

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION

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In the Matter of *
*
TOWN OF OXFORD *
*
and *
*
MASSACHUSETTS COALITION OF POLICE, *
LOCAL 173, AFL-CIO *

Case No.: MUP-2659

Date Issued:
August 4, 2004

Commissioners participating:

Allan W. Drachman, Chairman
Helen A. Moreschi, Commissioner
Hugh L. Reilly, Commissioner

Appearances:

Marc L. Terry, Esq. - Representing the Town of Oxford
Leigh A. Panettiere, Esq. - Representing the Massachusetts Coalition of
Police, Local 173, AFL-CIO

DECISION¹

STATEMENT OF THE CASE

1 On April 10, 2000, the Massachusetts Coalition of Police, Local 173, AFL-CIO
2 (Union) filed a charge of prohibited practice with the Labor Relations Commission
3 (Commission) alleging that the Town of Oxford (Town) had violated Sections 10(a)(1) and
4 (5) of M.G.L. c. 150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of
5 the Commission's Rules, the Commission investigated the charge and, on November 28,
6 2000, issued its own Complaint of Prohibited Practice, alleging that, by requiring

¹ Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission issues a decision in the first instance. 456 CMR 13.02(2).

1 bargaining unit members to obtain advance written permission to wear pins, including
2 union pins, on their uniforms, the Town: 1) failed to bargain in good faith by unilaterally
3 implementing a change in obtaining advance written permission to wear union pins, in
4 violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law; and, 2)
5 independently interfered with, restrained, and coerced its employees in the exercise of
6 their rights under the Law, in violation of Section 10(a)(1) of the Law.

7 Pursuant to notice, Hearing Officer Ann T. Moriarty, Esq. conducted an evidentiary
8 hearing on June 8, 2001. Both parties had a full opportunity to be heard, to examine and
9 cross-examine witnesses, and to introduce evidence. The Commission received both
10 parties' briefs on July 12, 2001. In its brief, the Union requested that the hearing officer
11 take administrative notice of its written submission filed during the Commission's
12 investigation of this charge for the purpose of noting the date the Union filed its initial
13 written submission, the date on Officer Robert Green's affidavit, and the statement in
14 paragraph 6 of Officer Green's affidavit that, as of the date he wrote that affidavit, it was
15 still permissible to wear guardian angel pins.

16 At the request of counsel for both parties, the hearing officer conducted a telephone
17 conference call on July 17, 2001. During this conference call, the Union amended its
18 request to ask that the hearing officer take administrative notice only of the filing date of
19 the Union's initial written submission in this case. On July 20, 2001, the Town filed its
20 written opposition to the Union's modified request. The Town opposed the Union's
21 request because: 1) the record was closed at the end of the June 8, 2001 hearing; 2) the

1 Town would be unfairly prejudiced if the Union's request is granted; and, 3) the information
2 is irrelevant to the issue before the Commission. The hearing officer denied the Union's
3 request in her Recommended Findings of Fact, and the Union has not challenged that
4 ruling.

5 The hearing officer issued Recommended Findings of Fact on August 9, 2001.
6 The Town and the Union filed challenges to the Recommended Findings of Fact on
7 September 17 and September 18, 2001, respectively. On September 18, 2001, the
8 Union filed a reply brief and requested permission to do so pursuant to Commission rule
9 13.13(4).² On October 10, 2001, the Town filed its opposition and response to the
10 Union's reply brief. The Commission has considered both parties' post-hearing briefs
11 and reply submissions in reaching this decision. On June 10, 2004, the Commission
12 received the Town's Motion to Submit Further Legal Argument regarding Count II of the
13 Commission's complaint. The Union did not object to the Town's request. The
14 Commission respectfully denies the Town's motion. In reaching this decision, the
15 Commission has reviewed carefully the Massachusetts Appeals Court decision in
16 Sheriff of Worcester County v. Labor Relations Commission, 60 Mass. App. Ct. 632
17 (2004) and has applied that Appeals Court holding to the facts of this case.

² Commission rule 13.13(4) provides:

(4) No reply briefs may be filed except by permission either of the hearing officer in a hearing pursuant to 456 CMR 13.02(3) or of the Commission in a hearing pursuant to 456 CMR 13.02(2).

1 (Noyes) has allowed this pin substitution because it is the flag.⁴ The DARE pin is larger
2 than the American flag pin, but it is in the shape of an American flag with the DARE
3 acronym and the word "America" on it. Certain police officers have also worn a Union
4 pin and a guardian angel pin on their uniforms. The guardian angel pin is gold in color
5 and about ½" in diameter. The Union pin is circular in shape, about 1/2 inch in diameter
6 with the words Massachusetts Coalition of Police around the outer edge and Mass
7 C.O.P. AFL-CIO in the center of the pin. The Union pin is similar in size to the required
8 Commonwealth of Massachusetts pin.

9 In or about February 1998, the Town appointed Noyes as its Chief of Police. As
10 part of his effort to improve the image of the Town's police department and to provide
11 the community with a professional department, Noyes secured new equipment for the
12 police officers and approved a new uniform to upgrade the police officers' appearance.
13 In or about November 1998, Noyes provided the Union with proposed police department
14 rules and regulations for the Union's review. In response, the Union submitted its own
15 proposed rules and regulations for the Town's review. The Town, through Noyes, and
16 the Union, through Union Vice-President, Patrolman Kevin Kennedy (Kennedy) and
17 Patrolman James McDonald (McDonald), met and negotiated about the police
18 department's rules and regulations on several occasions between February 1999 and

⁴ Although the record is silent on whether there exists any written authorization from Noyes for this pin substitution, the record evidence does support a finding that Noyes has allowed this pin substitution both before and after January 17, 2000, and we amend the findings accordingly.

1 October 21, 1999. Generally, the parties negotiated over the content of a specific
2 section or sections of the proposed rules, like Section 4 Professional Conduct and
3 Responsibilities, at a single meeting. After the meeting, Noyes sent Kennedy a revised
4 text of the section or sections of the rules incorporating the changes the parties agreed
5 to during their negotiations. In turn, Kennedy reviewed the text, and if he disagreed with
6 the revisions, the parties would further discuss the section(s) at a subsequent meeting.

7 As the negotiations progressed, the parties began to discuss more sections at
8 each meeting. During the last negotiating session in the morning of October 21, 1999,
9 the parties discussed Sections 1, 2, 3 and 11. Both parties left the October 21, 1999
10 meeting understanding that they had reached an agreement on all the rules and
11 regulations. In the afternoon of October 21, 1999, Noyes sent Kennedy a copy of the
12 revisions that the parties had discussed that date. Subsequently, Noyes prepared a full
13 text of the rules and regulations for Kennedy's review, and the Union accepted the final
14 draft. In or about November or December 1999, the Union's membership ratified the
15 department's rules and regulations as negotiated with the Town. The Town's Board of
16 Selectmen formally approved the rules and regulations on or about January 11, 2000.
17 Noyes distributed the rules and regulations to bargaining unit members in early January
18 2000, with an effective date of January 17, 2000. Prior to January 17, 2000, the police

1 department did not have any rules and regulations in effect governing uniforms,
2 including uniform adornments like pins and medals.⁵

3 Rule 8.4 of the Oxford Police Department Police Manual, Rules and Regulations
4 manual, effective January 17, 2000, provides:

5 Rule 8.4 - Wearing The Uniform
6

7 Officers shall keep their uniforms neat, clean and well pressed at all times.
8 Care should be taken not to wear threadbare or faded items. The uniform
9 cap shall be worn out of doors unless otherwise directed by competent
10 authority. While in uniform, officers shall display their badge on the
11 outermost garment over their left breast. The Chief of Police shall
12 periodically issue special orders pertaining to daily or seasonal wearing of
13 uniforms.
14

15 Officers shall not wear any identifiable part of the uniform outside the limits
16 of the community except while in the performance of official duty, while
17 commuting to and from duty, while attending funeral or memorial services,
18 or with the permission of the Chief of Police. No buttons, insignia,
19 attachments or coverings of any kind will be worn on the uniform without
20 the permission of the Chief of Police.
21

22 The Town and the Union negotiated over the content of Rule 8.4 during one of
23 the sessions. The Union's proposal specifically permitted police officers to wear Union
24 pins. The Town's proposal prohibited the wearing of any pins or insignia, unless
25 permitted by the police chief. During the parties' discussion on this specific issue, the
26 Union stated that it did not want the rule to specifically prohibit the wearing of Union

⁵ Because the record supports a more specific finding requested by the Union, we have amended the hearing officer's findings to include the absence of rules regarding uniform adornments prior to January 17, 2000.

1 pins, but that it was something that should not hold up the entire negotiations' process.
2 According to Kennedy, "[f]rom what I had heard, there was case law. We wanted it, but
3 we moved on from there..."⁶ After this discussion, the parties tabled further discussions
4 on this section of the rules and regulations. The record contains no information that the
5 parties returned to this issue later in the negotiations. The rules and regulations, which
6 the Union ratified, includes Rule 8.4, above.

7 On March 1, 2000, Noyes issued an order about uniforms in the form of a
8 memorandum to all members of the police department. This order reads as follows:

9 Just recently I have observed an increasing number of unauthorized pins
10 and attachments being worn on the uniform shirt. Prior to wearing of any
11 items not part of the uniform, written authorization must be obtained.

12
13 Per Order,
14 Charles K. Noyes
15 Chief of Police
16

17 Noyes has continued to permit police officers to wear the DARE pin on their uniforms
18 after he issued his March 2000 memo, above. Further, Noyes has indicated that, under
19 Rule 8.4, he would authorize the wearing of a pin, medal, or ribbon given to a police
20 officer in recognition of their service to the department or in recognition of their work
21 from a community organization like Mothers Against Drunk Driving (MADD).

22 Prior to the end of March or early April 2000, Union President Robert Green
23 (Green) had worn a Union pin on his uniform for about eight years with one exception.

⁶ The hearing officer credited Union Vice-President Kevin Kennedy's un rebutted testimony about the parties' negotiations over Rule 8.4.

