

COPY

SANDULLI GRACE, PC

ONE STATE STREET
SUITE 200
BOSTON, MASSACHUSETTS 02109

(617) 523-2500

JOSEPH G. SANDULLI
KENNETH A. GRACE
ALAN H. SHAPIRO
SUSAN F. HORWITZ
AMY LAURA DAVIDSON
JOHN M. BECKER
LEIGH A. PANETTIERE
BRYAN C. DECKER
PATRICK N. BRYANT

Email: ashapiro@sandulligrace.com

FAX (617) 523-2527

By Hand Delivery

October 2, 2006

Edward Srednicki, Executive Secretary
Labor Relations Commission
399 Washington Street, 4th Floor
Boston, MA 02108

RE: City of Gloucester and Gloucester Police Patrolmen's Association, MCOP
Local 344, AFL-CIO, MUP-06-4742 (Art Space)

Dear Mr. Srednicki:

Enclosed please find an original and two copies of the Charging Party's
Written Submission, accompanying affidavits, and Certificate of Service in the
above matter.

Thank you for your attention to these matters.

Very truly yours,



Alan H. Shapiro

Enc.

cc: Linda Lowe, Esq.
Union Officials

[By Mail]
[By Email]

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION

CASE NO. MUP-06-4742

GLOUCESTER POLICE
PATROLMEN'S ASSOCIATION,
MCOP, LOCAL 344, AFL-CIO
Charging Party

and

CITY OF GLOUCESTER,
Respondent

CHARGING PARTY'S WRITTEN SUBMISSION

I. INTRODUCTION

This charge demonstrates how the City of Gloucester ("City"), through its Police Department ("Department" or "GPD"), initially altered a longstanding past practice by deviating from the normal overtime hiring list to staff an area known as "Art Space." Instead of hiring from the full list of patrol officers, including detectives, in the normal order, the Department insisted that half of the assignments go to detectives. When the Gloucester Police Patrolmen's Association, MCOP Local 344, AFL-CIO ("Union") grieved the violation, police management compounded the infraction by overt retaliation: it gave the Art Space assignments only to detectives, in complete contravention of the Union's grievance. The obvious result must be the issuance of complaints for both unilateral change and retaliation violations of Chapter 150E.

II. STATEMENT OF THE FACTS

1. The Union represents a bargaining unit of police patrol officers, including non-superior officer detectives, employed by the City of Gloucester Police Department (“Department”). [Foote Affidavit ¶ 6].
2. The City and the Union are parties to a collective bargaining agreement which is dated July 1, 1999, to June 30, 2002, but which remains in effect while they negotiate a successor. A copy of this collective bargaining agreement (“Agreement”) is attached as Exhibit A to the Foote Affidavit. [Foote Affidavit ¶ 7].
3. The Agreement contains Article XXIV, “EXTRA WORK AND EXTRA WATCHES,” which governs the assignment of overtime and paid details to all members of the Gloucester Police Department. [Foote Affidavit ¶ 8].
4. On February 21, 2006, the Union filed a grievance concerning the way a grant overtime job was being allocated. A copy of this grievance is attached as Exhibit B. The Department had assigned on overtime a detective and a patrol officer to maintain a watch on a location called “Art Space” in downtown Gloucester during weekend evenings. Originally, the Department assigned these overtime shifts off the “A List,” which is for station overtime and includes all patrol officers. Later, the Department began filling Art Space through the “D List,” which is for all other overtime and includes all patrol officers also. Assignments are made off both the A and D Lists based on a “low man” equitable distribution formula with seniority being given consideration in the event of ties. Patrol officers and Patrol Officer Detectives are on both the A and D Lists. The Union maintained that both

assignments should have been made through the A or D List to whichever officers were at the top of the list, regardless of whether they were patrol officers or detectives. [Foote Affidavit ¶ 10].

5. For at least twenty years, assignments such as “Art Space” had been filled through the A or D Lists, which include all patrol officers and detective patrol officers. The only deviation from this procedure was in 1999, when they were filming the movie “The Perfect Storm” in Gloucester. At that time, detectives were assigned in plain clothes to provide personal security to actor George Clooney. The Union filed a grievance and the City eventually decided to instruct the Police Chief not to accept “special security requests from outside vendors which result in special assignment(s) outside the customary “D” list rotation.” A copy of this grievance response is attached as Exhibit C to the Foote Affidavit. [Foote Affidavit ¶ 11].
6. The day after the grievance was filed, on or about February 22, 2006, Union Vice President Kevin Mackey had a meeting with Lt. Joseph Aiello to discuss the grievance. Lt. Aiello has been designated by Chief John Beaudette as the conduit for initial grievances filed by the Union. In that conversation, Lt. Aiello stated that since the Union filed a grievance, both assignments will be automatically given to detectives. [Mackey Affidavit ¶ 7].
7. On February 22, 2006, Foote received from Lt. Aiello a grievance response, in the form of a memorandum from Lt. Aiello to Chief Beaudette. A copy of this memorandum is attached as Exhibit D to the Foote Affidavit. [Foote Affidavit ¶ 12].

8. Following that conversation and grievance, the Department stopped even splitting the Art Space jobs between patrol officers and detectives and, instead, assigned all subsequent Art Space overtime to detectives. These assignments solely to detectives went on for about a month after the grievance was filed. [Foote Affidavit ¶ 13].

III. ARGUMENT

A. BY UNILATERALLY CHANGING THE DISTRIBUTION OF OVERTIME SHIFTS, THE CITY VIOLATED SECTION 10(a)(5) OF CHAPTER 150E.

“In order to prevail in a case alleging an unlawful unilateral change, the charging party must show by a preponderance of the evidence that the employer changed established working conditions or created new working conditions without affording the union notice and an opportunity to bargain to agreement or impasse before the change. City of Boston, 15 MLC 1191, 1194 (1988). The change must affect a mandatory subject of bargaining. City of Boston, 10 MLC 1189, 1193 (1983). It is well established that the method of assigning overtime is a mandatory subject of bargaining. Town of Ipswich, 11 MLC 1403, 1411 (1985); City of Boston, 10 MLC 1238 (1983).” *Commonwealth of Mass., Metropolitan District Commission*, __ MLC ___, SUP-3144 (6/8/90).

Here, there was no notice or opportunity to bargain when the Department initially decided to deviate from the normal work list and instead assign half the Art Space overtime slots to detectives. The prior practice for assigning overtime had been to distribute it to all officers on the A or D lists, based on whoever came up on the list, detective or non-detective. The list contained the names of all patrol officers, detectives

and non-detectives. There had been no preference for detectives in these overtime assignments.

The initial assignment of half the Art Space jobs to detectives was a unilateral change. The subsequent alteration to assigning only detectives compounded the unilateral change and set out an additional violation for retaliation.

B. THE ELIMINATION OF ALL NON-DETECTIVES FROM THE ART SPACE OVERTIME JOBS WAS IN RETALIATION FOR THE UNION'S GRIEVANCE.

The day after the Union grieved the Art Space assignments, Lt. Aiello told Officer Mackey, then Union Vice President, that because of the grievance all of the Art Space jobs would be allocated only to detectives. The Department then went ahead and carried out its threat. Rarely, in the contemporary annals of public sector jurisprudence does one encounter such an overt display of unvarnished union animus.

The Commission applies a three-step analysis when reviewing an alleged violation of Section 10(a)(3). *Trustees of Forbes Library v. Labor Relations Commission*, 384 Mass. 559, 565-566 (1981). First, the Commission determines whether a Prima facie case has been established. To establish a prima facie case of discrimination based on protected activities, the charging party must produce evidence to support each of the following elements: that the employee(s) engaged in concerted activity protected by Section 2 of the Law, that the employer knew of this activity, that the employer took adverse action against the employee, and that the adverse action was motivated by the employer's desire to penalize or discourage the protected activity. *Town of Clinton*, 12 MLC at 1364, *Boston City Hospital*, 11 MLC at 1071; *City of Boston (Police Department)*, 8 MLC 1872, 1874 (1982).

The first three elements of the analysis are obviously present: (1) the Union engaged in the protected activity of filing a grievance; (2) the Department/City had to have known of the grievance since Lt. Aiello responded to it; and (3) the Department took adverse action against the Union by assigning all Art Space overtime jobs to detectives, thereby reducing overtime available to non-detectives.

The evidence of illegal motivation is also overwhelming. There is first direct evidence in the “smoking gun” conversation in which Lt. Aiello told Officer Mackey that giving all the grieved overtime assignments to detectives was due to the Union’s having filed a grievance. There are also several circumstantial factors tending to show the retaliatory nature of the Employer action: its timing (immediately following the grievance) *Town of Somerset*, 15 MLC 1523, 1529 (1989); the insubstantiality of the reasons given for the adverse action, *Commonwealth of Massachusetts*, 14 MLC 1743, 1749 (1988); the employer's divergence from longstanding practices, *Everett Housing Authority*, 13 MLC 1001, 1006 (1986); and expressions of animus or hostility towards the bargaining representative, *Town of Andover*, 17 MLC 1475 (1991).

Therefore, in addition to the bargaining violation, a finding of unlawful retaliatory action is also warranted under Section 10(a)(3) and (1).

IV. REMEDY

The appropriate remedy here is a make-whole remedy for the unilateral change violation, requiring the City to make whole Officer Mitchell and any other officers affected by the swap denial for all economic losses. In addition, a posting and cease and desist order would apply. As for the Section 10(a)(3) violation, the Employer must be ordered also to make effected employees whole, to cease and desist, and to post a Notice

to Employees admitting its culpability and promising to refrain in the future from further violations.

V. CONCLUSION

Based on the foregoing, the Commission should issue a complaint finding that the City of Gloucester violated Sections 10(a)(5) and (1) of the Law by unilaterally changing employee terms or conditions of employment in the distribution of overtime for Art Space. In addition, the City committed a Section 10(a)(3) and (1) violation by further deviating from past practice and assigning all Art Space overtime shifts to detectives in retaliation for the Union grievance.

Respectfully submitted,

GLOUCESTER POLICE
PATROLMEN'S ASSOCIATION,
MCOP LOCAL 344, AFL-CIO
By its Attorney,



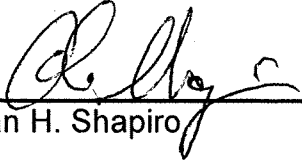
Alan H. Shapiro, Esq.
Sandulli Grace, P.C.
1 State Street, Suite 200
Boston, MA 02109
617-523-2500
ashapiro@sandulligrace.com

Dated: October 2, 2006

CERTIFICATE OF SERVICE

I, Alan H. Shapiro, hereby certify that on October 2, 2006, I served the Charging Party's Written Submission and accompanying affidavits upon the Respondents by mailing a copy to:

Linda Lowe, Esq.
City of Gloucester Law Department
City Hall
Dale Avenue
Gloucester, MA 01930



Alan H. Shapiro

