COMMONWEALTH OF MASSACHUSETTS
BEFORE THE DEPARTMENT OF LABOR RELATIONS

TOWN OF MEDFIELD,	)	
Respondent,	)	
	)	
and	)	**Case No. MUP-22-9272**
	)	
MEDFIELD POLICE LEAGUE,	)	
MassCOP Local 257,	)	
Charging Party.	)	
	)	
	)	

Position Statement

In preparation for the Investigatory Conference on this matter, the Union hereby submits a summary of the allegations, in support of its May 4, 2022 charge of prohibited practice.

Facts

1. For approximately one year, the Medfield Police Department has been experiencing a shortage of staffing which has resulted in several officers being "forced" onto shifts in addition to their regular schedule.

2. On Friday, March 18, 2022, Officer Christine DiNatale, who ordinarily worked Monday through Friday from 7am to 3pm as the court prosecutor, or as a patrol officer when necessary, was forced onto the 3pm to 11pm shift.

3. On Friday, March 18, 2022, during the 3pm to 11pm shift, Officer DiNatale and her coworker, Officer Michael Stanley, reported to the scene of an underage party.

4. Officer DiNatale and Officer Stanley attempted to get the attendees of this party home safely, which took until after 11:00pm, meaning that Officer DiNatale had entered hour 17 (beyond 16 hours). Officer Stanley was also back in at 7am and ineligible to be held over after 11:00pm on March 18, 2022.

5. Officer DiNatale, cognizant of Officer Stanley's schedule, advised him to leave his notes for her and she would write the report as a favor to him.

6. On Monday, March 21, Chief Guerette approached Officer DiNatale about the underage party and directed her to charge the attendees with possession of alcohol, despite Officer DiNatale's concerns about a lack of probable cause.

7. The Department's computers were down on Monday March 21, and it took longer than usual to write the report. The Chief questioned Officer DiNatale about the status of her report.

8. Officer DiNatale expressed to the Chief that she and Officer Stanley could not finish the report over the weekend due to their schedules, at which point the Chief cut her off and ordered to stay and finish the report that day.

9. After her conversation with the Chief, Officer DiNatale stated to her coworkers, "I'm done."

10. The Chief, upon hearing this, told Officer DiNatale "I don't want to hear any more of your" and gestured with her hand to indicate a mouth opening and closing rapidly (flapping).

11. Officer DiNatale asked the Chief, "Would you like my two week notice?" to which the Chief did not respond verbally, but instead used a hand gesture that conveyed "fine."

12. On Tuesday, March 22, 2022, Officer DiNatale was ordered to a walking beat at the Medfield State Hospital from 11am to 3pm. **See Exhibit 1 (text message from Chief to Sergeant).**

13. This scheduling made the Department short staffed and Sergeant Burgess was forced to work on patrol by himself for a portion of the shift.

14. On April 1, 2022, Officer DiNatale arrived at work to find that there was a shift without proper staffing.

15. Officer DiNatale was scheduled for In-Service training, which is awarded by seniority within the Department, but was ordered in to work the patrol shift despite less senior employees also attending the training. **See Exhibit 2 (In-Service training sign-up sheet ("PREFERENCE WILL BE BASED ON SENIORITY.")); Exhibit 3 (Daily Summary, 4/1/2022); Exhibit 4 (In-Service Training Event Summary).**

16. On April 8, 2022, Officer DiNatale informed the Chief of her intent to retire.

17. On April 11, 2022, the Chief approached Officer DiNatale asking about her replacement for the specialty position of court prosecutor.

18. Later that same day, the Chief put out shift bids without the court prosecutor position. **See Exhibit 5 (blank shift bid).**

19. Officer DiNatale resubmitted her shift bid, including her former position. **See Exhibit 6 (DiNatale first shift bid).**

20. On April 14, 2022, the Chief texted her informing her that her bid included an unlisted shift, and directed her to resubmit. **See Exhibit 7 (text from Chief to DiNatale).**

21. Officer DiNatale resubmitted her shift bid, including the position that covered Court as she believed she was supposed to train her replacement. **See Exhibit 8 (DiNatale second shift bid).**

22. The Chief then told Officer DiNatale she was not qualified for the job she bid for.

23. The Chief stated, upon information and belief, "Fuck her she put in for jobs she is not qualified for let everyone else pick and give her whatever is left."

24. On April 24, 2022, Officer DiNatale reapplied for her license to carry (LTC) before it expired; however, the Chief directed Sergeant Burgess to hold off on renewing the license until after Officer DiNatale's retirement in order to make it more costly for her.

Discussion

Introduction

This is primarily an anti-union retaliation case, in which the Police Chief took retaliatory actions because of concerted protected activities by a member of the union, Officer Christine DiNatale. Since the filing of the charge against the Town, Officer Dinatale has retired from the Medfield Police Department due to ongoing retaliation from the Chief. She has faced further retaliation from the Chief in her retirement, as well. In the charge, the Union listed several factual allegations, which have been repeated and supplemented as necessary above.

This memorandum is intended to assist the Hearing Officer in understanding how the Town's conduct violated Sections 10(a)(3) and 10(a)(1) of G.L. c. 150E ("the Law"). The Town repeatedly violated Sections 10(a)(3) and 10(a)(1) of the Law by targeting and intimidating Officer Dinatale based on her union activity in March, April, and May 2022. Furthermore, the Town continued to violate Sections 10(a)(3) and 10(a)(1) by retaliating against Officer Dinatale for her past union activity during her retirement.

Counts

Count 1:

On March 21, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) when the Chief used a hand flapping gesture and said "I don't want to hear any more of your…" to Officer Christine DiNatale in response to the concerns she raised concerns about her and other officers' working conditions, and in response to Officer DiNatale's question whether the Chief would like her two weeks' notice, motioned her arms in a way that signaled "go ahead."

Count 2:

On March 22, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) when the Chief ordered Officer DiNatale to complete a "walking beat" at the Medfield State Hospital, an assignment that had never before been given out, in response to the concerns she had raised on behalf of herself and her fellow officers.

Count 3:

On April 1, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) by ordering Officer DiNatale to work on her scheduled In-Service training date to work patrol, in violation of the requirement to pull officers by seniority, in retaliation for Officer DiNatale's protected concerted activity.

Count 4:

On April 11, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) when the Chief put out a shift bid that intentionally eliminated the specialty position of court prosecutor, which had been held by Officer DiNatale.

Count 5:

On April 14, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) when the Chief stated about Officer DiNatale, "Fuck her she put in for jobs she is not qualified for let everyone else pick and give her whatever is left" in response to Officer DiNatale's shift bid, in retaliation for her protected, concerted activity.

Legal Standard for Retaliation

A public employer that retaliates or discriminates against an employee for engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the Law. Southern Reg. Voc. School District v. Labor Relations Commission, 388 Mass. 414 (1982); School Committee

of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party must show that: 1) an employee was engaged in activity protected by Section 2 of the Law; 2) the employer knew of that conduct; 3) the employer took adverse action against the employee; and 4) the employer took the adverse action based on the protected activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000); Town of Clinton, 12 MLC 1361, 1365, MUP-5859 (November 9, 1985); Town of Brookfield, 28 MLC 320, 327, MUP-2538 (May 1, 2002), aff'd sub nom. Town of Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005).

The DLR has consistently held that, since there is rarely direct evidence of anti-union animus, animus can be shown by "circumstantial evidence and reasonable inferences drawn from that evidence." Suffolk County Sheriff's Department, 27 MLC 155, 159, MUP-1498 (June 4, 2001). Circumstantial evidence may include: shifting and inconsistent reasons for an employer's action, Everett Housing Authority, 13 MLC 1001, 1006, MUP-565 (June 4, 1986); the insubstantiality of the reasons given for the adverse action, Commonwealth of Massachusetts, 14 MLC 1743, 1749, SUP-3081 (May 19, 1988); the timing of the adverse action in relation to the protected activity, Town of Somerset, 15 MLC 1523, 1529, MUP-6404 (March 9, 1989); and the employer's divergence from longstanding practices, Town of Mashpee, 36 MLC at 171. See Town of Blackstone, MUP-16-5329 (March 14, 2018).

Violation:

Here, Chief Guerette took retaliatory action against Officer DiNatale based on the protected activity in which she engaged during March of 2022. The Chief assigned Officer DiNatale to a walking beat which had not been assigned to any other officer in the Department in response to

her raising concerns on behalf of herself and at least one other coworker on March 21, 2022. Furthermore, the Chief retaliated against Officer DiNatale by pulling her out of In-Service training against the seniority rules of the Department, and later by giving her a shift bid that she did not pick, despite her seniority within the Department.

The Chief constructively discharged Officer DiNatale through this pattern of conduct during March and April 2022. Officer DiNatale retired in May 2022. Even after her retirement, the Chief retaliated against Officer DiNatale by refusing to renew her license to carry (LTC) until after she retired, which would cost Officer DiNatale additional funds.

Conclusion

The Charging Party respectfully requests that the Investigator issue a Complaint of Prohibited Practice.

Respectfully Submitted,
Medfield Police League,
MassCOP Local 257,
By its attorneys,

Casey Berkowitz

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Dated: October 5, 2022

Certificate of Service

I, Casey E. Berkowitz, hereby certify that I served a copy of this position statement upon the representative of the Town of Medfield by electronic mail:

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Casey Berkowitz
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Dated: October 5, 2022