

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION**

In the Matter of	*	
	*	
TOWN OF OXFORD	*	Case No.: MUP-2659
	*	
and	*	
	*	Date Issued:
MASSACHUSETTS COALITION OF POLICE,	*	
LOCAL 173, AFL-CIO	*	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.

18

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 FINDINGS OF FACT

2 After reviewing both parties' challenges and the record, we adopt the Hearing
3 Officer's Recommended Findings of Fact, as modified where noted, and summarize the
4 relevant portions below.

5 The Town is a public employer within the meaning of Section 1 of the Law, and
6 the Union is an employee organization within the meaning of Section 1 of the Law.³
7 The Union is the exclusive representative for all full-time permanent police patrol
8 officers and sergeants (police officers) employed by the Town in its police department,
9 excluding the chief of police, lieutenant, civilians, and part-time employees. Currently,
0 the Town employs sixteen full-time police officers, four sergeants, and twelve patrol
1 officers. At some point prior to 1998, the Town assigned police officers to monitor a
2 protest strike in the Town. If requested, the Town would assign police officers to a
3 private duty detail to monitor a demonstration.

Police officers are required to wear a badge, a name tag, a Commonwealth of Massachusetts pin, an American flag pin, and a chain and whistle as part of their uniform. Certain police officers wear a Drug Awareness Resistance Education (DARE) pin on their uniforms instead of the American flag pin. Police Chief Charles Noyes

³ The Commission's jurisdiction is uncontested.

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 1/2" 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.

1 At a point in time before February 1998, the former police chief instructed the police
2 officers to remove the Union pin and the police officers obeyed the order. After the
3 Union protested this order, the former police chief reversed this prohibition and allowed
4 the police officers to wear the Union pin.⁷ Further, the former police chief requested
5 that, if the officers wore the Union pin, it should be placed on the lapel pocket of their
6 uniform just below their name tag.⁸

7 About the end of March or early April 2000, Noyes told Green to remove the
8 Union pin from his uniform and Green obeyed the order.⁹ In light of Noyes's order,
9 Green then told other police officers to remove the Union pin from their uniforms. Over
10 the eight years that Green had worn a Union pin on his uniform, no person had ever
11 asked him about the pin, nor, according to Green, did the pin interfere with the
12 performance of his duties as a Town police officer. After Noyes told Green to remove

⁷ The Union requests a finding that the Union President [Green] informed the former police chief that Commission law permitted union members to wear union pins, and gave him a copy of the Commission's decision in Dighton School Committee, 8 MLC 1303 (1981). However, Green did not testify that he gave the former police chief this Commission decision. Rather, Green testified that after the former police chief prohibited the wearing of Union pins, the former police chief was given a copy of a decision that concerned teachers and union buttons that he [Green] believed was decided by the Commission. This testimony, standing alone, does not support the specific finding requested by the Union.

⁸ At the request of the Town, the Commission has amended the findings to the extent necessary to reflect that it was the former police chief, not Noyes, who permitted the police officers to wear Union pins on their uniforms.

⁹ The record does not indicate if Green was also wearing a guardian angel pin when Noyes asked him to remove his Union pin.

1 the Union pin about the end of March or early April 2000, Green and other police
2 officers continued to wear guardian angel pins on their uniforms until some point after
3 May 4, 2000. At some point after May 4, 2000, Noyes told Green to remove the
4 guardian angel pin from his uniform, and Green obeyed the order.¹⁰

5 The Massachusetts Coalition of Police Officers (MCPO) represents uniformed
6 police officers in about eighty cities and towns in the Commonwealth of Massachusetts.
7 Richard L. Nelson (Nelson) has been employed as a business agent for MCPO for
8 about six years. In his capacity as MCPO business agent, Nelson travels throughout
9 the state assisting MCPO affiliates in contract negotiation and administration. Nelson is
10 familiar with the uniforms worn by police officers in the eighty communities he is
11 assigned to work with, and in most of these communities certain police officers wear a
12 union pin on their uniform. Over Nelson's six year career with MCPO, no police officer
13 in any bargaining unit represented by MCPO has told Nelson that the Union pin on their
14 uniform has interfered with their job duties or that a member of the public has asked
15 about the Union pin on their uniform.

¹⁰ The credible record evidence does not support a finding that Noyes did, or did not, personally observe any officer wearing a guardian angel pin after March 1, 2000 until Noyes asked Green to remove this pin at some point after May 4, 2000.

1 OPINION

2 Section 10(a)(1)

3 The wearing of union insignia is a right protected by Section 2 of the Law, “which
4 cannot be denied absent special circumstances or a clear and unmistakable indication that
5 it was waived as a result of the bargaining process.”¹¹ Sheriff of Worcester County v.
6 Labor Relations Commission, 60 Mass. App. Ct. 632, 642 (2004) (Sheriff of Worcester
7 County), citing, National Labor Relations Bd. v. Mead Corp., 73 F.3d 74, 79 (6th Cir. 1996),
8 quoting from Metropolitan Edison Co. v. National Labor Relations Bd., 460 U.S. 693, 708
9 (1983). A public employer who interferes, restrains or coerces an employee in the
10 exercise of concerted activity protected by Section 2 of the Law violates Section 10(a)(1)
11 of the Law. Id. Following the Appeals Court’s instructive lead in Sheriff of Worcester
12 County, we first examine the record here to determine whether special circumstances exist
13 to justify the Town’s prohibition on the wearing of union insignia.

14 Special circumstances are determined on a case by case basis. Dighton School
15 Committee, 8 MLC 1303, 1305 (1981). In Sheriff of Worcester County, the Appeals Court

¹¹ Section 2 of the Law provides:
Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve.

1 decided that “no special circumstances connected to the jail’s mission, command
2 structure, need for discipline or other functional requirement justified the sheriff’s unilateral
3 prohibition of the union buttons,” where the facts demonstrated that there existed a long
4 time period without a policy prohibiting the wearing of pins and that the sheriff’s prohibition
5 at issue in the case fell with particular force on union insignia pins. Sheriff of Worcester
6 County, 60 Mass. App. Ct. at 643, citing, Boise Cascade Corp., 300 NLRB 80, 84 (1990).
7 “Special circumstances rarely, if ever, are found in the absence of a comprehensive ban
8 on all nonstandard adornments.” Sheriff of Worcester County, 60 Mass. App. Ct. at 643,
9 citing, Dighton School Committee, 8 MLC at 1305 (“A rule which is enforced only against
10 union buttons demonstrates the lack of any truly legitimate purpose for the rule”).

11 Based on the record here, we find that the Town has not met its burden of
12 producing substantial evidence showing that special circumstances exist justifying the
13 Town’s prohibition on the wearing of union insignia pins. Instead, the record
14 demonstrates that, for at least eight years prior to March 2000, police officers wore a
15 union insignia pin on their uniforms during working hours. Although the Town argues
16 that special circumstances exist to justify prohibiting the wearing of union insignia pins,
17 the record is devoid of any evidence showing that the wearing of a union insignia pin for
18 at least eight years adversely affected or undermined the safety of police officers and
19 the public, created or threatened to create disciplinary problems, interfered with the
20 police officer’s ability to enforce the law, compromised the neutrality of a police officer,
21 or interfered with the employer’s ability to maintain discipline.

1 Like the employer in Sheriff of Worcester County, the Town relies principally on the
2 holding in Department of Justice, Immigration and Naturalization Service v. Federal Labor
3 Relations Authority, 955 F.2d 998, 139 LRRM 2820 (5th Cir.1992) to justify its prohibition
4 on the wearing of union insignia pins. In that case, the Fifth Circuit Court of Appeals,
5 interpreting the Federal Service-Labor Management Relations Statute, 5 U.S.C. ss. 7101-
6 7135, held that “when a law enforcement agency enforces an anti-adornment/uniform
7 policy in a consistent and nondiscriminatory manner, a special circumstance exists, as a
8 matter of law, which justifies the banning of union buttons.” Id., at 1006. In Sheriff of
9 Worcester County, the Appeals Court did not expressly adopt or reject this Fifth Circuit
10 holding because the evidence in the case before it demonstrated that the employer’s anti-
11 adornment practice at issue did not constitute a blanket prohibition on all nonstandard
12 adornments. Sheriff of Worcester County, 60 Mass. App. Ct. at 643. Similarly, it is
13 unnecessary for the Commission to adopt or reject the Fifth Circuit’s holding because the
14 evidence here does not support a finding that the Town has enforced a neutral anti-
15 adornment policy in a consistent and nondiscriminatory manner.

16 The evidence establishes that police officers are required to wear a badge, a name
17 tag, a Commonwealth of Massachusetts pin, an American flag pin, and a chain and whistle
18 as part of their uniform. The evidence also establishes, however, that certain police
19 officers wear a Drug Awareness Resistance Education (DARE) pin at their option on their
20 uniforms instead of the American flag pin, and that the police chief has allowed and
21 continues to allow this pin substitution. Therefore, the Town’s argument that it strictly and

1 uniformly enforces an anti-adornment policy to ensure uniformity in the police department
2 similar to the military's strict enforcement of its uniform regulations is contradicted by the
3 police chief's continued authorization that police officers may substitute a DARE pin for the
4 required American flag pin. By allowing this deviation from the standard, required uniform,
5 while at the same time prohibiting the wearing of union insignia pins, the Town has
6 enforced its uniform policy in a discriminatory manner. Moreover, the rule enforced against
7 the wearing of union insignia pins expressly allows for further exceptions to the prescribed
8 uniform at the discretion of the police chief.

9 The Town also contends that the wearing of union insignia pins would compromise
10 the neutral image that police officers must maintain if called to intervene at a labor dispute.
11 We are sensitive to this argument, but the record demonstrates that the Town's police
12 department is rarely called to a labor dispute and the Town's rule as enforced is not limited
13 or narrowly drawn to address these rare occurrences. Therefore, for all these reasons, we
14 are not persuaded that there exist special circumstances that override an employee's
15 statutorily protected right in these circumstances to wear union insignia pins.

16 The Town next argues that, even if special circumstances do not exist to justify
17 prohibiting police officers from wearing union insignia pins on their uniforms, the Union
18 waived that right on behalf of its members through the collective bargaining process over
19 the police department's rules and regulations. We address this defense next, before
20 deciding whether the Town's conduct at issue here constitutes an independent violation of
21 Section 10(a)(1) of the Law.

1 Section 10(a)(5) and (1)

2 The Commission's complaint of prohibited practice also alleges that the Town
3 violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it
4 implemented a March 1, 2000 policy requiring police officers to obtain advance written
5 permission to wear union insignia pins on their uniforms.

6 Prior to January 17, 2000, the police department did not have any rules and
7 regulations in effect governing uniforms, including uniform adornments like pins and
8 medals. By memorandum dated March 1, 2000, the police chief issued an order
9 requiring police officers to obtain written authorization prior to wearing any items that
10 are not part of the uniform. In late March or early April 2000, the police chief ordered
11 the Union President to remove his union insignia pin and he did so. In turn, the Union
12 President then told other police officers to remove their union insignia pins from their
13 uniforms and they removed those pins.

14 The Town argues that it did not implement a change in employee's terms and
15 conditions of employment when it prohibited police officers from wearing all pins not
16 authorized by the police chief, because the March 1, 2000 memorandum from the police
17 chief was only a reminder of a previously adopted rule that police officers were not
18 permitted to wear any pins that were not part of the official police department uniform.

19 The Town also argues that, even if police officers have the right to wear union insignia
20 pins, the Union waived that right on behalf of its members through the collective

1 bargaining process over the police department rules and regulations, specifically Rule
2 8.4, which prohibits police officers from wearing union insignia pins.

3 The Union argues that, if the Commission finds that the parties negotiated a rule
4 prohibiting all pins on the uniform, that rule is not applicable to union insignia pins
5 because a union cannot waive its members' Section 2 rights to wear union insignia pins.

6 The Union also argues that, even if the Union could waive employees' Section 2 rights in
7 the collective bargaining process, the parties did not bargain to agreement or impasse on
8 whether the rule prohibited the wearing of union insignia pins, and, therefore, the Union did
9 not consciously yield its right to pursue its members' statutory right to wear union insignia
10 pins.

11 A waiver of statutorily protected rights must be "shown clearly, unmistakably, and
12 unequivocally." School Committee of Newton, School Committee of Newton v. Labor
13 Relations Commission, 388 Mass. 557, 569 (1983). A contract waiver of a statutory right
14 will not be lightly inferred. Town of Andover, 4 MLC 1086, 1089 (1977). The burden of
15 proving a contract waiver rests on the party who raises that defense. City of Boston v.
16 Labor Relations Commission, 48 Mass. App. Ct. 169, 175 (1999); City of Newton, 29 MLC
17 135, 138-139 (2003) and cases cited. To prevail in this defense, the evidence must
18 demonstrate that the parties consciously explored and considered the right of employees
19 to wear union insignia pins and the Union knowingly and unequivocally yielded that right.
20 Town of Andover, 28 MLC 264, 270 (2002); Springfield School Committee, 20 MLC 1077,
21 1082 (1993), citing, Melrose School Committee, 3 MLC 1299 (1976); Town of Marblehead,

1 12 MLC 1667, 1670 (1986). To determine the existence of waiver, the Commission
2 examines the contractual language. Massachusetts Board of Regents, 15 MLC 1265,
3 1269 (1988), citing, Town of Marblehead, 12 MLC at 1670. If the language clearly,
4 unequivocally, and specifically permits the Town to prohibit police officers from wearing
5 union insignia pins on their uniforms, no further inquiry is necessary. Boston School
6 Committee, 27 MLC 121, 123 (2001), citing, City of Worcester, 16 MLC 1327, 1333
7 (1989). If the language is ambiguous, the Commission reviews bargaining history to
8 determine the parties' intent. Id.,

9 Applying this well established case law here, we find that the Union waived its
10 right to bargain over the police chief's March 2000 prohibition on the wearing of union
11 insignia because it had agreed to the language contained in Rule 8.4 during the 1999-
12 2000 negotiations over the police department's rules and regulations.¹² The language
13 of Rule 8.4 clearly and unequivocally prohibits police officers from wearing buttons,
14 insignia, attachments or coverings of any kind on their uniforms without the police
15 chief's permission. No further inquiry is necessary. Therefore, we conclude that the
16 Town did not refuse to bargain in good faith, in violation of Section 10(a)(5) and,
17 derivatively, Section 10(a)(1) of the Law, when the police chief issued a March 1, 2000

¹² It is unnecessary for us to decide whether the Union waived the employees' Section 2 right to wear union insignia because, as discussed further in this decision, Rule 8.4 is not a blanket prohibition on the wearing of all nonstandard pins that is applied in a consistent and nondiscriminatory manner.

1 memorandum requiring police officers to obtain advance written permission to wear
2 union insignia pins on their uniforms.

3 However, our analysis does not stop here. We return to our examination of the
4 record to determine whether the Town interfered with, restrained or coerced employees
5 in the exercise of their rights under Section 2 of the Law by implementing Rule 8.4 and
6 prohibiting police officers from wearing union insignia pins on their uniforms, in violation
7 of Section 10(a)(1) of the Law.¹³

8 The right of employees to wear union insignia is a form of workplace
9 communication, like the right of employees to distribute union-related literature.
10 Although an employer may promulgate rules regulating the distribution of union-related
11 material in the work place, those rules must be neutral, nondiscriminatory, and tailored
12 to avoid impermissible interference with employee rights to organize. Quincy School
13 Committee, 19 MLC 1476, 1480-81 (1992). See also Beth Israel Hospital v. NLRB, 437
14 U.S. 483, 491-492, 98 LRRM 2727, 2730 (1978). Similarly, in the law enforcement
15 context, a public employer may implement rules regulating the uniforms of law
16 enforcement officers, but those rules, even if negotiated with the employees' exclusive
17 representative, must be neutral, and applied and enforced in a consistent and
18 nondiscriminatory manner. See generally, Department of Justice, Immigration and
19 Naturalization Service v. Federal Labor Relations Authority, 139 LRRM at 2825;

¹³ See Sheriff of Worcester County, 60 Mass. App. Ct. at 636 for a discussion of the different interests protected by Sections 10(a)(1) and 10(a)(5) of the Law.

1 Universal Fuels, 298 NLRB 254, 120 LRRM 1209 (1990) (union effected an invalid
2 waiver of employees' rights). Therefore, we examine the record to determine whether
3 Rule 8.4 is a neutral anti-adornment policy, which the Town has consistently applied
4 and enforced in a nondiscriminatory manner.

5 Rule 8.4 in part, provides that "[n]o buttons, insignia, attachments or coverings of
6 any kind will be worn on the uniform without the permission of the Chief of Police."
7 Although the rule does not distinguish on its face between the wearing of union insignia
8 pins and all other pins, it does expressly vest unfettered discretion in the police chief to
9 grant or to deny a police officer's request to wear any nonstandard pin, including union
10 insignia pins. The existence of such complete discretion, which employees can
11 reasonably read as unlawfully vesting discretion in the police chief to prohibit the
12 wearing of union insignia, while permitting the wearing of other nonstandard insignia,
13 persuades us that Rule 8.4 is not a neutral anti-adornment policy. See generally,
14 Quincy School Committee, 19 MLC at 1480-1482; Lafayette Park Hotel, 326 NLRB 824,
15 825 (1998).

16 Further, as we stated previously in this opinion, relying on this section of Rule
17 8.4, the police chief has prohibited police officers from continuing to wear union insignia
18 pins on their uniforms, while also continuing to allow certain police officers to substitute
19 a DARE pin, which is not part of the police department's standard, required official
20 uniform, for the flag pin, which is. Moreover, the record demonstrates that, under Rule
21 8.4, the police chief would authorize the wearing of a pin, medal, or ribbon given to a

1 police officer in recognition of their work from a community organization like Mothers
2 Against Drunk Driving, while continuing to prohibit the wearing of union insignia pins.

3 Based on this record, we find that the above-quoted section of Rule 8.4 is not a
4 neutral, blanket anti-adornment policy which the Town has consistently applied and
5 enforced in a nondiscriminatory manner. Therefore, by maintaining and enforcing that
6 part of Rule 8.4, the Town has interfered with, restrained, and coerced its employees in
7 the exercise of their rights under Section 2 of the Law, in violation of Section 10(a)(1) of
8 the Law.

9 CONCLUSION

10 For the reasons stated above, we conclude that the Town has interfered with,
11 restrained, and coerced employees in the exercise of their rights under Section 2 of the
12 Law by: a) maintaining the following section in Rule 8.4 of the police department's rules
13 and regulations: "[n]o buttons, insignia, attachments or coverings of any kind will be worn
14 on the uniform without the permission of the Chief of Police"; and, b) enforcing the above-
15 quoted section in Rule 8.4 in a discriminatory manner, in violation of Section 10(a)(1) of
16 the Law. Further, we conclude, for the reasons stated that, the Town did not violate
17 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

ORDER

WHEREFORE, on the basis of the foregoing, it is hereby ordered that the Town of

Oxford shall:

Cease and desist from:

- a) Maintaining and enforcing the following section in Rule 8.4 of the Police Department's rules and regulations:

No buttons, insignia, attachments or coverings of any kind will be worn on the uniform without the permission of the Chief of Police.

- b) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law by prohibiting police officers from wearing union insignia pins on their uniforms, while permitting the wearing of other nonstandard insignia; and,

- c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action, which will effectuate the policies of the Law:

- a) Rescind the above-quoted section from Rule 8.4 and advise the employees that it is no longer maintained in the Police Department's rules and regulations;
- b) Post in conspicuous places where employees represented by the Massachusetts Coalition of Police, Local 173, AFL-CIO usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees; and

- 1 c) Notify the Commission within ten (10) days of receipt of this decision and order of
2 the steps taken to comply with this order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

ALLAN W. DRACHMAN, COMMISSIONER

HELEN A. MORESCHI, COMMISSIONER

HUGH L. REILLY, COMMISSIONER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, section 11, decisions of the Labor Relations Commission are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Labor Relations Commission within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

NOTICE TO EMPLOYEES

POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Labor Relations Commission has issued a decision finding that the Town of Oxford violated Section 10(a)(1) of the Massachusetts General Laws, Chapter 150E (Chapter 150E), the Public Employee Collective Bargaining Law, by: a) maintaining the following section in Rule 8.4 of the police department's rules and regulations: "[n]o buttons, insignia, attachments or coverings of any kind will be worn on the uniform without the permission of the Chief of Police"; and, b) enforcing the above-quoted section in Rule 8.4 in a discriminatory manner, in violation of Section 10(a)(1) of the Law. The Town of Oxford posts this Notice to Employees in compliance with the Labor Relations Commission's order.

Section 2 of the Public Employee Collective Bargaining Law gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and enforce the following section in Rule 8.4 of the Police Department's rules and regulations:

No buttons, insignia, attachments or coverings of any kind will be worn on the uniform without the permission of the Chief of Police.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law by prohibiting police officers from wearing union insignia pins on their uniforms, while permitting the wearing of other nonstandard insignia.

WE WILL rescind the above-quoted section from Rule 8.4 and advise the employees that it is no longer maintained in the police department's rules and regulations.

Town of Oxford

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Labor Relations Commission, 399 Washington St., 4th Floor, Boston, MA 02108-5213 (Telephone: (617) 727-3505).