

Retaliation

The Union alleges that the Town violated Section 10(a)(3) of the Law by terminating Romeo in retaliation for his protected, concerted activity. To establish a prima facie case of a 10(a)(3) retaliation violation, a charging party must show that 1) the employee engaged in concerted activity protected by Section 2 of the Law; 2) the employer knew of the concerted, protected activity; 3) the employer took adverse action against the employee; and 4) the employer's action was motivated by a desire to penalize or discourage the protected activity. City of Holyoke, 35 MLC 153, 156, MUP-04-4503 (January 9, 2009).

There is no dispute that Romeo participated in protected, concerted activity in his role as Union President, and that the Town had knowledge of this activity. Further, there is no dispute that being dismissed from a position is an adverse action.

The Union did not support its claim of unlawful motivation. To support a claim of unlawful motivation, a charging party may rely on circumstantial evidence and reasonable inferences drawn from that evidence. City of Holyoke 35 MLC at 156. Several factors may suggest unlawful motivation, including the timing of the alleged discriminatory act in relation to the protected activity, triviality of reasons given by the employer, disparate treatment, an employer's deviation from past practices, or expressions of animus or hostility towards a union or the protected activity. Id. at 157. Timing alone is insufficient to support a finding of illegal employer motivation. Id.

The Union argues that the Town was unlawfully motivated because it dismissed Romeo after he signed and supported a series of grievances. The Union argued that the Town treated Romeo differently than another employee who attended the November 24 meeting when he was assigned to a detail but was not punished. However, the Town established that the other employee did not submit a pay slip for the hours that he attended the meeting. This difference undermines the Union's argument of disparate treatment because the Town argues that it disciplined Romeo because he submitted the pay slip, not for attending the mediation. The Union did not provide any other evidence of anti-Union animus in the Town's dismissal of Romeo. Thus, the Union has not established that the alleged adverse action was motivated by a desire to penalize Romeo for his protected activity, and has not established a prima facie case. Accordingly, I do not find probable cause to believe that the Town violated the Law in the manner alleged, and I dismiss this portion of the Union's charge.²

10(a)(2)

Section 10(a)(2) of the Law provides that it is an unfair labor practice for an employer to dominate, interfere, or assist in the formation, existence, or administration of any employee organization. The Commonwealth Employment Relations Board (CERB) will find employer domination when an employer initiates or provides the impetus for the formation of an organization, dictates its form and structure, or selects its representatives. Blue Hills Regional Technical School District, 9 MLC 1271, 1277, MUP-4613 (September 10, 1982).

Interference in the existence and administration of an employee organization occurs when an employer deprives a union of an economic benefit, or grants a union an undeserved economic advantage. City of Boston, 14 MLC 1606, 1617, MUP-5574 (March 25, 1988) (citing New Bedford School Committee, 13 MLC 1009, 1016, MUP-5363 (June 9, 1986)).

Unlawful assistance arises when an employer's actions aid one employee organization at the expense of another employee organization. Commonwealth of Massachusetts, 7 MLC 1228, 1235, SUP-2380 (August 22, 1980).

The facts that the Union presented at the investigation did not establish that the Town violated Section 10(a)(2) of the Law. The Union did not provide any cases that support any of their allegations as a violation of Section 10(a)(2) of the Law, and I have found none. Since the Union has not presented any evidence of specific allegations or case law that would support a finding of probable cause that the alleged actions constitute a violation of Section 10(a)(2) of the Law, I dismiss this portion of the Union's charge.

² I dismiss the Union's 10(a)(4) allegation under the same analysis as I used with the Section 10(a)(3) allegation. See City of Boston, 35 MLC 289, MUP-04-4077 (May 20, 2009)(the same elements of proof apply to alleged violations of both Section 10(a)(3) and Section 10(a)(4) of the Law).

Independent 10(a)(1)

The Union additionally alleges that the Town independently violated Section 10(a)(1) of the Law by requesting that the Union take down communications between Racow and the TM or the Chief from the bulletin board. An employer violates Section 10(a)(1) of the Law if it engages in conduct that tends to restrain, coerce or interfere with employees in the free exercise of their rights under Section 2 of the Law. Town of Mashpee, 11 MLC 1252, MUP-5141 (November 20, 1984). Section 2 of the Law provides that employees shall have the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment. Unlawful interference will be found if the employer's speech contains an expressed or implied threat or promise of benefits with regard to employees' participation in protected, concerted activities. See Watuppa Oil Co., Inc., 2 MLC 1032, 1038, CR-3466 and UP-2280 (July 18, 1975). The pertinent inquiry regarding a Section 10(a)(1) violation is the effect that the employer's conduct would tend to have on "reasonable employees." Mass. Board of Regents (U.Mass. Medical Center), 14 MLC 1397, 1401, SUP-2901 (December 21, 1987). Even without a direct threat of adverse consequences, the CERB has found a violation when an employer makes disparaging remarks about an employee's exercise of protected activities. Athol-Royalston Regional School Committee, 26 MLC 55, 56, MUP-1832 (November 2, 1999). Here, there was nothing implied or directly stated within the emails from DiChiara or the Chief that would tend to restrain, coerce, or interfere with a reasonable employee's rights under Section 2 of the Law.

The Union's primary argument regarding the Town's dismissal of Romeo is that the Town retaliated against him. The Union additionally alleges that the Town's dismissal of Romeo independently violated Section 10(a)(1) of the Law. The CERB has held that allegations focusing on the intent of an employer rather than the effect the action has on employees are more appropriately analyzed under Section 10(a)(3) rather than Section 10(a)(1). City of Cambridge, 30 MLC 31, 32, MUP-01-3033 (September 3, 2003)(citations omitted). Nexus in time between Romeo's participation in negotiations and the grievance process and his termination alone, does not support a finding of an independent 10(a)(1) violation of the Law. The Union has cited no cases, and I know of none, holding that an alleged adverse action that did not violate Section 10(a)(3) of the Law could independently violate Section 10(a)(1) of the Law merely by the proximity in time between the termination and the alleged protected activity. Consequently, I find no probable cause to believe that the Town violated the Law in the manner alleged and I dismiss this portion of the Union's charge.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



AARON SWINDERMAN, ESQ. INVESTIGATOR

APPEAL RIGHTS

* The charging party may, within ten (10) days of receipt of this order seek a review of the dismissal by filing a request with the Commonwealth Employment Relations Board, pursuant to Department Rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.