COMMONWEALTH OF MASSACHUSETTS
BEFORE THE DEPARTMENT OF LABOR RELATIONS

TOWN OF MEDFIELD, **Respondent,**	)	
and	)	**Case No. MUP-22-9271**
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. At all times prior to March 4, 2022, the Medfield Chief of Police has been aware that the midnight shift (11pm-7am) is a "reactive" shift due to the fact that nighttime activity in Medfield and surrounding towns is usually fairly low.

2. Pursuant to longtime practice in the Medfield Police Department, proactive police activity is concentrated on the daytime hours. During the nighttime hours, officers do regular building checks and patrol, and, if those activities do not generate activity, they wait for calls for service to come in.

3. Due to Medfield's relatively small police force, Officers have been discouraged from being "proactive" on the midnight shift due to the risk that they will become unavailable for calls that might come in.

4. Officers and Sergeants working the midnight shift often spend time in the locker room, the Sergeant's office, and/or the patrol room, or else sit in their cruisers in the garage or parking lot, waiting for calls for service to come in.

5. On February 22, 2022, Chief Michelle Guerette sent an email to three Sergeants noting a lack of activity during the overnight shifts, and requesting that traffic enforcement and property checks be increased during certain parts of the shift. A copy of this email is attached as **Exhibit A**.

6. Due to staffing shortages within the Department, Officers and Sergeants are routinely forced to work double shifts (sixteen hours in a row), three or more times within their four-shift rotation. Often, those double shifts include a midnight shift.

7. The online scheduling system for the Medfield Police Department indicates which Officers were scheduled to work each shift. In some instances, it indicates where a shift was worked as "Forced Overtime" or "Overtime," though these denotations are not always accurate. A complete record of online schedules from January 1, 2022 to June 9, 2022 is attached as **Exhibit B**.

8. Officers within the Medfield Police Department have historically kept track of the number of shifts for which they've been forced through what is known as the "Force Book." A complete record of all forced shifts between January 1, 2022 and May 23, 2022, drawn from the Force Book, is attached as **Exhibit C**. Pages from the Force Book indicating annual totals for 2020 and 2021 are attached as **Exhibit D**.

9. For example, Officer Robert Flaherty worked on May 16-18, 2022 during his usual 7am-3pm shift (Exhibit B, pp. 138-140), then was forced to work the 3pm-11pm shift for all three of those dates (Exhibit B, pp. 138-140; Exhibit C, p. 7).

10. In the year 2020, there were a total of 139 force-ins for Medfield officers (Exhibit D, p. 2). In the year 2021, there were a total of 160 force-ins (Exhibit D, p. 3). There have been **156** force-ins thus far in the year 2022, with **129** of those occurring between March 4, 2022 and May 23, 2022. The forces have continued past the last date kept in these records, as indicated in the Aladtec logs (Exhibit B).

11. The parties are currently in contract negotiations. The Town has not made any proposals to change current practices regarding workload or job duties on any shift.

12. Sergeant Ryan Maxfield, Officer Terrence Teehan, and Officer Paul Treggiari have engaged in concerted protected activity for at least the past year, including filing grievances, submitting bargaining proposals, and getting MassCOP counsel involved in contract negotiations for the first time in many years. Their union activities have been more frequent than union activities in the past.

13. On March 4, 2022, Sergeant Ryan Maxfield was placed on administrative leave pending an investigation into conduct occurring during the midnight shift.

14. On March 7, 2022, Officer Terrence Teehan was also placed on administrative leave pending an investigation into conduct occurring during the midnight shift.

15. On March 14, 2022, Chief Guerette issued a memorandum entitled "Midnight Assignments," which immediately and unilaterally changed the expectations and working conditions for the midnight shift, which was regularly worked by Sergeant Maxfield and Officer Teehan, amongst others. A complete and accurate copy of this memorandum is attached as **Exhibit E**.

16. The investigation into conduct on the midnight shift has been ongoing since March 2022. As part of the Chief's investigation, the Town of Medfield has procured the services of an outside investigator to review countless hours of video footage and to interrogate several Officers at the Department, the cost of which is currently unknown to the Union.

17. To this date, Sergeant Maxfield and Officer Teehan have not been returned to work. As a result, the number of forces continues to grow far beyond what has been seen in previous years.

Discussion

Introduction

This is primarily an anti-union retaliation case, in which the Police Chief took retaliatory actions because of concerted protected activities by the Union. The Chief's retaliatory actions were primarily focused on the Union's Secretary/Treasurer Ryan Maxfield and its Vice President Terrence Teehan, although other union officials and bargaining unit members have been targets of her unlawful actions as well. In the charge, the Union listed several factual allegations, which have been repeated above.

This memorandum is intended to assist the Hearing Officer in understanding how the City's conduct violated Sections 10(a)(5), 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, intimidating, threatening, and, in some cases, actually disciplining officers involved in the Union throughout March and April of 2022. Furthermore, the Town violated Section 10(a)(1) of the Law throughout the investigatory process, when it intimidated several junior officers and implicitly and explicitly threatened officers with discipline for truthfully answering questions about their own and others' actions. Finally, the Town violated Section 10(a)(5) and 10(a)(1) by implementing a unilateral change in working conditions in mid-March, while the Town's unfair and coercive investigation was ongoing. The Town's investigation, now three months in the making, has left the Medfield Police Department short-handed, which has resulted in an intolerable number of forced double shifts for the officers who remain. A "normal" work week for a police officer, as provided for by contract, is four days on and two days off; rather than work four shifts per week, however, many Medfield officers find themselves working double that, as a result of forces.

Counts 1, 2, 3, and 5

Count 1:

On March 4, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) by placing Sergeant Ryan Maxfield on administrative leave and launching a widespread internal affairs investigation based on alleged "sleeping on duty."

Count 2:

On March 7, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) by placing Officer Terrence Teehan, Union Vice President, on administrative leave and adding Officer Teehan to the investigation into Sergeant Maxfield and "sleeping on duty."

Count 3:

On March 14, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) by implementing a change in midnight shift working conditions in retaliation for protected union activity by several officers within the Medfield Police Department.

Count 5:

On April 29, 2022, the Town violated G.L. c. 150E Sections 10(a)(3) and 10(a)(1) by targeting Officer Paul Treggiari, Union president, during the investigation into alleged "sleeping on duty" during the midnight shift.

Legal Standard for Anti-Union 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 Union President Paul Treggiari, Vice President Terrence Teehan, and Secretary/Treasurer Ryan Maxfield based on the protected activity they engaged in during her tenure as Chief of Police. Chief Guerette was well aware of the concerted protected activity that each of these three officers engaged in over the past several years, including filing grievances, submitting contract proposals, engaging in contract negotiations, and enlisting the services of Union legal counsel. In response to these protected, concerted activities, the Chief placed Vice President Teehan and Secretary/Treasurer Maxfield on administrative leave and has drawn out the investigation for three months. During this time, she directed threatening questions at President Treggiari through her designated investigator, Steven Carl.

The Chief's large scale attack on Union officials constitutes anti-union retaliation in direct violation of Sections 10(a)(3) and 10(a)(1) of the Law.

Counts 4, 6, and 7

Count 4:

On March 30, 2022 and April 29, 2022, the Town violated G.L. c. 150E Section 10(a)(1) by enlisting hired investigators to intimidate and coerce several junior officers through mandated interviews as part of the internal affairs investigation.

Counts 6 & 7:

Throughout this months-long investigation, the Town has violated G.L. c. 150E Section 10(a)(1) by threatening officers, both implicitly and explicitly, with discipline during their mandated interviews for answering questions about their own behavior (Count 6), or the behavior of others (Count 7), which has historically been condoned and encouraged for the midnight shift.

Legal Standard for Intimidation and Implicit or Explicit Threats of Discipline

While most violations of Section 10(a)(1) arise as derivative violations of other sections of the Law, as seen here in Counts 1, 2, 3, and 5, a public employer violates Section 10(a)(1) independently by engaging in conduct that "may reasonably be said to tend to interfere with, restrain, or coerce employees in the exercise of their rights . . . ." Town of Bolton, 32 MLC 13 (2005) (citing Quincy School Committee, 27 MLC 83, 91 (2000)). In determining whether an employer has violated 10(a)(1), it is the "effect of the employer's conduct on reasonable employees," rather than the employer's intent or motivation behind the conduct, or the subjective and actual impact of that conduct on employees. Id.; Town of Chelmsford, 8 MLC 1913 (1982); Groton-Dunstable Regional School Committee, 15 MLC 1551 (1989); Quincy School Committee, 27 MLC 83 (2000); City of Fitchburg, 22 MLC 1286 (1995).

Violation:

Threats and intimidation are common under the regime that Chief Guerette has established in the Medfield Police Department; however, in March of 2022, these tactics amounted to a violation of the Law, as Chief Guerette and her chosen investigators used them to intimidate and coerce Department personnel in the exercise of their rights under the Law. During the investigation, the Chief's representatives made both direct and indirect threats to junior and senior officers alike. In Board of Regents, 14 MLC 1697 (1987), it was expressly held that "an employee who is criticized for alleged misconduct in the course of protected activity, but who in fact is innocent, suffers a violation of 10(a)(1) of the Law despite the Employer's motive or mistake of fact." (citing Whitman-Hanson Regional School Committee, 9 MLC 1615, 1618 (1982)). Despite the Chief's direct or indirect intimidation or coercion of over half a dozen personnel at the Medfield Police Department, in an attempt to get each of them to either confess to wrongdoing and/or point fingers at their fellow Union members, there has not been sufficient evidence to corroborate or conclude the investigation.

The Chief's baseless investigation into Union officials and members alike constitutes intimidation and coercion based on protected, concerted activity in direct violation of Section 10(a)(1) of the Law.

Count 3

Count 3:

On March 14, 2022, the Town violated G.L. c. 150E Sections 10(a)(5) and 10(a)(1) by unilaterally implementing a change in midnight shift working conditions.

Legal Standard for Implementation of Unilateral Changes in Working Conditions

A public employer violates Section 10(a)(5) and, derivatively, (a)(1) of G.L.c. 150E if it unilaterally changes an existing condition of employment or implements a new condition of employment without affording the union notice and an opportunity to bargain to agreement or impasse prior to implementing the change. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124, 127 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572 (1983); City of Boston, 16 MLC 1429, 1434 (1989). A public employer's duty to bargain includes working conditions established by custom and practice as well as those governed by the provisions of a collective bargaining agreement. Bristol County Sheriff's Office, 28 MLC 113, 123 (2001), citing City of Newton, 27 MLC 74, 81 (2000); City of Boston, 16 MLC at 1434 (1989); Town of Wilmington, 9 MLC 1694, 1699 (1983).

Violation:

Here, Chief Guerette unilaterally implemented new expectations for officers assigned and/or forced to work the midnight shift at the Medfield Police Department. In her March 14, 2022 order, attached hereto as **Exhibit E**, she created a checklist of new responsibilities for the shift. These responsibilities are entirely new and appear to have been created in response to the Chief's own personal investigation into activity, or lack thereof, on the midnight shift. See **Exhibit A** (referencing traffic enforcement and property checks). Neither the Chief nor Town

administrative personnel have requested to bargain about these topics or any change in shift duties whatsoever during the parties' ongoing contract negotiations.

The Chief's March 14 memorandum constitutes a unilateral change in working conditions without prior notice and/or negotiations with the Union. Therefore, the memorandum is in direct violation of Sections 10(a)(5) and (1) of the Law.

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,

Leigh A. Panettiere, BBO# 559737
Casey E. Berkowitz, BBO# 708951
Sandulli Grace, P.C.
44 School Street, Suite 1100
Boston, MA 02108
(617) 523-2500

Dated: June 13, 2022

Certificate of Service

I, Leigh A. Panettiere, hereby certify that I served this request for review on all parties to this matter by sending it to the following by electronic mail:

Jaime Kenny, Esq.
31 Schoosett St. Unit 405
Pembroke, MA 02359
jaime@cliffordkennylaw.com

Leigh A. Panettiere