

April 1, 2015

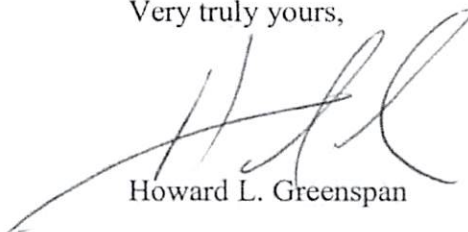
Division of Labor Relations
19 Staniford Street, 1st Floor
Boston, MA 02114

Re: MUP-14-4210
Winthrop Police, MCOP, Local 421, AFL-CIO
and
Town of Winthrop

Dear Sir/Madam:

Enclosed please find Respondent Town Of Winthrop's Response To Review Of
The March 5, 2015 Dismissal Of Charge Of Prohibited Practice.

Very truly yours,



Howard L. Greenspan

HLG/dc

DLRPPR1.15PM3:08

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD**

DLR Docket No. MUP-14-4210

DLRAPR1'15PM3:08

WINTHROP POLICE	)	
MCOP LOCAL 421, AFL-CIO	)	
	)	
Charging Party,	)	
v.	)	
	)	
TOWN OF WINTHROP	)	
	)	
Respondent	)	
	)	

**RESPONDENT TOWN OF WINTHROP'S
RESPONSE TO REVIEW OF THE MARCH 5, 2015 DISMISSAL OF CHARGE OF
PROHIBITED PRACTICE**

I. INTRODUCTION

Defendant Town of Winthrop (hereinafter "the Town") submits this response to the charging party's request for review of the dismissal of the charge of prohibited practice. The Town denies that any action taken against Officer Romeo relates to his engaging in protected concerted activity under Chapter 150E.

II. PROCEDURAL ISSUES

On December 12, 2014, Winthrop Police M.C.O.P. Local 421 AFL-CIO filed an complaint of prohibited practice. On January 15, 2015, Winthrop Police M.C.O.P. Local 421 AFL-CIO filed an amended complaint of prohibited practice. At the in-person investigation the charging party filed a written submission identifying the Union as the charging party and executed by Ferruccio Romeo as President of the Union. All of the pleadings identified Winthrop Police M.C.O.P. Local 421 as the charging party. On March 16, 2015 a document identified as charging party Ferruccio Romeo's request for review of the March 5, 2015 dismissal of the charge of prohibited practice was filed. For the first time this pleading identifies Ferruccio Romeo individually as an additional party. Nothing in the pleadings up until this point in time identifies Ferruccio Romeo individually as a complainant in this action. The Town of Winthrop objects to the standing of Ferruccio Romeo as a charging party at this time in the proceeding. Romeo has never filed any charges against the Town in an individual capacity. The attorneys for Romeo have not filed an appearance on behalf of M.C.O.P. Local 421.

III. THE TOWN DENIES ALL OF THE CHARGES THAT ANY ACTION ARE IN VIOLATION OF CHAPTER 150E

The request for review asks the Board to consider that the in-person investigation took place without presence of Union or personal counsel for the charging party. While Officer Romeo appeared on behalf of the Union it should be noted that Officer Romeo is an active and licensed member of the Massachusetts Bar. In addition, Winthrop Police Union MCOP is represented by the law firm of Sandulli Grace and it appears that counsel was not requested by Union President Romeo. Union President Romeo elected to represent the Union and should not now be allowed to argue that he appeared without counsel. The Town also denies that Officer

Romeo was disciplined for "relatively minor misconduct". Officer Romeo was dismissed for filing a false detail slip for 8 hours pay in the total amount of \$344.00 for a detail which he was not present at. Billing for services rendered without being present constitutes unacceptable judgment and conduct unbecoming a police officer. Officer Romeo was also dismissed for making untruthful statements during the course of a disciplinary investigation which in and of itself constitutes just cause for dismissal. The request for review also states that Officer Romeo is prepared to submit additional evidence at a hearing which he admittedly did not submit at the in-person investigation. Officer Romeo was given ample opportunity to present information at the investigation and in fact submitted 22 exhibits in support of the charge.

The Town disputes the facts recited in this reconsideration request. Chief Delehanty did a thorough investigation of Officer Romeo submitting a false detail slip. The Chief interviewed other Winthrop police officers who performed the detail and all officers interviewed stated that it was their understanding they had to be present in the proximity of the "Pump Station". None of the other officers supported Officer Romeo's preposterous theory of a "roving detail". In addition, Chief Delehanty interviewed Stephen Colometo, DCR Resident Engineer and Michael Vickery, DCR Inspector. Colometo advised the Chief that the "Pump Station" detail was added for traffic issues going to the beach project or coming from the beach project. Colometo was specifically asked if it was a floating detail and responded it was a stationary one or that the officer could be on the traffic route and assist with traffic problems. Colometo indicated that he never spoke to any Winthrop police officer about the Pump Station being a floater detail. Michael Vickery confirmed to Chief Delehanty that the Pump Station detail was a stationary post to control traffic pertaining to trucks coming into Winthrop for the "beach project". Vickery also

confirmed that he never spoke to anyone in the Police Department about the detail being a floating detail. When questioned by Chief Delehanty, Officer Romeo specifically stated to the Chief that the detail had changed a few weeks ago and he did inquire with the DCR engineers about the purpose of the Pump Station detail. At a pre termination hearing Officer ~~Romeo~~ was asked if he had lived in the Town of Winthrop could he fulfill his detail obligations by sitting in his house with a radio and he answered yes. Based on all of the foregoing the Town rightly concluded that Officer Romeo had violated the Department's code of conduct by inaccurately and falsely submitting a time slip indicating that he had worked a detail from 7:00 a.m. to 3:00 p.m. on the date in question when he was known to have been elsewhere during this time. Officer Romeo also misrepresented where he was during the morning of the detail. The police station video and door key records demonstrate that Romeo was either in the station or at contract mediation for all of the detail time submitted with the exception of no more ~~than~~ a half hour. The Chief and the Town Manager concluded that Romeo submitted a fraudulent request for detail reimbursement, lied about the lack of need for an officer to be present during this detail and further lied about the whereabouts on the day in question

Police officers must behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. See Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App.Ct. 364, 371 (1986). The Town has produced credible evidence that Officer Romeo sought reimbursement for a detail shift that he did not work. That conduct is tantamount to theft (or attempted theft), of public funds. The Town had further credible evidence that Officer Romeo lied to Chief Delehanty about the supposed justification for his conduct – not a single witness has corroborated his account.

Officer Romeo has not presented a scintilla of evidence that connects the ~~aforementioned~~ conduct and resulting discipline to any protected activity within the Division's jurisdiction. The Commission's investigator found no evidence that the Town's termination of Officer Romeo was unlawfully motivated by a desire to penalize him by engaging in protected activity. Officer Romeo produced no circumstantial evidence of expressions of anger, criticism or ridicule directed at him by the Town for his protected activities that may be recognized to constitute interference, restraint, and/or coercion of employees. See Groton-Dunstable Regional School District, 15 MLC 1551 (1989).

In connection with the 10 (a)(2) charge the Union did not present any evidence ~~that~~ the employer attempted to dominate, interfere or assist in the formation, existence or administration of the Union. To establish a violation of Section 10 (a)(2) the evidence must demonstrate that the employer's conduct significantly interfered with the existence and administration of the Union. See Commonwealth of Massachusetts Commissioner of Administration and Finance, 27 MLC (2000).

In connection with the 10 (a)(3) charge the Union did not support its claim that the employer discriminated in regard to a hiring, tenure or any term or condition of employment to encourage or discourage membership in any employer organization. The Town of ~~Winthrop~~ took appropriate action due to Officer Romeo's severe misconduct and the action was not taken to discourage protected activity. The investigator found that the Town established that no other employee submitted false pay slips for hours they attended a Union negotiation. In fact the Town produced evidence that another employee who attended the mediation did not submit a pay slip and attempt to defraud the Town and the Commonwealth of Massachusetts. 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. The investigator also found that the Union did not present any evidence of specific allegations that would support a violation of 10 (a)(2) of the law.

In connection with the allegation that the Town independently violated 10 (a)(1) of the law the investigator correctly concluded that the pertinent inquiry regarding a 10 (a)(1) violation is the effect of the employee's conduct would tend to have on reasonable employees. ~~Here~~ there was nothing introduced that would tend to show that the Town intended to restrain, coerce, or interfere with a reasonable employee's rights under Section 10(a) of the law.

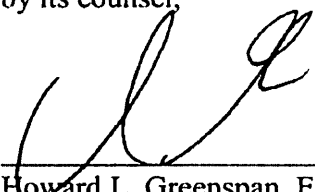
IV. DEFERRAL

Finally, the charge should not be deferred to arbitration since many of the issues involved in the case before the Commission will not be resolved by an arbitrator. The issues before the Commission are not essentially a question of contract interpretation. Significant issues in this case are policy matters which the law commits the division and the issues raised by the complaint would be more appropriately and completely before the Commission than before an arbitrator. See City of Boston, 4 MLC 1033 (1977). In fact, the history of the Commission is that the Commission has never referred 10 (a)(3) and 10 (a)(4) cases. See City of Boston 5 MLC 1155, 1157.

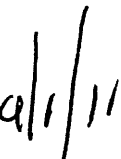
V. CONCLUSION

The attempt to paint Officer Romeo's conduct as a first minor incident is not consistent with the facts of this case. The Union should not be allowed to present additional evidence to support these contentions and should be bound by the evidence presented to the investigator. Officer Romeo chose not to be represented by counsel, is an attorney himself, and was given adequate opportunity to present pertinent facts to the Commission. The charging party M.C.O.P. has not filed a request for reconsideration. For these reasons as well as the above referenced matters the Town requests that Commonwealth Employee Relations Board affirm the dismissal of the charges.

Respectfully submitted,
The Town of Winthrop
by its counsel,

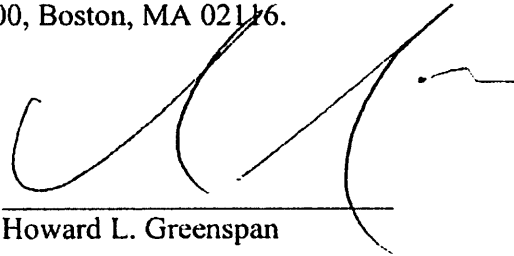


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Dated: 

CERTIFICATE OF SERVICE

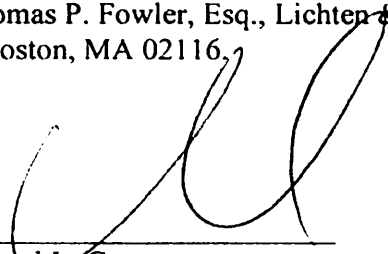
A copy of the foregoing Respondent Town Of Winthrop's Response To Review Of The March 5, 2015 Dismissal Of Charge Of Prohibited Practice has been sent via U.S. Mail, postage pre-paid this 1st day of April, 2015 to Harold L. Lichten, Esq., Lichten & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston, MA 02116.



Howard L. Greenspan

CERTIFICATE OF SERVICE

A copy of the foregoing Respondent Town Of Winthrop's Response To Review Of The March 5, 2015 Dismissal Of Charge Of Prohibited Practice has been sent via U.S. Mail, postage pre-paid this 1st day of April, 2015 to Thomas P. Fowler, Esq., Lichten & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston, MA 02116,



Howard L. Greenspan