

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

CHELMSFORD SCHOOL  
COMMITTEE

and

CHELMSFORD FEDERATION  
OF TEACHERS, AFT LOCAL 3569

Case No. MUP-17-6374

Date Issued: June 27, 2018

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COMPLAINT OF PROHIBITED PRACTICE AND PARTIAL DISMISSAL

The Chelmsford Federation of Teachers, AFT Local 3569 (Union) filed a charge with the Department of Labor Relations (DLR) on December 5, 2017,<sup>1</sup> alleging that the Chelmsford School Committee (School Committee or Employer) had engaged in prohibited practices within the meaning of Sections 10(a)(1), (2), (3) and (5) of Massachusetts General Laws, c.150E (the Law). Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.05 of the DLR's Rules, I conducted an in-person investigation on February 12, 2018 and March 5, 2018,<sup>2</sup> and find probable cause to believe that a violation has occurred and, for the reasons stated

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<sup>1</sup> The Union filed an amended charge on December 18, 2017. The Union also clarified the allegations in its charge at the in-person investigation.

<sup>2</sup> I left the record open for the parties to submit final versions of their exhibits on March 19, 2018 and to submit written arguments in support of their positions on April 9, 2018.

below dismiss other allegations.<sup>3</sup>

### COMPLAINT

This Complaint of Prohibited Practice shall issue and the parties will be given an opportunity to be heard for the purpose of determining the following allegations:

#### Count I

1. The Town of Chelmsford (Town) is a public employer within the meaning of Section 1 of the Law.
2. The School Committee is the collective bargaining representative of the Town for the purpose of dealing with school employees.
3. The Union is an employee organization within the meaning of Section 1 of the Law.
4. The Union is the exclusive bargaining representative for a unit of teachers and nurses as well as certain other professional employees, who are employed by the School Committee.
5. Jay Lang, Ed.D. (Lang) is the Superintendent of the Chelmsford public schools and an agent of the School Committee.
6. Patricia Tobin (Tobin) is the interim principal of the Harrington School (Harrington) and an agent of the School Committee.
7. Eric Blanchet (Blanchet) is the AFT field representative who services the bargaining unit referred to in paragraph 4.
8. Jennifer Salmon (Salmon) is president of the Union referred to in paragraph 3 and a teacher at the Harrington.

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<sup>3</sup> On February 12, 2018, the School Committee moved to defer to arbitration the allegations that it violated Sections 10(a) (1) and (3) of the Law by issuing a written reprimand to Jennifer Salmon (Salmon), a motion which the Union opposed. I hereby deny without prejudice the School Committee's request because deferral of the allegations involving the written reprimand would not conserve the resources of the parties or the DLR as the remaining allegations in the Complaint would still need to be adjudicated. See Town of Ware, 17 MLC 1565, 1566, MUP-7486 (March 8, 1991) (citing Whittier Regional School Committee, 13 MLC 1325, 1332, MUP-5150 (December 11, 1986)).

9. On November 16 and November 21, 2017, Salmon requested that Tobin meet with her and Blanchet on November 22, 2017 regarding the working conditions of Carol Larivee (Larivee), a first grade teacher at the Harrington.
10. On November 21, 2017, Tobin informed Salmon that she was unavailable to meet on November 22, 2017.
11. On November 22, 2017, before the students arrived but while unit members were present, Salmon and Blanchet went to Tobin's office, requested a meeting with her about the issue referred to in paragraph 9 and contended that the matter was urgent.
12. Tobin informed them that she was too busy to meet with them.
13. Blanchet stated loudly that it was unacceptable and demanded that Tobin check her calendar and agree to a date for a meeting.
14. Tobin became upset and left her office, while Blanchet and Salmon remained seated at a small table outside of Tobin's office.
15. Tobin's administrative assistant called the Main Office, where Lang's office was located, and requested help.
16. Lang called the police and went to the Harrington.
17. When Lang arrived, Blanchet approached him in the corridor and demanded that he arrange a meeting with Tobin.
18. In the presence of unit members, Lang requested that the police remove Blanchet from the Harrington, which they subsequently did.
19. By the conduct described in paragraph 18, the School Committee independently has interfered with, restrained and coerced its employees in the exercise of protected activities in violation of Section 10(a)(1) of the Law,

Count II

20. The allegations in paragraphs 1 through 18 are re-alleged.
21. After the police removed Blanchet from the school building, Lang went to Tobin's office where Salmon still remained seated outside at the small table.
22. Lang informed Salmon that although she had done nothing wrong, he was sending her home to prevent further issues.

23. The activity referenced in paragraphs 9 and 11 constitutes concerted, protected activity.
24. The School Committee took the action described in paragraph 22 in retaliation for Salmon engaging in the concerted, protected activity described in paragraphs 9 and 11.
25. By the conduct described in paragraphs 22 and 24, the School Committee has discriminated against Salmon for engaging in concerted activity protected by Section 2 of the Law in violation of Section 10(a)(3) of the Law.
26. By the conduct described in paragraphs 22 and 24, the School Committee has derivatively interfered with, restrained and coerced Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count III

27. The allegations in paragraphs 1 through 18 and 21 and 22 are re-alleged.
28. Lang then requested that the Harrington school resource officer escort Salmon from the building, which he did.
29. By the conduct described in paragraph 28, the School Committee has independently interfered with, restrained and coerced Salmon in the exercise of protected activities referred to in paragraphs 9 and 11 in violation of Section 10(a)(1) of the Law.

#### Count IV

30. The allegations in paragraphs 1 through 18, 21, 22 and 28 are re-alleged.
31. Later, on November 22, 2017, Lang issued Salmon a letter (November 22, 2017 administrative leave letter) placing her on administrative leave.
32. The November 22, 2017 administrative leave letter stated in pertinent part:

Please be advised that I am placing you on administrative leave with pay pending the results of an investigation into an incident that occurred at Harrington Elementary School earlier this morning. The administrative leave will commence today, Wednesday November 22, 2017, and continue until further notice.

While you are on paid administrative leave you are not to contact staff members or students of the Harrington Elementary School pertaining to this incident, including e-mail or social network websites, such as Facebook, nor visit the premise[s] of the Harrington Elementary School. Failure to follow this order will be deemed insubordination and you may be subject to suspension and/or termination from your employment with the Chelmsford Public Schools.

If any contact with the Harrington Elementary School is necessary, contact must be made through your Principal Patricia Tobin at \_\_\_\_.

33. The School Committee took the action referred to in paragraphs 31 and 32 in retaliation for Salmon engaging in the concerted protected activity referred to in paragraphs 9 and 11.
34. By the conduct described in paragraphs 31, 32 and 33, the School Committee has discriminated against Lang for engaging in concerted activity protected by Section 2 of the Law in violation of Section 10(a)(3) of the Law.
35. By the conduct described in paragraphs 31, 32 and 33, the School Committee has derivatively interfered with, coerced and restrained Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law..

#### Count V

36. The allegations in paragraphs 1 through 18, 21, 22, 28, 31 and 32 are re-alleged.
37. Lang's order in the November 22, 2017 administrative leave letter, which is referred to in paragraph 32, precluded Salmon from contacting any staff members at the Harrington, even Union representatives, about the events referred in paragraphs 9, 11, 18, 22, and 28 and was overly broad.
38. By the conduct described in paragraphs 31, 32 and 37, the School Committee has independently interfered with, restrained and coerced Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count VI

39. The allegations in paragraphs 1 through 18, 21, 22, 28, 31 and 32 are re-alleged.

40. On November 22, 2017, from 12:00 PM to 12:45PM, Lang held a meeting with unit members at the Harrington regarding the events referred to in paragraphs 9, 11, 18, 22 and 28.
41. Lang stated that Blanchet and Salmon had demanded a meeting with Tobin, that the meeting was "combative," and that Blanchet would not leave and wanted to be heard. He noted that the police were called to remove Blanchet and Salmon and that Salmon's removal was "not disciplinary but it was not appropriate for her to remain in school." He also commented how he was shocked and disappointed with the actions from "some individuals."
42. By Lang's comments referred to in paragraph 41, the School Committee has independently interfered with, restrained and coerced employees in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count VII

43. The allegations in paragraphs 1 through 18, 21, 22, 28, 31, 32, 40 and 41 are re-alleged.
44. Lang also stated at the meeting referred to in paragraph 40 that "there was a right way and a wrong way to get help within the school," and that unit members could work better with the Administration.
45. By Lang's comments described in paragraph 44, the School Committee has independently interfered with, restrained and coerced employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count VIII

46. The allegations in paragraphs 1 through 18, 21, 22, 28, 31, 32, 40, 41 and 44 are re-alleged.
47. On November 22, 2017, Lang issued an official statement (November 22, 2017 official statement), copies of which were emailed to unit members and parents, concerning the events referred to in paragraphs 9, 11, 18, 22 and 28.
48. Lang's November 22, 2017 official statement noted in pertinent part:

On Wednesday, November 22, just prior to student arrival, there was an incident at the Harrington Elementary School at 8:00 a.m. Due to laws governing both staff and student

confidentiality, we are limited in the information we can release. The incident is also the subject of a pending investigation. What we can say is this entire incident was unfortunate and avoidable.

On that morning, a staff member arrived at the school with a state representative of the American Federation of Teachers (AFT), demanding to meet with Principal Patricia Tobin, despite the fact that Ms. Tobin had denied the request for a meeting the day before. As detailed in the police report, when the AFT representative began to shout at Ms. Tobin, approaching her pointing his finger in her face, the Chelmsford Police Department was contacted and both the AFT representative and the teacher were safely escorted from the premises.

The staff member was placed on administrative leave with pay pending the results of an investigation into this incident. It is important to recognize that this leave is not punitive, it is simply standard procedure following an incident of this nature.

49. Although Lang did not name Salmon or Blanchet in his official November 22, 2017 statement, he had previously identified them to unit members at the meeting, which also had taken place on November 22, 2017 and which is referred to in paragraph 40.
50. By Lang's November 22, 2017 official statement referred to in paragraphs 47 and 48, the School Committee has independently interfered with, restrained and coerced Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count IX

51. The allegations in paragraphs 1 through 18, 21, 22, 28, 31, 32, 40, 41, 44, 47 and 48 are re-alleged.
52. On November 22, 2017, Lang sent an email (November 22, 2017 email) to unit members as well as to parents and students stating:

I am writing to inform you of an unfortunate incident that occurred at the Harrington Elementary School this morning at arrival time. I was called to the school by Principal Tobin when individuals demanded a meeting with her and refused to leave the building. The request for a meeting had previously been denied by the administration. The Chelmsford Police Department was contacted and the

individual was escorted from the building. I would like to thank the Chelmsford Police Department for their quick response and let you know that at no time during this incident were the students unsafe.

53. By Lang's November 22, 2017 email, the School Committee has independently interfered with, restrained and coerced Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count X

54. The allegations in paragraphs 1 through 18, 21, 22, 28, 31, 32, 40, 41, 44, 47, 48 and 52 are re-alleged.
55. On November 24, 2017, a local newspaper the Lowell Sun reported that Salmon had been placed on paid administrative leave after an "altercation" between Lang and Blanchet and that the police had escorted Blanchet and Salmon from the Harrington. The newspaper story quoted Lang as stating:

From my perspective, it's totally unfortunate this entire incident took place. It's not appropriate any time to do anything that would disturb a school assembly and do anything that would detract from kids coming to school and having a good educational experience.

56. By Lang's statements referred to in paragraph 55, the School Committee has independently interfered with, restrained and coerced Salmon in the exercise of her rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XI

57. The allegations in paragraphs 1 through 18, 21, 22, 28, 31, 32, 40, 41, 44, 47, 48, 52 and 55 are re-alleged.
58. On November 28, 2017, Lang sent an email (November 28, 2017 email) to Harrington parents and unit members that stated in pertinent part:

I am writing to follow up on a series of events that have transpired over the past two weeks, beginning with an incident at Harrington School just prior to the Thanksgiving break, and escalating into a truly regrettable situation for our Chelmsford Public Schools... [N]othing positive or productive is accomplished when differences of opinion deteriorate into



personal confrontations and raised voices. We are extremely disappointed that this situation has escalated to this unnecessary level and hope that we can all move forward in a more positive manner and get back to focusing on our serious work of educating our students. ...

59. Although Lang in his November 28, 2017 email did not identify Salmon or Blanchet as being involved in the incident at the Harrington prior to Thanksgiving break, he previously had named them to unit members at the November 22, 2017 meeting referred to in paragraph 40.
60. By the comments referred to in paragraph 58, the School Committee independently has interfered with, restrained and coerced employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count XII

61. The allegations in paragraphs 1 through 18 and 21, 22, and 28 are re-alleged.
62. On or about November 27, 2017, the School Committee conducted an investigation into the events referred to in paragraphs 11 through 18, 21, 22 and 28.
63. On or about November 27, 2017, the School Committee sought via email to preclude Blanchet from having any involvement in that investigation, which included communicating with unit members about the investigation.
64. By the conduct described in paragraph 63, the School Committee has interfered with employees' right to communicate with their union representative about the incident referred to in paragraphs 11 through 18, 21, 22 and 28 in violation of Section 10(a)(1) of the Law.

#### Count XIII

65. The allegations in paragraphs 1 through 18, 22, 24, 28, 62 and 63 are re-alleged.
66. On November 27, 2017, as part of the investigation referred to in paragraph 62, the School Committee began to schedule investigatory interviews with unit members concerning the events referred to in paragraphs 11 through 18, 21, 22 and 28.
67. On November 27, 2017, the School Committee informed Blanchet via email that neither he nor Marie O'Donnell (O'Donnell), the Union's vice-

president, could act as the employees' representatives at the investigatory interviews referred to in paragraphs 62 and 66.

68. By refusing to permit Blanchet or O'Donnell to participate in the investigatory interviews referred to in paragraph 66, the School Committee has interfered with its employees' right to seek assistance from the Union in violation of Section 10(a)(1) of the Law.

Count XIV

69. The allegations in paragraphs 1 through 11 and 62 and 66 are re-alleged.
70. On or about November 29, 2017, the School Committee conducted an investigatory interview with Larivee, which included asking her when and why she went to Salmon to discuss her working conditions as referenced in paragraph 9.
71. By the conduct described in paragraph 70, the School Committee independently has interfered with, restrained and coerced Larivee in the exercise of her rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count XV

72. The allegations in paragraphs 1 through 18, 22, 28, 31, 32, 33, 62 and 66 are re-alleged.
73. On December 12, 2017, the School Committee issued a written reprimand to Salmon.
74. The School Committee took the actions described in paragraph 73 in retaliation for Salmon engaging in the concerted, protected activities described in paragraphs 9 and 11.
75. By the conduct described in paragraphs 73 and 74, the School Committee has discriminated against Salmon for engaging in concerted activity protected by Section 2 of the Law in violation of Section 10(a)(3) of the Law.
76. By the conduct described in paragraphs 73 and 74, the School Committee has derivatively interfered with, restrained and coerced Salmon in violation of Section 10(a)(1) of the Law.

Count XVI

77. The allegations in paragraphs 1 through 18 are re-alleged.

78. John Moses (Moses) is Chair of the School Committee and its agent.

79. On November 28, 2017, Moses posted the following comment on Facebook:

I've stated this privately, and will be stating this publicly during the next School Committee as well, I will no longer engage in negotiations with the State Union Representative ... .

I will not sit across the table from a bully under civilized rules of order.

80. By the comments referred to in paragraph 79, the School Committee independently has interfered with, restrained and coerced employees in the exercise of their rights protected by Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### Count XVII

81. The allegations in paragraphs 1 through 4 and 6 and 8 are re-alleged.

82. On October 13, 2017, a teacher at the Harrington was concerned about her terms and conditions of employment and Salmon went to her classroom to speak with her.

83. After Salmon returned to her classroom, Tobin called Salmon.

84. During the telephone call, Tobin raised her voice and used profanity when she informed Salmon that the matter referred to in paragraph 82 was "none of her business."

85. Tobin also informed Salmon that Tobin had spoken with the principal of the district school where Salmon had worked the prior year. Tobin then stated that according to the principal, Salmon had been "a problem" at the other school.

86. By its agent's Tobin's comments referred to in paragraphs 84 and 85, the School Committee has independently interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

#### PARTIAL DISMISSAL\*

For the following reasons, I have decided to dismiss the remaining allegations in the Union's charge alleging that the School Committee violated Sections 10(a)(1), (2), (3), and (5) of the Law.

*Independent Section 10(a)(1) Allegations*

A public employer violates Section 10(a)(1) of the Law when it engages in conduct that tends to interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91, MUP-1986 (February 29, 2000); Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11, 1999). The focus of a Section 10(a)(1) analysis is the effect of the employer's conduct on reasonable employees' exercise of their Section 2 rights. Town of Winchester, 19 MLC 1591, 1596, MUP-7514 (December 22, 1992). The Commonwealth Employment Relations Board (CERB) does not analyze the motivation behind the conduct, Town of Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12, 1982), aff'd sub nom. Town of Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct. 1107 (1983), or whether the coercion succeeded or failed. Groton-Dunstable Regional School Committee, 15 MLC 1551, 1555-1556, MUP-6478 (March 20, 1989). Section 2 of the Law states:

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 such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve (of the Law).

Expressions of anger, criticism or ridicule directed to employees' protected activities have been recognized to constitute interference, restraint and/or coercion of employees. See Salem School Committee, 35 MLC 199, 217, MUP-04-4008 (April 14, 2009).

Sending Salmon Home

First, the Union alleges that when the School Committee, acting through its agent Lang, sent Salmon home on November 22, 2017, the School Committee's action was an independent violation of Section 10(a)(1) of the Law. I have found in Count II of the Complaint that there was probable cause to believe that Lang's order sending Salmon home was in retaliation for her concerted, protected activities. When a charging party alleges that an employment action was unlawfully motivated, the CERB has held that such an action should be pleaded as a Section 10(a)(3) allegation, not as an independent Section 10(a)(1) allegation. Town of Chelmsford, 8 MLC at 1916 (citing City of Boston, 8 MLC 1281, 1284-1285, MUP-3891 (August 17, 1981)). Accordingly, I dismiss this portion of the Union's charge.

Placing Salmon on Paid Administrative Leave

Next, the Union alleges that when the School Committee placed Salmon on paid administrative leave later on November 22, 2017, the Employer also independently violated Section 10(a)(1) of the Law. Because I have found in Count IV of the Complaint that there was probable cause to believe that the School Committee placed Salmon on leave in retaliation for her concerted, protected activity, I decline to issue an independent Section 10(a)(1) violation for the reasons discussed above. Therefore, I dismiss that portion of the Union's charge.

#### Failing to Telephone Parents of Salmon's Students

Third, the Union alleges that the School Committee violated Section 10(a)(1) of the Law by failing to telephone the parents of Salmon's students to inform them that she would not be available to meet with them on November 29, 2017. Using email, Salmon had scheduled twenty parent teacher conferences for that date. After the School Committee placed her on administrative leave, Salmon informed the School Committee that the conferences needed to be postponed. Assistant Superintendent Linda Hirsch, Ed.D. (Hirsch) located a handwritten list of the parents' names on Salmon's desk and took a photo of the list. The School Committee then sent emails to the parents notifying them of the postponement. One parent E.A., who was sent an email, still showed up for the conference and sent an email to Salmon asking where she was. The Union argued that the School Committee's failure to call the parents eroded Salmon's professional credibility and had a chilling effect on her advocacy efforts. However, the School Committee was not obligated to communicate with the parents via telephone and instead, had used the same means of communication, i.e. email, which Salmon had used to schedule the meetings. Therefore, I do not find probable cause to believe that the School Committee violated the Law in manner alleged and dismiss this portion of the Union's charge.

#### Attempted Interrogation of Blanchet

Also, the Union claims that the School Committee violated Section 10(a)(1) of the Law by attempting to interrogate Blanchet. In a November 29, 2017 letter, the School Committee notified Blanchet that it wanted to interview him on November 30, 2017 regarding his involvement in the November 22, 2017 incident. Harold Jones (Jones), counsel for the Union, informed the School Committee via email on November 29, 2017 (November 29, 2017 email) that Blanchet would not be submitting to an interview.

An employer who coercively interrogates employees about their union activities or union membership violates Section 10(a)(1) of the Law. Lawrence School Committee, 33 MLC 90, 99, MUP-02-3631 (December 13, 2006). The CERB has held that interrogation, which itself is not threatening, does not constitute an unfair labor practice unless it meets certain standards. Id. In examining whether the interrogation was unlawful, the CERB considers a variety of factors, including: 1) the background, whether there is a history of employer hostility and discrimination; 2) the nature of the information sought, including whether the interrogation appeared to be seeking information on which to base taking action against individual employees; 3) the identity

of the questioners, including their positions in the employment hierarchy; 4) the place and method of interrogation, including whether the employee was called into a supervisor's office and whether there was an atmosphere of unnatural formality; and 5) the truthfulness of the reply. Id. No single factor is outcome determinative. Rather, it is a totality of the circumstances test. Salem School Committee, 35 MLC at 214. Here, it is significant that Blanchet is not an employee of the School Committee, and thus, could simply refuse to meet with its representatives, which he did through his counsel Jones. Moreover, when Blanchet refused to meet, the School Committee took no further action to solicit information about the November 22, 2017 incident from him. Accordingly, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged and that aspect of the Union's charge is dismissed.

#### Attempted Interrogation of O'Donnell

Next, the Union contends that the School Committee violated Section 10(a)(1) of the Law by attempting to interrogate O'Donnell. In a November 29, 2017 email, the School Committee notified O'Donnell that it wanted to interview her about the November 22, 2017 incident and certain events preceding that incident. Jones, in the November 29, 2017 email that is referenced above, responded by stating:

We are troubled that the Employer is bringing in a union officer for the purpose of interrogating her about union activity. Marie [O'Donnell] was not a witness to the events of November 22<sup>nd</sup> and the line of question[ing] proposed seem[s] quite likely to violate the law.

After the Union's protest, the School Committee did not interview O'Donnell or make any further attempts to solicit information from her about the November 22, 2017 incident. Consequently, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged and that portion of the Union's charge is dismissed.

#### Salmon's Investigatory Interview

Additionally, the Union contends that the School Committee violated Section 10(a)(1) of the Law when Lang issued a letter to Salmon on November 29, 2017 (November 29, 2017 letter) ordering her to attend an investigatory interview on November 30, 2017 regarding the November 22, 2017 incident as well as Salmon's access to and use of confidential student records information. Lang's November 29, 2017 letter also noted that the investigatory interview could lead to the imposition of discipline and that Salmon had the right to be represented by counsel or a Union representative at that interview. However, I decline to find that the School Committee's holding of the investigatory interview constituted a separate independent violation of Section 10(a)(1) of the Law, especially in light of the fact that Salmon's placement on administrative leave and her subsequent receipt of a written reprimand were alleged as violations of Section 10(a)(3) in Counts IV and XV of the Complaint.

Salmon's Written Reprimand<sup>4</sup>

Additionally, the Union contends that the School Committee violated Section 10(a)(1) of the Law when it claimed that Salmon accessed confidential information<sup>5</sup> and issued the December 12, 2017 written reprimand to her. However, I have found in Count XV of the Complaint that there was probable cause to believe that the School Committee's issuance of a written reprimand to Salmon was in retaliation for her concerted protected activity. Accordingly, I decline to issue an independent Section 10(a)(1) allegation for the reasons discussed earlier. Therefore, I dismiss this portion of the Union's charge.

Possibility of Future Discipline

Also, the Union alleges that the School Committee violated Section 10(a)(1) of the Law by including language in the December 12, 2017 written reprimand, which referenced the possibility of future discipline, and which the Union argued would chill Salmon in the exercise of her protected activity. The disputed language states in pertinent part:

Your compliance with your supervisor's requests, as well as your adherence to expectations and policies governing student record confidentiality is critical to your job performance. Additional misconduct could result in further disciplinary action up to and including termination of your employment.

The cited language does not support a separate allegation of unlawful conduct by the School Committee. Rather, it is an additional component of the written reprimand that the School Committee imposed, i.e. that such discipline, if it were lawful, could form the basis of progressive discipline. However, because the allegation is subsumed within Count XV of the Complaint, I hereby dismiss that portion of the Union's charge.

Tobin's Posting of O'Donnell's November 20, 2017 Email

Next, the Union alleges that Tobin independently violated Section 10(a)(1) of the Law by taping a November 20, 2017 email that O'Donnell sent to Hirsch and copied to Tobin to a file cabinet in Tobin's office. O'Donnell saw the email when she was present

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<sup>4</sup> The Union consolidated the allegation in its charge that Salmon's continued placement on administrative leave constituted an additional violation of Section 10(a)(1) of the Law with above-described allegation.

<sup>5</sup> The Union originally contended that the School Committee's accusation that Salmon accessed confidential information was a separate, independent violation of Section 10(a)(1) of the Law. However, at the March 5, 2018 in-person investigation, the Union agreed to incorporate this claim as part of the allegation that the issuance of the written reprimand independently violated Section 10(a)(1) of the Law.

in Tobin's office in December 2017. O'Donnell's November 20, 2017 email stated in pertinent part:

I'm so very disappointed to see the email regarding Patty's [Tobin] continued accusations of Jen [Salmon]. I have had prior communications with Patty about the way she approaches members and specifically Jen. In that communication, I stated my investment and interest in all meetings that discuss concerns she has with Jen. Please advise Patty that it is in her best interest to include me in these meetings. It seems very obvious that Patty lacks the skills necessary to be a leader in a building where the union president teaches. ...

Although the Union contends that it was chilling for O'Donnell to see her email taped to the filing cabinet, the subjective impact of the School Committee's conduct is not determinative. City of Fitchburg, 22 MLC 1286, 1292, MUP-9843 (November 29, 1995). Here, the facts before me do not show that the taped email was visible to employees who were not present in Tobin's office or that Tobin attached any disparaging statements or art work to the email. Consequently, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged and that portion of the Union's charge is dismissed.

#### *Section 10(a)(2) Allegations*

A public employer violates Section 10(a)(2) of the Law when it dominates, interferes or assists in the formation, existence or administration of an employee organization. Interference in the existence and administration of an employee organization occurs when an employer deprives a union of an economic benefit, or grants a union an undeserved economic advantage. City of Boston, 14 MLC 1606, 1617, MUP-5734 (March 25, 1988) (citing New Bedford School Committee, 13 MLC 1009, 1016, MUP-5363 (June 9, 1986)). For instance, an employer deprives a union of an economic benefit in refusing to enforce an agency service fee provision. New Bedford School Committee, 13 MLC at 1617, failing to remit employees' dues payments, City of Boston, 14 MLC at 1617, and unilaterally demanding an agency service fee. Whittier Regional School Committee, 13 MLC 1325, 1333, MUP-5150 (December 11, 1986). In such cases, the evidence must demonstrate that the employer's conduct significantly interfered with the existence and administration of the employee organization. Springfield School Committee, 27 MLC 15, 18, MUP-2521 (September 1, 2000). Unlawful assistance arises when an employer's actions aid one employee organization at the expense of another employee organization. Commonwealth of Massachusetts, 7 MLC 1226, 1235, MUP-3480 (August 21, 1980). The most common type of unlawful assistance cases decided by the CERB involves recognition. An employer commits a per se violation of Section 10(a)(2) of the Law if it recognizes and bargains with an incumbent after a question of representation has been raised by a rival union. Id.

#### Salmon's Placement on Administrative Leave



First, the Union alleges that the School Committee violated Section 10(a)(2) of the Law by placing Salmon on administrative leave on November 22, 2017. The Union contends that her placement on administrative leave interfered with her ability to conduct Union business at the Harrington because she could not be present at the school. However, other Union representatives were still available and able to conduct Union business at the Harrington. Furthermore, Salmon's placement on administrative leave is more appropriately pleaded as a violation of Section 10(a)(3) of the Law, as is alleged in Count IV of the Complaint. Therefore, this portion of the Union's charge is dismissed.

#### Precluding Salmon from Contacting Harrington Staff Members

Next, the Union alleges that the School Committee violated Section 10(a)(2) of the Law by including an order in the November 22, 2017 administrative letter that precluded Salmon from contacting Harrington staff members. The Union contends that the School Committee's order precluding her from contacting Harrington staff members, including Union representatives, interfered with her ability to conduct Union business. However, the School Committee's order did not preclude other Union representatives from interacting with Harrington staff members only Salmon. Further, this order is more appropriately pleaded as an independent Section 10(a)(1) allegation, as is alleged in Count V of the Complaint. Consequently, I do not find probable cause to believe that the School Committee violated Section 10(a)(2) of the Law in the manner alleged, and this portion of the Union's charge is dismissed.

#### Seeking to have Blanchet Cease Involvement in the Investigation of the November 22, 2017 Incident

Third, the Union alleges that the School Committee violated Section 10(a)(2) of the Law by seeking in a November 27, 2017 email to have Blanchet cease his involvement in the School Committee's investigation of the November 22, 2017 incident. However, the School Committee does not attempt to forestall the involvement of other Union representatives in the investigation, only Blanchet. Further, the School Committee's conduct is more properly pleaded as an independent violation of Section 10(a)(1) of the Law, as is alleged in Count XII of the Complaint. Accordingly, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged and that aspect of the Union's charge is dismissed.

#### *Section 10(a)(3) Allegations*

To establish a prima facie case of a Section 10(a)(3) violation, a charging party must produce information that supports the following four elements: 1) the employee engaged in concerted activity protected by Section of the Law; 2) the employer knew of the protected activity; 3) the employer took adverse action against the employee; and 4) the employer's conduct was motivated by a desire to penalize or discourage the protected activity. Commonwealth of Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998).

Blanchet's Removal by the Police

First, the Union alleges that the School Committee violated Section 10(a)(3) of the Law when Lang requested in the presence of other unit members that the police remove Blanchet from the Harrington on November 22, 2017. Blanchet is an AFT employee, who is assigned to provide services to the Union. The facts before me do not show that he was hired or sought to be hired by the School Committee. Somerset School Committee, 41 MLC 335, 338, MUP-13-3085 (May 21, 2015) (finding that because Section 10(a)(3) specifically prohibits discrimination in regard to hiring, employment status is not required). However, even assuming that the protections of Section 10(a)(3) of the Law are applicable to Blanchet, the Union has not demonstrated that the Employer took an adverse employment action against him. Further, this claim is more appropriately pleaded as an independent Section 10(a)(1) violation, as is alleged in Count I of the Complaint. Therefore, I dismiss this portion of the Union's charge.

Salmon's Removal by the Police

Also, the Union contends that the School Committee violated Section 10(a)(3) of the Law when Lang requested that the police remove Salmon from the Harrington on November 22, 2017. Because Counts II and IV of the Complaint already allege that the School Committee violated Section 10(a)(3) of the Law when the School Committee sent Salmon home on November 22, 2017 and then placed her on administrative leave, I decline to find that Salmon's escort out of the building by the school resource officer constituted an additional adverse employment action. Instead, the claim is more appropriately pleaded as an independent violation of Section 10(a)(1) of the Law, as alleged in Count III of the Complaint. Accordingly, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged and that aspect of the Union's charge is dismissed.

Precluding Salmon from Contacting Harrington Staff Members

Next, the Union alleges that the School Committee violated Section 10(a)(3) of the Law when it included an order in the November 22, 2017 administrative letter, which precluded Salmon from contacting Harrington staff members. However, because the allegation contends that the School Committee interfered with Salmon's rights under Section 2 of the Law, it is more appropriately pleaded as an independent Section 10(a)(1) violation, as is alleged in Count V of the Complaint. Therefore, I dismiss this portion of the Union's charge.

November 29, 2017 Investigation Letter

Additionally, the Union alleges that the School Committee violated Section 10(a)(3) of the Law when Lang in his November 29, 2017 letter informed Salmon that she was the subject of an investigation. However, because Lang did not discipline Salmon in that letter but only referenced the possibility of future discipline, the School

Committee took no adverse action against Salmon. The CERB has consistently defined adverse action as an adverse personnel action, such as a suspension, discharge, involuntary transfer or reduction in supervisory authority. City of Boston, 35 MLC 289, 291, MUP-04-4077 (May 20, 2009). Accordingly, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged, and that aspect of the Union's charge is dismissed.

#### Failing to Telephone the Parents of Salmon's Students

Next, the Union claims that the School Committee violated Section 10(a)(3) of the Law by failing to contact the parents of Salmon's students via telephone to inform them that she would not be available to meet with them on November 29, 2017. However, the School Committee's decision to use email to contact the parents of Salmon's students rather than to telephone them does not constitute an adverse employment action. Consequently, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged, and that portion of the Union's charge is dismissed.

#### Possibility of Future Discipline

Also, the Union contends that the School Committee violated Section 10(a)(3) of the Law when it included language in the December 12, 2017 written reprimand that referenced the possibility of future discipline. However, as was discussed above, the possibility of future discipline does not constitute an adverse employment action. Therefore, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged, and I dismiss this aspect of the Union's charge.

#### Tobin's October 13, 2017 Telephone Call

Next, the Union contends that Tobin's October 13, 2017 telephone call to Salmon violated Section 10(a)(3) of the Law. During that telephone call, Tobin purportedly raised her voice and used profanity. Additionally, Tobin allegedly told Salmon that it was not her business when Salmon met with another teacher about that teacher's terms and conditions of employment, and that Salmon had been a problem at the prior school where she worked. However, Tobin's purported comments do not constitute adverse action. Because those comments arguably could chill Salmon in the exercise of her concerted, protected activities, the claim is more appropriately pleaded as an independent violation of Section 10(a)(1) of the Law, as is alleged in Count XVII of the Complaint. Therefore, I dismiss this portion of the Union's charge.

#### *Section 10(a)(5) Allegations*

##### *Alleged Refusal to Bargain*

The duty to bargain collectively as imposed by Section 6 of the Law includes the mutual obligation of the employer and the representative of the employees to meet at

reasonable times. See Southern Worcester County Regional Vocational School District, 2 MLC 1488, 1495, MUP-2090, 2010 (May 6, 1976). While the CERB has not prescribed a particular bargaining session attendance formula which will satisfy the duty to negotiate in good faith, a party's refusal to respond to the other party's repeated requests for negotiating meetings constitutes a per se refusal to bargain, not requiring an affirmative demonstration of bad faith. See City of Chelsea, 3 MLC 1169, 1174, MUP-2373 (H.O. October 14, 1976), aff'd 3 MLC 1384 (January 19, 1977).

#### Salmon Requests to Meet with Tobin

Here, the Union points out that Salmon requested on November 16, 21 and 22, 2017 to meet with Tobin on November 22, 2017 regarding Larivee's terms and conditions of employment, and that Tobin told her that she was unavailable to meet on November 22, 2017. The Union contends that because the parties did not meet on the matter until February 17, 2018, the Employer refused to bargain in violation of Section 10(a)(5) of the Law. However, when the parties met on February 17, 2018, they agreed upon safety protocols that addressed the Union's concerns about Larivee's terms and conditions of employment. Because the parties ultimately met and resolved the underlying issue, I dismiss the allegation in accordance with Section 11 of the Law ("the investigator may dismiss the complaint if she otherwise determines that further proceedings would effectuate the purposes of this chapter.") Accordingly, this portion of the Union's charge is dismissed.

#### Moses' Comments on Facebook

Also, the Union contends that Moses' November 28, 2017 comments on Facebook that he would no longer engage in negotiations with the State Union Representative constituted a refusal to bargain in violation of Section 10(a)(5) of the Law. However, despite Moses' comments, the facts before me do not show that the School Committee ever actually refused to meet with the Union. Moreover, on January 17 and February 5, 2018, the School Committee and the Union engaged in successor contract negotiations for the Union's custodial bargaining unit. Consequently, Moses' comments are more appropriately pleaded as a violation of Section 10(a)(1) of the Law as alleged in Count XVI of the Complaint. Therefore, this portion of the Union's charge is dismissed.


#### *Unilateral Change*

A public employer violates Section 10(a)(5) of the Law when it implements a change in a mandatory subject of bargaining without first providing its employees' exclusive bargaining representative with notice and an opportunity to bargain to resolution or impasse. See School Committee of Newton v. Labor Relations Commission, 338 Mass. 557 (1983). The duty to bargain extends to both conditions of employment that are established through a past practice as well as conditions of employment that are established through a collective bargaining agreement. Town of Burlington, 35 MLC 18, 25, MUP-04-4157 (June 30, 2008); aff'd sub nom., Town of

Burlington v. Commonwealth Employment Relations Board, 85 Mass. Ct. 1120 (2014); Commonwealth of Massachusetts, 27 MLC 1, 5, SUP-4304 (June 30, 2000). To establish a unilateral change violation, the charging party must show that: 1) the employer altered an existing practice or instituted a new one; 2) the change affected a mandatory subject of bargaining; and 3) the change was established without prior notice and an opportunity to bargain. City of Boston, 20 MLC 1603, 1607, MUP-7976 (May 20, 1994); Commonwealth of Massachusetts, 20 MLC 1545, 1552, SUP-3460 (May 13, 1994).

Here, the Union made the broad claim that the School Committee violated Section 10(a)(5) of the Law by including language in the December 12, 2017 written reprimand that referenced the possibility of future discipline. However, the Union failed to provide any specific information as to whether the inclusion of this language allegedly changed a past practice or instituted a new practice. Consequently, the Union has not provided me with sufficient information to believe that the School Committee violated the Law in the manner alleged by the Union, and that portion of the Union's charge is dismissed.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
MARGARET M. SULLIVAN, INVESTIGATOR

**\*APPEAL RIGHTS**

The charging party may, within ten (10) days of receipt of this order seek a review of the dismissal by filing a request with the Commonwealth Employment Relations Board pursuant to Department Rule 456 CMR 15.05(9). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.