City of Newton's Involuntary Transfer of Police Sergeant Deemed Adverse Employment Action by Massachusetts Supreme Judicial Court

June 10, 2025 | Corey F. Higgins | Articles

On May 22, 2025, the Supreme Judicial Court of Massachusetts in City of Newton v. Commonwealth Employment Relations Board reversed the Massachusetts Appeals Court's decision and affirmed the Commonwealth's Employment Relations Board (CERB) decision when it held that substantial evidence supported the finding that the City of Newton's transfer of a police sergeant from his day shift in the traffic bureau to the night shift in the patrol division resulted in a material disadvantage. In its decision, the Supreme Judicial Court of Massachusetts (SJC) further reaffirmed that the appropriate standard for determining whether an employer has taken an adverse employment action is based on an objective standard.

The City of Newton's police sergeant was an active bargaining unit member who engaged in union-related activities and was involved in several disputes with police leadership prior to his transfer. In 2018, the City sent the sergeant a letter informing him of his transfer from his position as a specialty sergeant working regular daytime hours with weekends and holidays off to a sergeant position working nighttime hours, weekends, and holidays. According to the sergeant, working night shifts was difficult for him and his family, which contributed to increased stress at home.

Consequently, the police union filed a charge of prohibited practice with the Department of Labor Relations alleging that the City violated G. L. c. 150E, § 10 (a) (3) and (a) (1). The hearing officer determined that while the sergeant's transfer was an adverse employment action and the sergeant had shown a prima facie case of retaliation, the City had rebutted the presumption of retaliation by producing evidence of his insubordination and misconduct.



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In turn, both the police union and the City filed cross appeals with the CERB. The CERB agreed with the police union that the transfer of the sergeant was an adverse employment action, and that the union had provided sufficient evidence to establish a prima facie case of retaliation. However, the CERB disagreed with the hearing officer's conclusion that the City had proven the transfer was due to the sergeant's insubordination and misconduct. Specifically, the CERB found that the City failed to provide sufficient evidence to show that these issues were the reason behind the transfer, as required in the second stage of the burden-shifting process in retaliation cases. As a result, the CERB reversed the dismissal of the complaint by the hearing officer and ordered that the sergeant be reinstated to the position he would have been in if the transfer had not taken place.

The City then appealed the CERB's decision to the Massachusetts Appeals Court, which determined that because the sergeant had received an increase in pay as required under the collective bargaining agreement, his transfer from daytime to nighttime duty was not an adverse employment action, as a matter of law. As such, the Appeals Court concluded that the union had not met its burden to show a prima facie case of retaliation under the first stage of the burden-shifting process.

Subsequently, both the CERB and the police union applied for further appellate review at the SJC. The SJC reaffirmed its holding in Yee v. Massachusetts State Police that an adverse employment action, defined as an action substantial enough to materially disadvantage an employee, must be measured by an objective standard. The court confirmed that a "material disadvantage arises when objective aspects of the work environment are affected, and the disadvantage is objectively apparent to a reasonable person in the employee's position." The SJC reasoned that the collective bargaining agreement made the sergeant's transfer from the day shift to the night shift more "palatable" by including a pay increase for the later shift but that it did not erase the material disadvantage of the transfer in the terms and conditions of his employment. Not only did the night shift transfer require a bargained-for pay differential, but it also interfered with the sergeant's family life. The court noted that a reasonable person in his position would see a sudden, involuntary transfer after six years of working a day shift with weekends and holidays off to a night shift—where weekends and holidays could be part of the schedule—as a significant and objective change in the employee's terms and conditions of employment.

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The SJC also addressed whether an employee must have a "generally good" employment record to assert a prima facie case of retaliation. The SJC made clear that a good work record is not a requirement for bringing retaliation claims, though it can be helpful evidence for an employee to show adverse action on behalf of an employer.

If you have any questions about this recent decision, please contact a member of our Labor, Employment and Employee Benefits Team.

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