

that the so-called "A" and "D" lists for extra work include both some detectives and all other patrolmen.

5. The Respondent denies that the referenced 1999 grievance concerning details or detectives assigned to actor, George Clooney, has any relevance to this matter. The 1999 grievance concerns only "special security requests from outside vendors". The assignments at issue here relate to undercover work in an area suspected of high levels of illegal drug use and/or sales and illegal underage drinking.

6. Respondent agrees that the Union filed a February 21, 2006 grievance concerning assignments for the Artspace investigation and that on or about February 22, 2006 Union Vice President Officer Mackey met with Lt. Joseph Aiello to discuss the grievance.

7. Respondent disagrees that the result of this meeting was to limit the Artspace assignments to detectives only. Rather, (See: Aiello Affidavit) in this meeting, Officer Mackey advised Lt. Aiello that he did not see a problem with the Artspace assignments being limited to detectives.

8. Respondent agrees that Lt. Aiello responded in writing to the February 21, 2006 grievance filed by Union President Foote.

III. ARGUMENT

The Respondent did not unilaterally change the distribution of extra work (details), therefore, there was no C. 150E, sec. 10(a)(5) violation. The Respondent did exercise its management rights to initially increase the number of detectives assigned on weekend nights in February, 2006 to investigate illegal drug use and/or sales and underage drinking at the youth music performance facility known as Artspace.

The Respondent did not retaliate against the GPPA after the filing of the February 21, 2006 grievance. In fact, Lt. Aiello (See: Aiello Affidavit) states that Officer Mackey, in his role of Union officer, said he saw no problem with the assignment of detectives.

There was no retaliation or as the hyperbole of the Union argument states, an event which stands out in the "contemporary annals of public sector jurisprudence" as an "overt display of unvarnished union animus."

The Union has not met the standard applied by the Commission to show a violation of Sec. 10(a)(3) of Ch. 150E. There is no prima facie case made out here because the Union starts from the incorrect premise that the assignments to investigate the criminal activity of drug use and underage drinking was an ordinary overtime assignment. It was not and the submission of the Union shows or does nothing to counter the fundamental point that this particular situation was, therefore, not a proper subject of a grievance. (See: Aiello Affidavit).

Nothing in either the Foote Affidavit or the Mackey Affidavit deals with the fact that the assignment was not mere extra work but was a concerted effort to investigate criminal activity. Nevertheless, assuming arguendo that the grievance was a proper one, the claim of retaliation rests merely on the unsubstantiated conclusions of Officer Foote (Foote Affidavit, para. 14) that "it was obvious to me" that the increased assignments of detectives was in retaliation. Clearly, such unsubstantiated assertions do not prove retaliation.

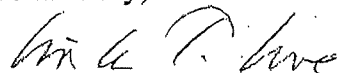
WHEREFORE, the Respondent requests that the Commission find that:

1. The charge of unilaterally changing a bargainable matter such as extra work has not been proven here where the work involved was a concerted investigation of criminal activity;
2. There was therefore no valid grievance as this matter represents the exercise of managerial rights; and
3. There was no retaliation (by assigning more detectives) as the matter was not grievable and even if it was, the Union has not demonstrated that retaliation occurred.

The Commission should, therefore, dismiss the charges.

Respectfully submitted,

City of Gloucester,
By its attorney,




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Dated: November 14, 2006

CERTIFICATE OF SERVICE

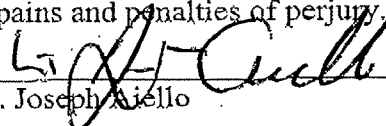
I hereby certify that on November 14, 2006, I caused a copy of the foregoing document to be sent by first class mail to Alan Shapiro, Esq., Sandulli, Grace PC, One State Street, Boston, MA 02109.



Linda T. Lowe, General Counsel

7. In this grievance, the Union argues that such assignments are governed by the Union contract Sec./Article XXIV "Extra Work and Extra Watches" (copy of contract attached to Charging Party's Submission).
8. The Foote affidavit alleges the Artspace details/assignments were not made randomly from the detail list to both plainclothes officers and detectives. Assignments are ordinarily made from both an A list and a D list.
9. The Foote affidavit alleges that the Artspace assignments were to "monitor and strictly enforce all laws". The affidavit further alleges "no special skills or expertise were required." What the affidavit conveniently omits is the primary purpose of the assignment which was to investigate illegal and primarily underage drinking and illegal drug use and/or sales. This type of surveillance of criminal activity does indeed qualify as requiring investigative detective skills. In my 30 years in the department, surveillance has ordinarily been done by detectives.
10. At no time did I retaliate against the GPPA as a union or against Officer Foote as a union officer or member.
11. My written response to the grievance did include a remark concerning Officer Foote and I acknowledge that my remark was inappropriate for which I apologize. I deny, however, that the remark showed retaliation by me.
12. Assignments of officers to investigate/prevent crimes is a management function of the Chief and cannot be driven by detail lists. I, therefore, do not believe the issue is one which can be grieved. When Artspace's assignments were switched to be all detectives, it was done to assure that proper surveillance of illegal activity was being carried out at all pertinent times.
13. The Mackey affidavit neglects to mention that Officer Mackey spoke as a union official with me on or about February²², 2006, about Artspace and indicated that he did not believe there was a problem with the use of only detectives.

The above statements are true based on my own personal knowledge and belief and are executed by the undersigned under the pains and penalties of perjury.


Lt. Joseph Aiello

11/13/06
(Date)