COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	
SALEM SCHOOL COMMITTEE	*	Case No. MUP-04-4008
and	*	Date Issued:
ELIZABETH ANNE BABCOCK	*	April 14, 2009

Board Members:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Daniel Kulak, Esq.	-	Representing the Salem School Committee
Elizabeth Babcock	-	Pro Se

DECISION[1]

Statement of the Case

1 On January 8, 2004, Elizabeth Anne Babcock (Babcock) filed a charge with the
2 former Labor Relations Commission (Commission), alleging that the Salem School

[1] Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's regulations, this case was designated as one in which the former Labor Relations Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters.
NOTICE: This opinion is subject to formal revision before publication on the Division's website and/or the bound volume of Board decision. Readers are requested to notify the Executive Secretary of any typographical or other formal errors so that corrections can be included.

Committee (School Committee) had violated Sections 10(a)(1), 10(a)(2) and 10(a)(5) of M.G.L. c.150E (the Law). Following an investigation, the former Commission issued a complaint and partial dismissal on March 2, 2005, alleging that the School Committee had violated Section 10(a)(1) of the Law when the School Committee: (1) met with five teachers who had distributed union-related communications in teachers' mailboxes and informed them that School Committee representatives had to pre-authorize the distribution of union-related communications in teachers' mailboxes; (2) threatened teachers with arrest for distributing union-related communications during a contract ratification vote; and (3) distributed a written notice to high school teachers that the high school principal had to pre-approve all requests to distribute information and materials through teachers' mailboxes. The School Committee filed its answer to the complaint on March 14, 2005 along with a motion to dismiss the allegations contained in the complaint, because Babcock lacked standing regarding allegations that did not directly concern her. The Hearing Officer took this motion under advisement.[2]

The former Commission issued an amended complaint of prohibited practice and partial dismissal (Amended Complaint) in Case No. MUP-04-4008 on May 19, 2005. The Amended Complaint added a fourth count, alleging that the School Committee had violated Section 10(a)(1) of the Law when it would not schedule a third-step grievance

[2] In addition to the charge against the School Committee, Babcock also filed a charge on January 8, 2004 against the Salem Teachers Union, Local 1258, MFT, AFT, AFL-CIO (Union), and the former Commission docketed that charge as Case No. MUPL-04-4479. On March 2, 2005, the former Commission issued a complaint in Case No. MUPL-04-4479 and consolidated that case for hearing along with Case No. MUP-04-4008. On March 24, 2005, Babcock filed a timely reconsideration request in Case No. MUP-04-4008. (The request was timely because Babcock did not receive notice of the former Commission's complaint in Case No. MUP-04-4008 until March 16, 2005.)

meeting with Babcock regarding a grievance she had filed or explain its reasons for not scheduling the third-step grievance meeting. On May 24, 2005, the School Committee filed its answer to the Amended Complaint and a motion to dismiss the allegations raised in the Amended Complaint, because Babcock lacked standing regarding allegations that did not directly concern her. The Hearing Officer took this motion, which the School Committee renewed on June 22, 2005, under advisement.

On May 16, 2005, Babcock filed a motion to amend the complaints in both Case Nos. MUP-04-4008 and MUPL-04-4479 with additional allegations. The School Committee filed its response on May 24, 2005.

While the former Commission considered Babcock's motion to amend the complaints in both Case Nos. MUP-04-4008 and MUPL-04-4479, the Hearing Officer conducted a hearing on July 14 and 15, 2005 for the disputed allegations in the Amended Complaint in Case No. MUP-04-4008 and the complaint in Case No. MUPL-04-4479. During these proceedings, all parties had the opportunity to be heard, to examine witnesses, and to introduce evidence in both matters.

On August 12, 2005, the former Commission partially allowed the motion to amend the complaint in Case No. MUP-04-4008, issued a second amended complaint of prohibited practice and partial dismissal (Second Amended Complaint) in that case, and denied the motion to amend the complaint in Case No. MUPL-04-4479. The Second Amended Complaint included the four counts set forth in the Amended Complaint and added seven additional counts alleging that the School Committee had violated Section 10(a)(1) of the Law by:[3]

[3] The Hearing Officer abridged and paraphrased the additional seven counts of the Second Amended Complaint, which the Board has modified slightly for the sake of

Count V: Changing who conducted the performance evaluations of four teachers, leading those teachers either to be constructively discharged or not to be reappointed;

Count VI: Meeting with a teacher about a school and union-related website with a police officer present; asking the teacher to shut the website down; and stating that the website was legal but that a teacher in Beverly had faced consequences for his actions;

Count VII: Telling a teacher who had met with the superintendent regarding the memo described in paragraph 19 of the Complaint that if he did not like conditions in Salem, he should look elsewhere; and, telling the teacher, who had posted a summary of this meeting on the website described in Count VI, that the posting the summary was a "dishonorable act";

Count VIII: Transferring the teacher referred to in Count VII to another assignment in July of 2004 after he wrote letters protesting the conduct at issue in Count III;

Count IX: Denying a teacher's request in July of 2004 to participate in a research project after the teacher began a petition to protest restrictions on the use of teachers' mailboxes;

Count X: In September of 2004, threatening the teacher referred to in Count IX with revoking his leave of absence after a local newspaper published an article about the teacher and a letter from the teacher;

Count XI: After two teachers filed affidavits in this matter, changing who conducted the performance evaluations of those teachers, leading one teacher to be constructively discharged and the other not to be reappointed; and denying another teacher's request to participate in a research project after he filed an affidavit in this matter.

The School Committee filed its answer to the Second Amended Complaint on August 22, 2005. The School Committee also filed a motion to dismiss the additional allegations in the Second Amended Complaint, because they were untimely and

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completeness and clarity. This summary is not intended and should not be construed as a substitute for the allegations contained in the Second Amended Complaint.

because Babcock lacked standing to bring these additional allegations.[4] On September 28, 2005, the School Committee amended its answer to the Second Amended Complaint to correct typographical errors.

On October 20, 2005, Babcock orally moved to amend paragraph 65 of the Second Amended Complaint by adding a fourth teacher who had filed an affidavit in her charge against the School Committee.[5] The School Committee did not object, and the Hearing Officer took the motion under advisement. The Board has decided to grant that motion.

On November 3, 2005, the School Committee moved to dismiss Counts V through XI of the Second Amended Complaint, because Babcock had failed to establish a prima facie case under Section 10(a)(3) and (4) of the Law for these allegations.[6] The Hearing Officer took the motion under advisement.

The Board has decided to deny the motion. Counts V through XI allege that the School Committee violated Section 10(a)(1), not Sections 10(a)(3) or (4) of the Law. Therefore, for the reasons set forth in City of Cambridge, 30 MLC 31, 32 (2003) and cases cited therein, our analysis of these counts focuses on the effect that an

[4] The Board has decided to deny both motions. With respect to standing, it is well-established that standing to file a Section 10(a)(1) charge is not limited to the aggrieved employee. Regardless of who files the charge, the Board has the statutory responsibility to remedy violations of the Law. Boston Housing Authority, 11 MLC 1189, 1195 (1984). With respect to timeliness, we deny that motion for the reasons set forth in the first part of the opinion.

[5] The teacher who filed the affidavit, Erik Arnold (Arnold), is the subject of Count VIII of the Second Amended Complaint.

[6] In October 2005, both parties filed briefs arguing that the Board should apply the Section 10(a)(3)/10(a)(4) analytical framework to Counts V-XI of the Second Amended Complaint.

employer's action has upon employees rather than on the employer's rationale for taking the action. We therefore deny the School Committee's motion.

For the allegations at issue in the Second Amended Complaint, additional hearing dates took place on October 20, 2005, October 21, 2005, October 26, 2005, November 3, 2005, November 14, 2005, November 22, 2005, January 9, 2006, and January 31, 2006. During these additional proceedings, Babcock and the School Committee had the opportunity to be heard, to examine witnesses, and to introduce evidence.

On June 2, 2006, Babcock filed her post-hearing brief, and the School Committee filed its post-hearing brief on June 5, 2006.

The Hearing Officer issued Recommended Findings of Fact on March 20, 2008. Babcock filed challenges to the findings on May 21, 2008.[7] The School Committee did not file any challenges. After reviewing challenges and the record, we adopt the Hearing Officer's recommended findings of fact, as modified where noted, and summarize the relevant portions below.[8]

[7] On April 2, 2008, the Hearing Officer extended the parties' time for filing challenges to May 12, 2008.

[8] The Hearing Officer noted that his findings regarding the "Vote No" Letter, the First Ratification Vote, and the Second Ratification Vote as well as Babcock's grievance do not include evidence that was introduced during the hearing dates that occurred after the former Commission issued the Second Amended Complaint. While some of the allegations in the Second Amended Complaint were consolidated for hearing with Case No. MUPL-04-4479, the Hearing Officer issued separate findings of fact in each case. The findings regarding the "Vote No" Letter, the First Ratification Vote, and the Second Ratification Vote are identical to the findings issued in Case No. MUPL-04-4479.

Findings of Fact[9]

The Union represents teachers employed by the School Committee in Salem High School, a middle school, and seven grade schools.[10] The School Committee provides mailboxes through which various memoranda and documents are circulated to its teachers. Teachers have used these mailboxes to distribute educational materials to each other as well as non-work related information, including announcements for social gatherings and birthday cards.[11]

On behalf of its members, the Union negotiated a collective bargaining agreement (Agreement) with the School Committee on September 18, 2000, effective by its terms from September 1, 2000 to August 31, 2003. Article IX, "Union Privileges and Responsibilities," sets forth in Section C(2)(b) that the "Union shall have the right to place its material[s] in the mailboxes of all teachers."[12] Babcock served as President of the Union from 1997 to 2001.

"Vote No" Letter

At the start of the 2003 to 2004 school year, the Union and the School Committee reached a tentative agreement regarding a successor collective bargaining

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[9] The Board's jurisdiction is uncontested.

[10] This finding has been modified to conform to the record evidence.

[11] Several witnesses expressed their understanding of how teachers had used their mailboxes previously. That testimony did not indicate prior specific uses of teachers' mailboxes. Thus, the Hearing Officer declined to find that their testimony provides a credible and substantial basis for concluding that any particular materials, other than what is noted above, had previously been delivered in teachers' mailboxes.

[12] Article I of the Agreement specifically defines the Union as "Salem Teachers Union, Local 1258, American Federation of Teachers, AFL-CIO" and "Union representative" as "the Union building representative or other qualified designee of the Union."

agreement (Successor Agreement) to the expiring Agreement.[13] The Union scheduled a ratification vote on September 15, 2003 and a membership meeting on September 8, 2003 to describe the contents of the proposed Successor Agreement. At the September 8th meeting, Union President David McGrath (McGrath) and a field representative for the Union, Jay Porter (Porter), answered questions about the proposed Successor Agreement. Members of the Union's negotiating team were present at the meeting, but McGrath and Porter indicated to those attending that negotiation team members were not allowed to answer members' questions. Prior to the membership meeting, Porter instructed members of the negotiating team that they had to support and endorse the proposed Successor Agreement and cautioned them about preparing a minority report or voicing comments in opposition to the proposed Successor Agreement. Because of the large turnout and a requirement that the meeting last no longer than three hours, the Union tried to limit questioners to three minutes per question. Several of the questions concerned new salary schedules. When one questioner asked for a comment specifically from one member of the negotiating team, McGrath and Porter directed the member of the negotiating team not to respond. When another questioner asked for the pros and cons to the proposed Successor Agreement, the Union's response was simply that the proposed Successor Agreement was the best that could be negotiated.

Several teachers at Salem High School were not satisfied with the Union's responses at the September 8th meeting. They had examined current and proposed salary schedules and had wanted to present their findings at the informational meeting.

[13] Unless specifically indicated, all references to the Agreement are to provisions that remained unchanged after ratification of the Successor Agreement.

Because they could not present that information, they drafted a letter ("Vote No" letter) voicing their concerns about the proposed Successor Agreement. They met with Babcock to have her review their draft letter and to advise them about how to distribute the letter. Babcock explained that they could distribute the letter through the teachers' mailboxes, but the letter had to be prepared and produced without use of school resources and distributed after the regular work day had ended. Babcock urged the teachers to put their names on the flier so that people knew that the flier reflected their personal points of view.[14] As a result, John Cammarata (Cammarata), James Flynn (Flynn), Addison Chrystie (Chrystie), George Clement (Clement), and Andrew Moore (Moore) (collectively, the five teachers) — signed the final draft of the "Vote No" letter.[15] None of the five teachers was an officer in the Union, a member of the Union's negotiation team, or a Union building representative.

On Thursday, September 11, 2003, three of the five teachers distributed the "Vote No" letter in mailboxes in seven of Salem's public schools.[16] At some schools, the teachers had the opportunity to notify school principals of their distribution of the "Vote No" letter, and those principals did not object to the distribution or ask to see the "Vote No" letter.

On Friday, September 12, 2003, school administrators received a number of phone calls concerning the "Vote No" letter. Assistant Superintendent of Personnel Lawrence Callahan (Callahan) went to the high school to examine the "Vote No" letter.

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[14] The Board has granted Babcock's request to modify this finding to reflect that she told the five individuals who met with her to sign the "Vote No" letter.

[15] A copy of the "Vote No" letter is provided in Appendix 1.

[16] This finding has been modified to reflect the correct number of schools.

After reading the letter, he decided to meet with the five teachers to determine what was happening between the five teachers and the Union.

That afternoon, while classes were still in session, school administrators removed the five teachers from their classes and lunchroom duties to attend a meeting with Callahan and High School Principal Ann Papagiotas (Papagiotas) regarding the "Vote No" letter. Previous to this incident, school administrators had not removed multiple teachers from their regular job duties in the middle of the school day. School administrators invited McGrath to attend, because they believed the five teachers were entitled to Union representation at this meeting.[17] The five teachers met McGrath just before the meeting started, but they and McGrath did not discuss why they had been summoned to the meeting. Instead, the five teachers met with each other.[18]

At the meeting, Callahan and Papagiotas asked the five teachers a number of questions regarding the mailbox distribution, including whether they had made copies using school resources or on school time, whether they had represented the Union, and whether they had sought Union review or approval of the "Vote No" letter. The five teachers answered all these questions. Towards the end of the questioning, Papagiotas announced that no mail or information could be circulated throughout the high school building without her express approval. Callahan added that employees would have to seek approval from School Superintendent Herbert Levine (Levine)

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[17] Article IX, Section L, "Right of Representation," of the Agreement states:

> In the event a teacher is called into a meeting with management representative and the teacher reasonably believes that any disciplinary action may result, it is the teacher's right to have a Union representative present in the meeting. If this right is refused, the teacher is under no obligation to respond to management's questions.

[18] The record is silent regarding what the five teachers discussed.

before using employee mailboxes in other school buildings.[19] McGrath was present throughout the meeting but said nothing.

During the course of the meeting, Cammarata asked several times whether the information that the administration was seeking could be used for disciplinary purposes and indicated that he wanted Union representation. Callahan was puzzled at this request, because McGrath was present at the meeting. At the end of the meeting, Cammarata asked Callahan if discipline was forthcoming. Callahan replied that discipline might occur, and Cammarata asked for representation.[20] Callahan replied that representation was unnecessary since the meeting was over. As the five teachers left the school office, Callahan directed Flynn to stay and asked Flynn if he had learned anything today.[21]

After the meeting, Callahan contacted a few principals at other schools to verify the five teachers' statements. When the principals verified what the five teachers had said, Callahan concluded that the five teachers had not violated any terms of the Agreement or working conditions, that they had answered all questions directly, and that there would be no discipline as a result. Callahan and Papagiotas did not inform the five teachers of this decision.

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[19] Callahan testified that his and Papagiotas' statements mirrored existing school policy regarding the use of teachers' mailboxes. The Hearing Officer did not credit this testimony, because other school principals did not apply this prohibition to the five teachers who disbursed the "Vote No" letter, and the School Committee did not discipline the five teachers for violating this alleged policy.

[20] Cammarata hoped to bring Babcock to the meeting as his representative.

[21] Callahan and Flynn knew each other prior to Flynn becoming a teacher at Salem High School. The record is silent about Flynn's response to Callahan's question.

First Ratification Vote

The contract ratification vote for the Successor Agreement was held on Monday, September 15, 2003, in the lobby of Salem High School after the school day had ended. A number of bargaining unit members — but not the five teachers — handed out the "Vote No" letter to teachers as they arrived to vote. Because of the September 12th meeting, the five teachers did not want to risk further action by school administrators.

During the ratification vote, Callahan visited the high school at the request of Levine to investigate complaints about a disruption there and to determine if the police needed to be called.[22] Callahan circulated throughout the lobby where the voting took place, did not see any disturbance meriting the complaints, and called Levine to inform him that the police were not needed as the voting was orderly. Callahan did not ask to see the flyer being distributed. Callahan met with McGrath and Porter to explain why he was there and told them that he believed there were no problems.[23] After meeting with McGrath and Porter, Callahan left the high school. Callahan's visit to the high school lasted from five to ten minutes. Papagiotas also was present in the lobby while the vote took place.[24]

After Callahan left, Porter and McGrath met with the teachers handing out the "Vote No" letter. Porter told the teachers that he had intervened on their behalf, because Callahan wanted to have them arrested if they did not stop distributing the

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[22] There is nothing in the record to indicate that McGrath and Porter voiced complaints to school administrators about the leafleting.

[23] Porter testified that Callahan had asked if he and McGrath wanted the teachers distributing flyers to be removed by calling the police. Porter's testimony is that he told Callahan that he did not want anything of the sort done, and that Callahan should leave.

[24] The record does not contain substantial and credible evidence regarding any specific action Papagiotas took while in the lobby or how long she was there.

"Vote No" letter.[25] Porter explained that he had convinced Callahan to leave the teachers alone, because only teachers and not the general public were present at the time. Cammarata asked Porter to grieve Callahan's threat to arrest them, but Porter declined to do so.[26]

Additionally, Cammarata asked Porter and McGrath to file a grievance over the prohibition Papagiotas had announced against using mailboxes to distribute information without prior approval from school administrators. Porter and McGrath replied that the Union would not file that grievance, because the Agreement provided that only official Union representatives and not teachers in general had unrestricted access to teachers' mailboxes.

Second Ratification Vote

Because the Union's membership declined to ratify the proposed Successor Agreement on September 15, 2003, the Union and the School Committee returned to the negotiating table. After reaching agreement on a new proposed Successor Agreement with the School Committee, the Union scheduled a second ratification vote for Monday, November 24, 2003.

Prior to scheduling the second ratification vote, Papagiotas distributed a memo dated October 22, 2003 to all high school staff stating: "As a reminder requests to

[25] While Porter testified about his conversation with Callahan, he did not testify about what he had said to the teachers and their supporters distributing the "Vote No" letter. McGrath simply testified that he confirmed Porter's testimony regarding what Porter had said to the teachers. Accordingly, the testimony of Cammarata and others regarding what Porter and McGrath told them about the conversation with Callahan is unrebutted.

[26] Porter and McGrath did not testify about this request, and this request is not part of the complaint against the Union in Case No. MUPL-04-4479. Under direct examination, they were only asked about Cammarata's request to file a grievance over access to teacher's mailboxes (described below).

distribute information or materials through the mailboxes must be **pre-approved** by me" [emphasis in original]. At a subsequent Union meeting, Cammarata asked McGrath about grieving Papagiotas pre-approval requirement for using teachers' mailboxes.[27] McGrath replied that Article IX, Section C(2)(b) of the Agreement only made teachers' mailboxes available to official Union representatives, so a grievance to extend access to all teachers lacked merit.

In September and October of 2003, the five teachers and their supporters learned that the School Committee had received a $500,000 Smaller Learning Communities Grant for the high school (Federal Grant). On November 19, 2003, Babcock and Patrick Schultz (Schultz) obtained a copy of the Federal Grant and began to examine it. After that examination, the two believed that the Federal Grant funded the implementation of various changes at the high school, including block scheduling. Babcock and others drafted a flyer containing a four-page summary of the Federal Grant that they attempted to distribute to other high school teachers by sliding the summary under classroom doors.[28] They did not ask Papagiotas for permission to distribute the flyer through teachers' mailboxes, because the Union had not authorized the flyer.

Despite Babcock's and her co-workers' efforts, the Union's membership ratified the new Successor Agreement on November 24, 2003.

Babcock's Grievance

On October 1, 2003, Babcock filed a grievance with Papagiotas regarding Papagiotas' September 12th prohibition against teachers distributing materials in school

[27] The record does not indicate when the meeting occurred.

[28] The summary is not part of the record.

mailboxes.[29] Papagiotas denied the grievance that same day, concluding "that the administrative action regarding dissemination" of material not sanctioned by the Union did not violate the Agreement. Subsequently, McGrath told Babcock that Papagiotas did not know that she had to meet with Babcock before deciding the grievance.[30] Babcock met with Papagiotas on October 8, 2003 about the grievance and learned on October 10, 2003 that Papagiotas would not be preparing a second response to the grievance. On October 14, 2003, Babcock appealed Papagiotas' decision to Levine, and he received the appeal on October 16, 2003. Without delay, Levine denied the grievance as untimely, because it was filed more than five days after the first-step decision.[31] In a letter dated October 22, 2003, Babcock appealed Levine's decision regarding her grievance to the School Committee.

The School Committee initially set December 8, 2003 as the date to hear the grievance. While the Agreement specifies that the School Committee will hear a third-step grievance ten days after receiving the appeal, the School Committee traditionally has difficulty in scheduling step-three grievances, because it has to coordinate the schedule of all seven members of the School Committee, its attorney, school administrators, Union representatives, and the grievant. In particular, the School Committee often has difficulty in scheduling step-three grievance meetings in

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[29] Article VIII of the Agreement sets forth a four-step grievance procedure that ends in arbitration that only the Union can request. Relevant excerpts from this part of the Agreement are provided in Appendix 2.

[30] Article VIII, Section B(1) of the Agreement states: "The teacher and the Principal . . . shall confer on the [step one] grievance with a view to arriving at a mutually satisfactory resolution of the complaint."

[31] Article VIII, Section B(2) of the Agreement specifies that a grievant has five days from receipt to appeal the denial of a step-one grievance to step two before the superintendent.

November, December, and January because of scheduling conflicts among all the participants. As a result, the Union has traditionally allowed some leeway to the School Committee in scheduling step-three grievance meetings.

In a letter dated October 23, 2003, Babcock requested information from the Union about a possible grievance previously filed by the Union over Union access to school mailboxes. McGrath responded in a letter dated November 7, 2003, explaining that he could not locate that type of grievance in the Union's records dating from 1967 to 1995, and that he did not have access at the time to the Union's grievance records dating from 1996 to 2003.

In a letter dated November 20, 2003, Babcock informed the Union that she believed Section 5 of the Law allowed her to meet with the School Committee regarding her grievance without input or interference from Union representatives and that only McGrath, as president of the Union, could be present.[32] The Union disagreed, and its counsel drafted a response dated the same day indicating that the Union wanted both McGrath and Porter present at the third-step grievance meeting. Because Porter was unavailable on December 8th, the Union explained to Babcock that it was requesting to reschedule the grievance meeting.

On December 4, 2003, Babcock met with Callahan to discuss scheduling the step-three meeting before the School Committee. Callahan informed Babcock that December 2003 dates were unavailable because of scheduling conflicts, and that he could not give her a set date for the grievance meeting in January of 2004. On January 7, 2004, Babcock learned that the School Committee had scheduled her step-three

[32] While the former Commission dismissed this portion of Babcock's charge against the Union, this information is relevant to the question of why the School Committee changed the December 8th grievance hearing date.

grievance hearing for January 12, 2004. Because she had decided to file charges with the former Commission over the School Committee's scheduling of her grievance meeting, Babcock did not attend the January 12th grievance meeting. At the request of Porter, the School Committee rescheduled the grievance meeting for February 2, 2004. Babcock did not attend the February 2nd grievance meeting, and the record is silent regarding any further action or decision regarding her grievance.

Affidavits

Cammarata, Clement, Schultz, and Erik Arnold (Arnold) filed affidavits in support of Babcock's charge against the School Committee. The former Commission received Cammarata's affidavit on February 6, 2004, and the former Commission received Clement's, Arnold's, and Schultz's affidavits on March 9, 2004. Babcock served the School Committee with copies of these affidavits when she filed them with the former Commission.[33] Cammarata's affidavit concerned the September 12, 2003 meeting over distribution of the "Vote No" letter in teachers' mailboxes and the first ratification vote on September 15, 2003. Clement's affidavit concerned the September 12, 2003 meeting over distribution of the "Vote No" letter in teachers' mailboxes. Schultz's affidavit concerned his request to Porter and McGrath during the first ratification vote on September 15, 2003 to grieve School Committee restrictions on access to teachers' mailboxes. Arnold's affidavit concerned his meeting with Levine in early November of 2003.[34]

[33] The Hearing Officer took administrative notice of this fact.

[34] Arnold's affidavit is not included in the Second Amended Complaint and is the subject of Babcock's motion to amend the Second Amended Complaint.

Salemhigh.net

Because of the September 12, 2003 requirement that messages in teachers' mailboxes be pre-approved, Moore transformed an existing website, salemhigh.net, that he had created as part of a class project, into an electronic bulletin board for teachers, students, and even the general public to use for posting comments and opinions about events at the high school as well as for viewing the comments and opinions on these subjects. Collective bargaining issues and information related to the Federal Grant were topics on which teachers and others posted comments and documents.[35] At one point, there were over 200 registered users of the website, and there were usually three to fifteen people on the website at any one time.[36] Moore, Cammarata, Schultz, Arnold, and others almost always posted under their own names. These teachers also discussed events and issues related to ratification votes, administration actions, and the Federal Grant among themselves through casual conversations and phone calls.

Posts occasionally questioned Levine's and Papagiotas' professionalism, and there were other posts that school administrators considered to be vulgar or defamatory. For these reasons, Levine considered the website to be "disgusting," and he occasionally saw posts that Callahan brought to Levine's attention because of their allegedly vulgar or defamatory character. When poorly written posts appeared or there were posts that Moore considered to be vulgar, Moore occasionally removed those posts, so students who used the website would not see those posts. Moore, however, rarely took this action because he: (a) did not want to have the responsibility of an

[35] The record contains only a few actual posts to the website.

[36] Moore also allowed anonymous posts, because he believed that some people would only post on the website if they could hide their identity from school administrators who regularly viewed the website and monitored the postings.

active moderator over the website; and (b) did not read all posts to the website and often avoided reading posts from users — identified by their screen name — whose postings he considered to be distasteful or unpleasant. There was a disclaimer of some kind on the website indicating that it was an unmodified forum, and that people posting should try not to offend others.[37]

Responses to Papagiotas' October 22nd Memorandum

In response to Papagiotas' October 22nd memorandum requiring that materials distributed in teachers' mailboxes be pre-approved, Schultz began a petition that 82 Salem High School teachers signed, including Schultz, Chrystie, Arnold, Babcock, Clement, Moore, and Cammarata. The School Committee was aware of this petition. It stated:

> We, the undersigned members of the Salem Teachers Union, declare our support for the right of Salem Teachers Union members to disseminate information (e.g. in mailboxes) related to union issues within the buildings where we work without the threat of censorship or reprimand by administration or union leadership. The language of our current contract [Article IX, Section C(2)(b)] clearly states and protects this right.

In addition, Arnold wrote a letter to Papagiotas dated October 24, 2003 to explain why he was upset with Papagiotas' October 22nd memorandum and why she should change her mailbox policy. Arnold received no response, and he subsequently wrote Levine a memorandum dated October 31, 2003.[38] Arnold began by explaining that two

[37] The parties did not produce evidence of any actual disclaimer but instead relied on various witnesses' general recollections about a disclaimer. Because there was no clear evidence about what was included in the disclaimer originally, the Hearing Officer did not consider testimony about how the disclaimer might have changed over time.

[38] Levine had been Superintendent at Salem Public Schools for several years already when the events at issue here occurred. Prior to his service with the School Committee, Levine had served in teaching and administrative positions at five other school districts. Levine retired at the end of the 2004 to 2005 school year.

recent events — the September 12, 2003 meeting with the five teachers and the October 22nd memorandum from Papagiotas — had reversed recent efforts to improve the school climate. Arnold went on to observe that "it is irrelevant whether or not you have the legal right to prevent teachers from using the mailboxes," that open access to the mailboxes touches on principles of democracy, freedom, and justice that should be held up at the school to its students, that strong feelings exist on this issue, and that this dispute was increasing divisiveness in the high school. In response, Levine asked Arnold to meet with him, and the two met several days later.[39]

At the meeting, Arnold said that Papagiotas' actions had harmed the atmosphere at the high school, but Levine urged Arnold to give her a chance.[40] Levine said that he would not remove Papagiotas so soon after starting at Salem High School.[41] Levine also told Arnold that school mailboxes were the property of the school, not the property of teachers.[42] After Arnold voiced further complaints about the mailbox policy and

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[39] Callahan also was at the meeting, but he did not participate. Moreover, Callahan offered no testimony regarding this meeting.

[40] Where the testimony regarding what happened at this meeting differed, the Hearing Officer credited Arnold's testimony because of Levine's admission that he did not recall details of what happened.

[41] At the hearing, Levine emphasized that he preferred to handle personnel problems privately rather than publicly.

[42] At the hearing, Levine offered an additional reason for why large-scale use of teachers' mailboxes had to be monitored by school administrators. This policy, Levine stated, was not intended to prevent teachers from sending birthday cards or other social communications through the mailboxes. Rather, Levine testified that Papagiotas' October 22nd memorandum was a new policy regarding the large-scale use of school mailboxes, that it was created at his direction, and that there was no prior school policy on this issue. According to Levine, school administrators had a legal responsibility not to allow the "subversion" of the collective bargaining process, because the School Committee had "a responsibility to bargain in good faith with the Union's officers." Deborah Sorrentino's testimony confirmed that a policy regarding teachers' use of mailboxes previously did not exist.

Papagiotas, Levine said that Arnold, as an employee, could work with school officials or look for work elsewhere if he was so unhappy at Salem.

A day or so after the meeting, Arnold posted a summary of what happened on the website, salemhigh.net, and produced a flyer that he distributed on teachers' cafeteria tables. Arnold did so because, prior to the meeting, he had told several teachers about this opportunity to meet with Levine, and he now wanted to communicate what had happened to his fellow teachers and the public without having to get pre-approval to use the teachers' mailboxes.[43] In that posting, Arnold explained:

> The meeting did not go well at all. Dr. Levine said there would not be any change in the mailbox policy. Those mailboxes are "his[,"] not "ours[."] His position is that the contract prevents anyone other than officers of the Union from using them. The most disappointing aspect of the meeting was when he addressed my comments about the "adversarial climate" that exists in [Salem High School], in large part due to the new policy and the circumstances surrounding its implementation. He basically said that if I don't like the climate here to go find a new job. How I felt about this policy or any other changes that would be made is not important[.] I am expected to do what I am told and if I'm not going to be a "team player" then I should leave [Salem High School].
>
> I was not expecting this type of reaction, but for those of you that read this, at least you will have an idea of how your leadership will react if you ever approach them about an issue like this in the future.

Levine saw the posting, considered it slanted in Arnold's favor, and contacted Arnold. The two spoke over the phone. Levine said he was disappointed by Arnold's posting, that the meeting was something between them, that he was not calling Arnold himself dishonorable, but that he believed the posting was a dishonorable act. Arnold replied that he thought people should know what had happened at the meeting.

[43] Arnold testified that he considered the meeting between himself and Levine to be a private matter. His actions before and after the meeting, however, indicate that he considered the subject matter of the meeting to be important to other teachers.

Protests Against the Federal Grant

Arnold was not familiar with the Federal Grant until Babcock explained some of the specifics of the grant. The grant application was prepared by the high school principal prior to Papagiotas' arrival, followed up on a comprehensive school reform planning grant the high school had received a year earlier, and complemented a $30 million investment in infrastructure at the high school. The Federal Grant, modeled after the Breaking Ranks program for creating schools within a school, funded the creation of a house system — a freshmen house and two upper-class houses. Each house, headed by a dean, would be a self-contained educational program that, in theory, would present students with a smaller learning community and increased guidance in developing their own educational plans. The Federal Grant also envisioned the more extensive use of inter-disciplinary learning projects that connected not only several different subjects but also institutions outside the high school, such as Salem State College and local businesses.

Arnold began organizing support for a special meeting of teachers and the Union to discuss some of the issues raised in the Federal Grant, including a possible switch to block scheduling.[44] Arnold and others opposed block scheduling and believed that

[44] The Federal Grant does not contain a reference to the adoption of block scheduling at the high school, but both teachers and school administrators testified that block scheduling was part of the Federal Grant. Block scheduling is when traditional class periods are lengthened to allow for in-depth study of particular subjects. For example, a school that adopts block scheduling could schedule math classes for 80-minute periods three days a week rather than a traditional 45-minute period five days a week.

unilateral implementation of block scheduling would violate the Agreement.[45] This meeting took place in November of 2003.[46]

The Successor Agreement, ratified on November 24, 2003, included the following side letter:

> Teachers and administrators at Salem High School have been working cooperatively over the past couple of years to look at restructuring Salem High School into smaller learning communities, and particularly going into the house system. Along with the restructuring, the objective of this committee would be to explore the options of extending academic periods and changing the structure of the academic day from what it is presently. This will be a cooperative effort by members selected by the Union and Administrators at Salem High School. The expectation will be that its recommendations will be returned to the parties by March 1, 2004 for ratification by April 1, 2004 to be ready for implementation by September, 2004.[47]

At the invitation of McGrath, Schultz initially served for a time on the committee investigating block scheduling but resigned because he believed Papagiotas was not

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[45] Article VI, Section 2 of the Agreement sets forth the number of teaching periods, administrative periods, and preparation periods that could be assigned high school teachers and specifically provided: "The high school schedule shall consist of 45-minute periods, an 11-minute homeroom period and a 30-minute duty-free lunch, each separated by a 4-minute passing time."

[46] While Arnold testified that he believed this meeting occurred in November or December of 2003, Arnold's description of what happened at the meeting indicates that it occurred before the November 24th ratification of the Successor Agreement.

[47] In the Agreement, there is also a side letter about a draft reorganization plan, stating that the Union and the School Committee embark on a joint venture regarding academic, governance, and structural reform of Salem Public Schools and that "[a]ll aspects of the school system are subject to change during this bilateral undertaking." The record is silent about the intent and scope of this side letter, when the Union and the School Committee entered into this side letter, and any action, if any, the Union and the School Committee undertook as part of this side letter relative to the events at issue here.

open to a balanced and full examination of the issue. Arnold replaced Schultz on the committee until he left his teaching position for another.[48]

While the issue of block scheduling was being debated and explored, other teachers were concerned about the lack of faculty meetings between administrators and teachers regarding issues related to the Federal Grant.[49] Arnold wrote Papagiotas a letter dated January 14, 2004, asking Papagiotas to: (a) answer questions he and others had; and (b) allow them to distribute her answers through school mailboxes. Papagiotas did not respond to the request. On January 26, 2004, Levine called a faculty meeting to discuss the Federal Grant. At this meeting, Schultz questioned Levine about the application process for the Federal Grant as well as its contents.[50]

On February 7, 2004, an article in the Salem News entitled, "Major changes in store for students at Salem High," appeared.[51] In that article, Levine described changes at Salem High School resulting from the Federal Grant, including a reorganization of the freshmen classes in three groups called houses and the introduction of block

[48] The committee delayed implementation of block scheduling at the high school until the 2005 to 2006 school year. In June of 2005, the Union's membership ratified a two-year test of block scheduling at the high school from the three block scheduling proposals put forward by the committee.

[49] This finding has been modified at Babcock's request to replace the word "Faculty" with "Federal."

[50] The record lacks any detail about specific questions and responses concerning the Federal Grant.

[51] The parties use Salem News and Salem Evening News interchangeably, and the record is silent regarding any organizational distinction between these names.

scheduling. The article also described faculty dissent regarding these changes. It stated:[52]

> Not everyone is thrilled with the changes. Some teachers say research on longer classes [, i.e., block scheduling,] shows mixed results, with many students proving unable to pay attention for the extended periods. In some cases, the teachers say, test scores have actually gone down in schools where block scheduling has been adopted.
>
> "It's not going to fit the needs of our kids," said social studies teacher George Clement.
>
> * * *
>
> Some teachers also say the changes have been made without their input.
>
> "We as a faculty are not opposed to constructive change at the high school," said social studies teacher Patrick Schultz. This grant, however, does not provide for that. . . . We were excluded from this process." [Ellipses in original.]
>
> But Levine said teachers have had input, and will have more through a committee that will help work out the details of the changes.
>
> "There is a mechanism already in place to handle queries from teachers, from administrators," Levine said. "There are a lot of intricacies to a schedule change like this that really need to be worked out."
>
> He characterized the dissenters as constant complainers. "If the sun comes up, I don't think they're particularly pleased," he said. "These people would have to have been living on Neptune not to know we've been working on this."
>
> David McGrath, president of the teachers' union, said he is confident teachers will have their say about the changes, although Levine cautioned that the faculty will not be asked to vote on the changes directly.
>
> Though by no means the entire faculty is against the restructuring, opposition runs deep. Teachers citywide narrowly approved a new contract in November, and much of the opposition is believed to have

[52] While witnesses occasionally indicated that quotations attributed to them were out of context, they generally agreed that this news article, other news articles, and letters to the editor included in these findings accurately reported what individuals had said or wrote. It is undisputed that the Salem News was regularly read by all involved in this matter.

> come from the high school. Nor do opponents of the restructuring fall neatly into any category; they include both new teachers and experienced ones, humanities teachers and scientists, longtime union activists and newcomers to such causes.
>
> Levine said he believes most teachers do support the changes, and said he could work with those who don't.
>
> "I'd have to think long and hard about doing something the majority of teachers at the high school don't want to do," Levine said. "The teachers have to feel that they have some buy-in to this."

Arnold was upset at some of the Levine's comments in this article and wrote a lengthy letter to the editor in response, which the Salem News subsequently published on February 10, 2004. In this letter, Arnold noted that the Agreement detailed a schedule for the high school, so any switch to a block schedule would require teachers to ratify that change. Arnold also stated that the School Committee had not met the requirement in the Federal Grant that administrators attain the support and involvement of their teachers, that there was no clear evidence to show that the proposed restructuring would lead to an improved learning climate, and that Levine's efforts at squashing opposition revealed his ineffective management skills and poor leadership.[53]

Arnold also began to attend meetings of the School Committee in the 2003 to 2004 school year. He spoke at these meetings on two or three occasions. His remarks were generally critical of the leadership in the high school and of the superintendent, Levine, regarding various actions they had taken, including restricting access to teachers' mailboxes. When one member of the School Committee asked Levine for a report on the climate in the high school, Arnold, on his own initiative, prepared a report that he subsequently distributed to School Committee members at a June 2004 meeting. In this two-page report, Arnold listed numerous events that described: (1) an

[53] The complete letter is reprinted in Appendix 3.

alleged lack of communication by Papagiotas about scheduling and her alleged refusal to meet with teachers about their concerns; (2) Papagiotas' and Levine's alleged unprofessional treatment of teachers; (3) alleged intimidation of teachers by Papagiotas and Levine; and (4) alleged unethical treatment of students by Levine and Papagiotas. Arnold referenced and described the incidents in this proceeding as well as other incidents, such as alleged threats to terminate the school newspaper advisor for advocating freedom of speech and press to her students and alleged delays in the publication of the school newspaper until editorials critical of school administrators were altered.

Lockdown

On Thursday, April 29, 2004, Levine ordered a lockdown of the high school because of a student posting on salemhigh.net.[54] At some point that day, police arrived and entrances to the high school were closed or monitored by the police. The student responsible for the posting, who was not at school that day, was brought to the police station and questioned. The police subsequently released the student before noon without charging him but served him with a trespass order not to visit the high school. He did not return to school that day.[55] There was no announcement informing teachers and students at the high school of the lockdown when school was in session.[56]

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[54] The student's post and identity are not part of the record.

[55] The student previously had taken issue with school administrators, and there had been a meeting of school administrators, the student, and his parents. The record is silent regarding the nature of that prior dispute. In light of the posting and the resulting lockdown, Levine suspended the student until a psychologist indicated that the student did not pose a threat to school safety.

[56] A lockdown policy for Salem Public Schools, dated November 7, 2005, states that, when a school announcement using an emergency code regarding a lockdown is made, teachers are to hold their students in locked classrooms until an "all-clear" signal. The

While Moore was teaching that day, Papagiotas visited him and said that he should secure representation for a meeting with Levine at the end of the school day. Moore asked what the purpose of the meeting was, and Papagiotas replied that he would learn that information at the meeting. Moore subsequently asked Babcock to be his representative, and they also invited Cammarata to join them.[57] Babcock asked Levine about the purpose of the meeting, and he told her that she would find out at a faculty meeting when the school day ended.[58]

A faculty meeting occurred immediately after the end of the school day. At this faculty meeting, Levine and Papagiotas explained to the high school staff that a lockdown of the school had occurred that day because of an unstable student who had earlier posted a threatening message on salemhigh.net. Levine read the student's post and asked faculty members to report any subsequent sightings of the student to school

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parties do not dispute that the same lockdown policy was in effect on April 29, 2004. In his testimony, Levine explained that application of the lockdown policy could vary according to the situation. Levine did not provide any further elaboration, and he was not familiar with how the lockdown at the high school actually took place on April 29th. During her testimony, Papagiotas was not asked about the lockdown policy.

[57] Cammarata has been a practicing Massachusetts attorney since 1999. Moore and Babcock wanted Cammarata at the meeting because of this legal expertise. Babcock was a designated building representative for the Union during the 2003 to 2004 school year.

[58] Levine did not want to disclose the purpose of the meeting to Moore or Babcock. Only a few people knew about the reason for the lockdown, and Levine did not want rumors about the lockdown to spread. Levine also believed that the lockdown provided an opportunity to put pressure on Moore to close or limit salemhigh.net by focusing on the impact the website was having on students. For Levine, children were impressionable and should not be used as pawns, and he believed that several teachers had allegedly begun to do just that through their struggles with the Union and school administrators. Levine wanted Moore to take the website down before a posting encouraged a student to do something illegal or even life-threatening.

administrators. Several teachers were upset at hearing this news and asked for pictures of the student to be distributed.

At 2:30 PM when the faculty meeting ended, the meeting with Moore took place in administration offices at the high school.[59] Besides Moore, Babcock, Cammarata, Levine, Papagiotas, and Callahan, a uniformed school resource officer was present.[60] McGrath was also there.[61] Moore believed the officer was there to escort him off of the school grounds, because the school officer had escorted another teacher out of the high school earlier in the school year.

Levine began the meeting by stating that it concerned Moore's website, salemhigh.net.[62] Levine further stated that there was once a good reason for the website, but that Moore should do the right thing now and shut the website down. Levine emphasized several times that he was not ordering Moore to take down the

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[59] The school resource officer testified that this meeting occurred before the faculty meeting. Because of his limited involvement in these meetings (he was not at the faculty meeting and his involvement at the meeting with Moore is described below), the Hearing Officer believed the officer was incorrect about the order of these events.

[60] The school resource officer from the City of Salem Police Department attended the meeting at Levine's request. Levine wanted the police officer there, because Levine considered the case to be a legal matter and he wanted to fill the police in on what happened at the meeting. Levine did not explain the purpose of the meeting to the uniformed officer, however, and the officer did not file a report with the Salem Police Department about the meeting. On previous occasions, the officer had attended student-parent meetings at the request of Papagiotas over possible disciplinary measures or because the student was upset over a personal incident, such as missing a school dance. The officer understood his role generally at such meetings as stepping in when tempers flared.

[61] Levine indicated in his testimony that McGrath was there, because Moore faced possible discipline.

[62] The following findings describe what was said at this meeting and should not be considered a description of when someone made any particular comment. Testimony from several witnesses disagrees about when participants may have said a particular remark but largely agrees on the content of those remarks.

website but instead asking Moore "to do the right thing."[63] Moore asked if he and others would have open access to teachers' mailboxes, and Levine replied no. Levine suggested to Moore to limit website access to teachers only, and Moore said he would not. Levine also observed that a Beverly teacher faced repercussions for not doing the right thing. Levine did not respond to requests to elaborate on what he meant by his reference to a Beverly teacher.[64] Levine admitted that Moore was not doing anything illegal but asserted that the website could lead to something illegal in the future. As a result, Levine advised Moore to do the right thing and shut down the website. The meeting ended without a resolution.

Teacher Evaluations and Who Performed Them

School administrators have an obligation under M.G.L. c. 71, § 38 to evaluate teachers' job performance, and the School Committee and the Union negotiated a set of procedures, guidelines, and forms for these performance evaluations.[65] Pursuant to these agreed-upon procedures, each school administrator is to notify the teachers he or she will be evaluating, personally conduct performance evaluations through open classroom observations, and assess how well teachers implement seven identified

[63] Several witnesses recalled Levine using this and similar phrases during the meeting.

[64] The case Levine referred to is School District of Beverly v. Geller, 435 Mass. 223 (2001), where two concurring opinions by Justices Cordy and Ireland overturned an arbitrator's decision to return a teacher to work, in part, because the teacher committed serious misconduct. The Justices disagreed on the specific legal analysis to be applied to that misconduct, however. While the facts were not similar, Levine believed the Supreme Judicial Court's findings were analogous to Moore's situation, because teachers first had to consider what was right for a school's pupils.

[65] The Union and the School Committee also have incorporated parts of the performance evaluation process into their Agreement.

principles of effective teaching.[66] After each observation, the school administrator and teacher meet to discuss a preliminary draft of the administrator's report, and the school administrator may revise his or her report after that meeting. If an evaluation report indicates that a teacher fails to meet a performance standard, the school administrator completes an "Improvement Plan" describing the specific actions the teacher must undertake, the support and assistance available to the teacher in making these recommended improvements, and a timeline of at least two months for instituting the recommended improvements. The school administrator also must meet at least once with the teacher to discuss the teacher's progress and notify the teacher in writing as to whether the improvement plan was completed successfully. Teachers also have the right to supply additional information and to grieve any determination that the teacher is failing to meet a performance standard.

The number of evaluations done in a school year varies according to whether a teacher has professional status — i.e., tenure — or not.[67] Those teachers that have professional status are reviewed three times a year: an initial observation around December 15th, a mid-term observation around February 15th, and then a year-end observation around April 15th. Teachers without professional status are reviewed four times a year for their first three years of employment: October 15th, December 15th,

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[66] The seven principles are: (1) currency in the curriculum, (2) effective planning and assessment of curriculum and instruction, (3) effective management of the classroom environment, (4) effective instruction, (5) promotion of high standards and expectations for student achievement, (6) promotion of equity and appreciation of diversity, and (7) fulfillment of professional responsibilities. The Hearing Officer took administrative notice of 603 CMR §§ 35.00 et seq., available at www.doe.mass.edu/lawregs/603cmr35.html, which sets forth and elaborates on these principles.

[67] A teacher gains professional status when he or she starts a fourth school year after being employed in the school district for three successive school years. See M.G.L. c. 71, § 41.

February 15th, and April 15th. A report and conference with the teacher occurs seven to ten days after these observations. Additionally, a mid-year progress report is due on January 15th for teachers lacking professional status. Once teachers reach professional status, they are evaluated every other year of their service. Regardless of whether a teacher has professional or non-professional status, the evaluation process ends with a year-end conference and final evaluation report.

In the summer of 2003, Deborah Sorrentino (Sorrentino), Papagiotas, and Sam Scuderi (Scuderi) divided among themselves the teachers to be evaluated for the 2003 to 2004 school year.[68] Because Papagiotas just had started work in Salem Public Schools that summer, Sorrentino and Scuderi reviewed the evaluation process for her. Together, the three decided that Sorrentino would evaluate English and social studies teachers, Scuderi would handle math and science teachers, and Papagiotas would evaluate foreign language and fine arts teachers.[69] Because these areas of study do

[68] Sorrentino and Scuderi were Assistant Principals at the high school. Sorrentino began working at Salem High School in the 2000 to 2001 school year,. Under the then-principal's direction, she drafted forms for conducting teacher evaluations and was responsible in subsequent school years for tracking when a school administrator completed the evaluations assigned to him or her.

[69] Papagiotas disputed this testimony from Sorrentino. Papagiotas alleges that she directed her secretary to assign teachers to be evaluated, and that the secretary used Sorrentino's forms. According to Papagiotas, she originally assigned math and science teachers, including Cammarata, Chrystie, and Flynn, to herself. Given that Sorrentino had general oversight of the evaluation process under Salem High School's prior principal and that Papagiotas just had arrived at the high school during the summer of 2003, The Hearing Officer did not find that testimony credible. It presumes Papagiotas had a degree of knowledge and familiarity with the administration of the high school, and there is nothing in the record to support that presumption. Furthermore, the School Committee did not produce the evaluation forms that could substantiate Papagiotas' claims. Sorrentino produced evaluation tracking forms from previous school years, because those forms came from her own files, and she had handled those forms from the start to the finish of the school year. Because Sorrentino's responsibilities changed during the 2003 to 2004 school year (see below), she did not have the forms for that school year.

not always lead to an equal number of teachers being evaluated by each administrator, there is always some shuffling of teachers, so the evaluation workload is spread evenly among school administrators.

In late September of 2003 but prior to October 1st, Sorrentino brought the final forms to Papagiotas for her approval, so the administrators could begin notifying teachers who would conduct their evaluations. When reviewing the forms, Papagiotas said that the assignments to Papagiotas and Scuderi had been reversed, and that Papagiotas was supposed to review math and science teachers while Scuderi would review foreign language and fine arts teachers. Three of the five teachers — Cammarata, Chrystie, and Flynn — taught science and math classes. All of the five teachers were not yet entitled to professional status under M.G.L. c. 71, § 41.

Sorrentino revised the evaluation assignments and began performing the evaluations of the teachers assigned to her. Prior to February 15, 2004, however, Papagiotas and Scuderi removed Sorrentino from evaluating eleven non-professionally statused teachers assigned to her and replaced them with eleven professionally statused teachers previously assigned to Scuderi and Papagiotas.[70] Papagiotas explained that this reassignment was occurring, because Sorrentino's absences from work over the past few months had led to her allegedly missing deadlines for completing

[70] Testimony regarding the exact circumstances of when Sorrentino was reassigned new teachers to evaluate is muddled. Papagiotas said that the reassignment occurred after Sorrentino missed the January 15th deadline for mid-year reports. Levine indicated that the reassignment could have occurred before January 15th, and that the decision was made around the December holidays. Sorrentino stated that the change took place just prior to February 15th, and that she had already completed her January 15th mid-year reports. The affected teachers who testified at the hearing simply referred to a change in their evaluator in February or later.

evaluations.[71] Sorrentino did not miss any evaluation deadlines, however.[72] Moore and Clement were two of the eleven teachers without professional status removed from Sorrentino.[73] At this time, Sorrentino began searching for another position outside of the Salem Public Schools.[74]

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[71] Sorrentino's attendance records for the 2003 to 2004 school year reveal that she was out sick for two days in September, one day in October, five days in November, three and a half days in December, and no days in January or February. Sorrentino also took two vacation days in October, one personal day in November, two personal days in December, one vacation day in January, and three days at the end of January to attend a funeral for a family member. The November sick days occurred around the Thanksgiving holiday because of foot surgery Sorrentino needed. Papagiotas testified that Sorrentino was absent four to five days at a time, and that these absences were not reflected in her attendance records because Sorrentino would leave work without having her absences recorded or accounted for. The Hearing Officer did not credit this testimony for the following reasons. First, Sorrentino's attendance records include documentation for paid time off to attend a summer conference, so the records show that paid leave was recorded on these forms. Second, Sorrentino was never disciplined or warned about excessive absenteeism. Third, Levine testified that he had learned of Sorrentino's allegedly excessive absences through monthly attendance reports that Callahan had prepared, but Levine also stated that he did not dispute the legitimacy of Sorrentino's absences. Furthermore, the record does not include Callahan's reports, so the only actual documentation regarding Sorrentino's absences are her attendance records that the School Committee maintained. Finally, Callahan testified that Sorrentino's absences in November and December of 2003 were not excessive.

[72] Sorrentino disputed missing any evaluation deadlines, and the Hearing Officer credited his testimony because 1) he did not find the allegations regarding Sorrentino's absenteeism to be credible; and 2) the School Committee did not provide an example or written documentation regarding any evaluation deadlines in the fall of 2003 and early 2004 missed by Sorrentino for teachers lacking professional status.

[73] Sorrentino testified that she thought Chrystie was removed from her, but it appears from her and other witnesses' testimony that Chrystie previously had been reassigned from Scuderi to Papagiotas.

[74] Sorrentino observed that her working relationship with Papagiotas soured when Sorrentino returned to work after her surgery. In June of 2004, Sorrentino learned that her position at the high school had been abolished as part of a reorganization that had led to the creation of a new Assistant to the Principal position. While Sorrentino interviewed for the new position, she eventually accepted an offer to be a high school principal outside Salem for the 2004 to 2005 school year.

Evaluation Reports

At the start of the 2003 to 2004 school year, Cammarata learned that Papagiotas would conduct his performance evaluation. Papagiotas subsequently prepared several evaluation reports and written reviews based on observations of Cammarata[75] that focused on Cammarata's educational background.[76] Prior to these reports, Cammarata had received generally good evaluations. A report based on a September 30, 2003 observation noted that Cammarata had taught a lesson focused on a concept map of matter. Papagiotas' report indicates that Cammarata asked questions of students as he created the concept map on a white board, that he had excellent rapport with students, that students took notes in their binders, and that he instructed students to use previously-created flash cards as study aids. Papagiotas concluded her report with the following suggestions:

- Even though this class period was a structured review for an assessment, try to make the review more student-centered such as having students create the concept map.

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[75] This finding has been modified slightly to reflect that evaluation reports include both reports and written reviews based on observations. As with other witnesses, Cammarata conflated the mid-year and final evaluation reports with the four evaluation observations and companion reports when he testified that Papagiotas only had performed four of five observations. The reports themselves indicate that Papagiotas conducted three observations of Cammarata on September 30, 2003, December 1, 2003, and March 23, 2004. The record does not include all six reports, because Cammarata did not keep copies of all reports himself, and the School Committee no longer possesses a complete set. Moore's evaluations, discussed below, are also incomplete for the same reasons. Finally, the record is silent regarding the evaluations for Clement, Chrystie, and Flynn, other than which school administrator was responsible for performing these evaluations.

[76] Cammarata did not initially pursue an educational degree in college but instead obtained a graduate degree in molecular biology and genetics before entering law school. He then took and passed a state exam to obtain his teaching certificate and started a regular teaching assignment in science at Salem High School in January of 2001.

- You could use the vocabulary words as a group game to better involve all students in the review.
- List the class outcomes on the board for the global learners.
- Create a student-centered activity involving flash cards. This will get the kids actively involved.
- Continue your good rapport with kids!

Papagiotas' mid-year progress report indicated that Cammarata had maintained "effective management of the classroom environment . . . [and] good rapport with students." Without explanation, the report also set forth the following recommendations for Cammarata:[77]

- Promote a student-centered learning environment
- Vary methodologies to meet the diverse needs of all learners
- Vary assessments to include performance assessment
- Maintain currency in "standards-based" learning environment
- Maintain currency in educational pedagogy
- Continue to gain more background in the diverse styles of individuals

None of the evaluations Cammarata received during the 2003 to 2004 school year put forward an improvement plan or proposed a conference to discuss alleged failures in Cammarata's teaching. After his March 9, 2004 performance observation contained no improvement plan, Cammarata concluded that his appointment would not be renewed and began searching for another teaching position.[78]

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[77] In her testimony, Papagiotas indicated that the handwriting on the second page was not hers. These handwritten recommendations, however, are identical to the commendation on the first page that she acknowledged to be in her handwriting. Furthermore, it is not clear from her testimony whether she was referring to the handwritten recommendations, the handwritten statement that read "Statement on back of this document" and was followed by Cammarata's signature, or the handwritten recommendations and the handwritten statement.

[78] For the 2004 to 2005 school year, Cammarata took a new position as a lead science teacher at a high school outside Salem.

Papagiotas' final performance report of Cammarata, dated May 9, 2004, concluded that he had failed to meet several performance standards.[79] For example, Papagiotas noted that Cammarata needed a better understanding of current teaching and learning practices, including student-centered learning and differentiated instruction, increased application of varied assessment strategies for students, and a more formal educational background in educational practices. For one part of Cammarata's evaluation, Papagiotas wrote: "Once again, Mr. Cammarata's background in teaching and learning theory is not sufficient to provide him with the knowledge to vary instruction and use authentic assessment practices. He should seek additional educational courses of study to enhance this aspect of his educational repertoire." In a letter dated June 7, 2004, Papagiotas informed Cammarata that his appointment would not be renewed.[80] Cammarata received the letter at an exit interview with Papagiotas. She handed him the letter and asked if he had any questions. He did not and left.

Like Cammarata, Moore generally had good evaluations prior to the 2003 to 2004 school year. For instance, Moore's final performance evaluation for the 2002 to 2003 school year, completed by the then principal, indicated that Moore met or exceeded all performance measurements. The two observation reports Sorrentino completed in October of 2003 and December of 2003 continued that pattern. For example, Sorrentino wrote in her October 2003 report that Moore presented "a well-

[79] Section J(3) of Article VI of the Agreement specifies that an unsatisfactory rating must be based on at least six observations of approximately thirty minutes each during the preceding year.

[80] Under M.G.L. c. 71, § 41, principals need to notify a teacher without professional status before June 15th if his or her appointment will not be renewed. The letter to Cammarata as well as the letter to Moore (see below) did not provide an explanation for this decision.

paced, creative and challenging lesson for students," and that Moore was "to be commended for his fine work." In her October 2003 report, Sorrentino offered the following suggestions to Moore for improvement:

1. Give ample wait-time for students to answer the questions that you ask. You can do this by counting to yourself -- one, two, three, four and the try rephrasing the question in a different way or giving a hint. Adding this technique to your repertoire will finalize your excellent instructional practices.

2. Incorporate closure to all lessons at the end of the class period. Mr. Moore kept the students actively engaged right to the last moment. A summation of the lesson is recommended.

For his February performance observation, Moore learned that his evaluator had been changed when Assistant Principal Scuderi met with him in place of Sorrentino. Scuderi provided no explanation for the change in evaluators.[81] Scuderi's report describes what he saw during his observation and sets forth the following recommendations:

- Continue to engage students in open discussion of the lesson content.
- Continue to have work written on the board and readied for your lessons.
- Continue to have lessons that tie students' present day experience to the lesson content.
- Students should raise their hands to be recognized to speak.
- Students should be reminded to give answers that pertain to the content of the lesson.
- Determine and use activities that will use the entire period.
- Try different seating formations to enhance dialog and discussion as well as class environment.
- Use group, student centered and cooperative education activities.

In April or May of 2004, Moore's evaluator was changed yet again without notice or explanation when Papagiotas conducted his final evaluation. Moore was not

[81] Papagiotas testified that written notice was given to the affected teachers regarding the change in evaluators. No document supporting this claim was entered into the record, however. For those reasons, the Hearing Officer credited Moore's testimony on this point.

informed of the results of this evaluation. Moore also was unaware of what Papagiotas' final evaluation report stated or on what the conclusions were based. None of the evaluations Moore received during his final school year put forward an improvement plan or proposed a conference to discuss any alleged failures in Moore's teaching. In a letter dated June 7, 2004, Papagiotas informed Moore that his appointment would not be renewed. As with Cammarata, Moore received a copy of this letter at an exit interview. During that interview, Papagiotas did not provide Moore with an explanation for his non-renewal, even though he specifically had asked for an explanation.[82]

While it is undisputed that the School Committee did not renew Chrystie's appointment at the end of the 2003 to 2004 school year, the record is silent regarding the circumstances of that action. The record also is silent regarding the circumstances of Clement's decision to resign his teaching position at the end of the 2003 to 2004 school year.[83]

Grievance Over the Reassignment of Evaluators

On April 13, 2004, the Union filed a step-one grievance regarding the reassignment of evaluators. While Cammarata and Moore did not formally join this grievance, the grievance nonetheless covered the change in their evaluators. On May 6, 2004, Papagiotas denied the grievance, but school administrators agreed to hold final evaluation reports for the affected teachers until the grievance was resolved.[84] The

[82] Moore subsequently took a teaching position for the 2004 to 2005 school year at another school outside Salem.

[83] It is undisputed that both Chrystie and Clement obtained teaching positions for the 2004 to 2005 school year at school districts outside Salem Public Schools.

[84] Levine, Callahan, and the School Committee's labor counsel attended this first-step grievance meeting. Normally, none of these individuals would be present this early in the grievance process. When asked why the second-step grievance meeting was

Union appealed Papagiotas' decision the same day. After Levine and the Union agreed to a twenty-day extension, the step-two grievance meeting took place on June 9, 2004. There, Levine granted the grievance with the following remedy: The affected teachers could: (a) accept the disputed evaluations; (b) have the disputed evaluations removed from their personnel files and their final evaluation report based on their remaining evaluations; or (c) have the disputed evaluations removed from their personnel files and have new evaluations conducted by an administrator of their choice — Papagiotas, Scuderi, or Sorrentino — before the school year ended. Additionally, Levine and the Union agreed that all rights under the Agreement to dispute an evaluation remained in effect until September 30, 2004. Moore did not sign the form to resolve the grievance and did not give this resolution much thought.[85]

SALEM in History Project/Leave of Absence Request

For the 2003 to 2004 school year, Schultz was in his fourth year of teaching social studies at Salem High School. Schultz had developed several extracurricular programs for the high school, including student involvement in a Harvard Model Congress and other projects about democracy in action. During the 2002 to 2003 school year, Schultz participated in some of the planning and development for a grant in American history called SALEM in History involving the School Committee, the National Park Service, Salem State College, and the Peabody-Essex Museum. The grant

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necessary, Levine testified that it was improper for him to make the May 6th grievance meeting a second-step meeting, because that kind of change would violate procedural steps in the grievance process. His decision on June 9th to grant the grievance, however, did not include any information that was not already available to him on May 6th.

[85] The record is silent regarding what action, if any, other teachers took regarding this resolution.

subsequently was awarded to the School Committee as the financial agent. In an e-mail message dated January 25, 2004, Elizabeth Duclos-Orsello (Duclos-Orsello), the Project Director for SALEM in History, invited Schultz to join SALEM in History's advisory board immediately and to apply later for one of several paid, master teacher positions when those positions were created. Schultz declined the invitation, however, because of concerns about the additional work on his already busy school schedule and on his responsibilities to his family. Other Salem High School teachers joined the advisory board and others also signed on to be master teachers when the openings appeared.

It was not easy to get these positions fully and consistently staffed, however. In an e-mail message dated April 9, 2004, Duclos-Orsello asked Marilyn Gigliotti (Gigliotti), an Assistant Superintendent, about having Schultz serve on the advisory board for the SALEM in History project or another teacher if Schultz was not available. Gigliotti replied that the other teacher was retiring and then stated, "I would not ask Patrick Schultz." Gigliotti's reasons for this statement regarding Schultz are unknown.[86]

In a letter dated June 7, 2004, Schultz requested a one-year, unpaid leave of absence from his teaching position during the 2004 to 2005 school year so he could: (a) deepen his relationship to his two children after "a particularly taxing" school year; (b) complete his M.Ed degree to complement his M.A. in American Studies; and

[86] During her testimony, Gigliotti explained that the reference to the other teacher's retirement meant that he was available for the advisory board position, but that she had only a vague recollection of the events connected to this e-mail message and to Schultz. While she was somewhat better at recalling events related to the other teacher, there is nothing in the record to suggest that her lack of recall regarding Schultz hid an ulterior motive. Her testimony revealed that she had regularly worked with the other teacher for some time.

(c) develop a wider range of lesson plans.[87] Schultz explained that he had "thoroughly enjoyed teaching at Salem High School for the last four years," and that he would "continue to be active in the school community and to provide students opportunities above and beyond the curriculum" when he returned in the 2005 to 2006 school year. Schultz also requested the leave of absence, because he did not like the current work environment at the high school. He did not disclose this additional and significant reason in his formal request to Levine.[88] On June 14, 2004, Levine approved Schultz's leave request.[89]

With the leave of absence approved, Schultz believed that he could participate in the SALEM in History without restriction and informed Duclos-Orsello. In an e-mail message dated June 24, 2004, Duclos-Orsello provided Schultz with documents he had to complete to serve on the advisory board and invited him to consider serving as a

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[87] Article 4, Section C(1) of the Agreement provides that these leaves:

> may be granted on account of prolonged illness, needed rest, necessities of the home and allied reasons; or they may be granted to regular teachers who are not eligible for sabbatical leaves of absence for the purpose of professional improvement; or they may be granted to regular teachers, other than those selected as exchange teachers, for the purpose of teaching in any school system in the United States; or they may be granted for any other activity which would, in the opinion of the Superintendent, contribute to the future benefit of Salem Public Schools.

[88] Schultz's testimony regarding this additional reason was contradictory. He testified that this reason was not as important as the three listed in his letter but also stated that the dysfunctional environment at the high school was not a reason for his decision to seek a leave of absence. Given Schultz's extensive involvement in the matters at issue in this case and his statements and writings regarding Levine and Papagiotas, the Hearing Officer found that Schultz's dislike of the current work environment at the high school to be a significant factor in his decision to seek a leave of absence.

[89] Levine granted the request for the reasons Schultz had stated in his request, and because it was relatively easy to find a social studies teacher to fill the vacancy. Levine did not examine Schultz's reference to "a particularly taxing" school year. Because Levine did not consider the reference to be relevant to his decision to grant the request.

master teacher if an opening appeared. Duclos-Orsello sent Schultz a formal letter dated June 25, 2004 inviting him to join the SALEM in History advisory board. Schultz subsequently completed the necessary paperwork. In a phone conversation, Duclos-Orsello asked Schultz if he would serve as a master teacher. Schultz accepted this invitation to apply and informed the School Committee administration.[90]

In a letter dated July 16, 2004, Levine denied Schultz's request to participate in the SALEM in History project, because Schultz was on a leave of absence for the 2004 to 2005 school year.[91] Although Levine provided no additional explanation for this decision, it was his practice that employees on a leave of a absence were not entitled to any job-related benefits from the School Committee, such as professional development.[92] Levine believed that the School Committee could not be responsible for paid work by someone who was not an actual employee of the School Committee at the time.[93] Furthermore, while the grant for the SALEM in History project did not prohibit

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[90] The previous master teacher from the high school had retired from teaching. Until he resigned (see below), Arnold was also considered a candidate for the master teacher position.

[91] The letter and testimony from several witnesses did not distinguish or clarify whether the prohibition applied only to work as a master teacher or to both service on the advisory board and work as a master teacher. Accordingly, the exact rationale for this prohibition is unclear even after the evidence, described below, is considered.

[92] Professional development varies from school district to school district, but it is mandated under M.G.L. c. 71, §§ 38g and 38q that teachers undertake and complete studies and coursework for their professional development. State guidelines require high school teachers to accrue 150 professional development points every five years. See 603 CMR 44 et seq.

[93] The testimony behind these findings presumed that the only issue in question was Schultz's possible work as a master teacher. Schultz, however, had applied to be both a master teacher and a member of SALEM in History's advisory board. According to Gigliotti, there was no reason why Schultz could not serve on the advisory board while also on a leave of absence, because that position was unpaid and did not lead to professional development.

teachers who were retired or on a leave of absence from serving as a master teacher or on the advisory board, it was school policy that a master teacher position should be filled with someone who would be accessible and available to other teachers.[94]

On August 20, 2004, the Salem News published an article entitled, "Salem teachers say they lost their jobs for speaking out." The lengthy article began by noting that word had leaked out to students in May of 2004 about teachers losing their jobs. The article and a related sidebar then described several issues and disputes involving the teachers at Salem High School, mentioning Babcock, Cammarata, Moore, Arnold, Schultz, and Clement as well as other teachers. In all, the article indicated that twenty teachers were not returning for the 2004 to 2005 school year.[95] Levine refused to discuss any specific teachers but told the reporter, "If administrators think they can do better, they non-renew. We think we can do better in some instances." The sidebar to the article listed the background and the alleged reasons several teachers were leaving.

On August 24, 2004, the Salem News published a letter to the editor that Schultz and Moore had authored together in response to the August 20th article as well as a letter to the editor authored by a Salem middle school principal.[96] Schultz subsequently received a call requesting that he meet with Levine about Schultz's leave of absence.

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[94] Babcock introduced evidence indicating that Salem Public School teachers on unpaid leave worked at other school districts with the knowledge of the School Committee. This evidence, however, does not shed any light on Levine's July 16th decision, because there is no evidence in the record to indicate that the School Committee had any fiscal or employer-related responsibility for the work teachers on leave did at other school districts. The Hearing Officer did not include the evidence for those reasons.

[95] The article specifically noted that seven teachers were not rehired, seven resigned, five retired, and one, Arnold, resigned after being transferred.

[96] The letter to the editor from the Salem middle school principal is not part of the record. Schultz's and Moore's letter is reprinted in Appendix 4.

Schultz contacted the Union for representation, and the meeting took place on September 14, 2004. At the meeting, Levine explained that he was considering whether to rescind Schultz's leave of absence, because Schultz had been dishonest in making his request. Porter observed that Schultz was doing what he had stated in his request letter, and that the Union would fight any effort to rescind the leave of absence. In a letter dated September 16, 2004, Levine informed Schultz of his findings and conclusions:

> 1. I believe that the letter that you sent me dated June 7, 2004, detailing your request for a year's leave of absence was incomplete.
>
> 2. As evidenced by the interview given and reported on by the Salem Evening News on August [20], 2004, where you were quoted as saying that you took a year's leave of absence because "the school was dysfunctional, as the result of awful leadership at the school level and the district level," I am disturbed to find no mention of that reason in your original letter to me dated June 7, 2004.
>
> 3. It is my opinion that you purposely left out the reason stated in #2 for what can only be described as a self-serving interest, knowing that I may be less likely to grant you a one year leave of absence if you included that particular reason in the request.
>
> 4. I find it disturbing that in both your original letter and in your meeting with me on September 14th, you were evasive when asked a direct question regarding the reasons why you requested a year's leave of absence.
>
> 5. I also find it disturbing that you seem to lack the courage of your convictions in not putting forth the reasons of a dysfunctional school and central administration in your letter dated to me on June 7th, yet you were so willing to publicly talk about those same reasons in your August 26th interview with the Salem Evening News.
>
> In conclusion, although I find your original letter on June 7th to be less than honest and comprehensive in listing the reasons why it was that you wanted a year's leave of absence, I find that it would be more disturbing for you to return to Salem High School at this late date. I am, therefore, taking no further action regarding your request for this year's leave of absence.

Levine did not include an additional factor that he considered when deciding not to revoke Schultz's leave of absence: that a replacement social studies teacher had already been hired and had begun working, and the effect of switching instructors after the school year was underway would have had a negative impact on students.[97]

Transfer

In March of 2004, the School Committee posted job openings for numerous teaching positions during the 2004 to 2005 school year, including a Diversion and Mainstream Program at Collins Middle School.[98] This assignment is one of the most difficult and least desirable teaching positions in Salem Public Schools, and the School Committee did not receive any qualified applicants for this position. During the summer of 2004, Levine decided to fill the vacancy by transferring Arnold from his high school social studies position.[99] Levine's rationale for this decision is unknown.[100] In a

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[97] Schultz pursued his leave of absence without further incident. In a letter dated June 15, 2005, Schultz informed school administrators that he intended to return to his teaching position for the 2005 to 2006 school year. After Schultz learned that he was given a new course to teach, that he was not to teach any advanced placement classes, and that his classroom was being relocated, he tendered his resignation in a letter dated July 19, 2005. Schultz took a new job for the 2005 to 2006 school year as a lead teacher in another school district.

[98] The teacher in the position at that time lacked proper certification and was in the position through a waiver the Commonwealth's Department of Education had granted.

[99] Arnold is a certified special education and social studies teacher and began teaching special education classes at Salem High School in the 1997 to 1998 school year. After four years as a special education teacher, Arnold requested and was granted a transfer to the High School's social studies program. Arnold requested the transfer, because he preferred to teach social studies over special education. During the course of his seven years at Salem High School, Arnold also coached football and tennis, served as a mentor for new teachers, supervised a student-teacher, participated on a hiring committee, and served as a building representative for the Union. Arnold's previous special education work at the high school involved developmentally-disabled children and not children with the behavioral problems he would face in the middle school assignment at issue here.

memorandum dated July 26, 2004, Levine informed Arnold that he was transferring Arnold to the Collins Middle School to teach in the Diversion and Mainstream Program for the 2004 to 2005 school year, because a suitable candidate for the position could not found.

Arnold was shocked at the new teaching assignment. Rather than accept it, Arnold resigned.[101] Arnold did not believe filing a grievance would resolve the matter adequately because: (a) a new school year was starting in approximately a month and resolution could take months or even years; (b) he did not think the Union could represent him effectively in a grievance; and (c) the School Committee would most likely rubber stamp Levine's actions. Furthermore, Arnold also had just received a call after a second interview, offering him a position teaching social studies in another school

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[100] Given the following inconsistencies in his testimony, the Hearing Officer did not find Levine's explanation credible. First, Levine initially testified that Arnold successfully had done this work in the past, and that a social studies vacancy was much easier to fill, even at this late date in the school calendar. Levine later acknowledged that Arnold previously had not taught at the middle school, but Levine still believed that Arnold had taught a similar program at the high school. Second, when Levine initially testified on this issue, he made no reference to considering teacher seniority when he made this decision. Section C of Article VII of the Agreement specifies that "[a]ll involuntary transfers of members of the bargaining unit shall be for cause" and that "the principle of seniority, in combination with other criteria, shall be utilized." There were ten to twelve teachers with the necessary special education certification for the Collins Middle School assignment, and most of these had less seniority than Arnold. During later questioning, Levine indicated that he had considered seniority. Still, he could not recall with any specificity if a particular special education certification was needed for the middle school position, or if he knew the seniority status of any particular teachers eligible for the position other than Arnold. Levine then explained that Arnold was "head and shoulders above other choices," that Arnold's competence and experience were the primacy factors behind his decision, and that Arnold had the physical size and strength ideally suited to this assignment, even though several women who lacked Arnold's size and strength previously had performed this middle school assignment.

[101] Arnold had begun looking for a new teaching position in social studies in the late spring of 2004. Arnold did so because he was unhappy with Papagiotas' leadership and the lack of corrective action Levine had taken against Papagiotas.

district at a salary several thousands more than his current pay. Arnold subsequently accepted that offer.

Opinion

A. **Timeliness**

As a preliminary matter, we address the School Committee's motion to dismiss Counts V-XI of the Second Amended Complaint because they are untimely. Section 15.05(1) of the former Commission's regulations, 456 CMR 15.01, states that the Commission "may allow amendment of any complaint at any time prior to issuance of a decision and order based thereon provided that such amendment is within the scope of the original complaint." Under this rule, even if the additional allegations were first brought to the Board's attention more than six months after a Charging Party knew or should have known about them, they would not be untimely under 456 Section 15.03[102] if they fall within the scope of the complaint as required by 456 CMR 15.05(1), or, phrased another way, if the additional claims "relate back" to earlier pleadings.[103]

On August 12, 2005, the former Commission allowed the Charging Party's motion to amend the Amended Complaint to add Counts V-XI on the grounds that there was a "sufficient nexus" between the protected, concerted activities described in the first three counts and the School Committee's actions arising out of those activities as described in the additional counts. We agree.

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[102] 456 CMR 15.03 states, "Except for good cause shown, no charge shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Commission."

[103] Mass. R. Civ. P. 15(c) states that whether a claim "relates back" turns on whether it "arise[s] out of the conduct, transaction or occurrence" alleged in earlier proceedings.

The crux of all eleven allegations in the Second Amended Complaint is that from September 2003 to September 2004, the School Committee engaged in behavior that interferes with, restrains and coerces teachers in their efforts to communicate with their colleagues and air their opinions regarding the administration and other matters of mutual concern relating to terms and conditions of employment, whether through teacher mailboxes, websites, fliers, letters to newspapers or Board charges. Thus, we agree with our predecessors that the additional seven counts fall within the scope of the original complaint and charge such that the original complaint gave sufficient notice to the School Committee of the issues that could or would be raised at hearing. See generally Labor Board v. Fant Milling Co., 360 U.S. 301 (1959) (finding a refusal to bargain collectively, the NLRB was not precluded from considering conduct on the part of the employer which was related to that alleged in the charge and grew out of it while the proceeding was pending before the Board). We also note that the School Committee had a full and fair opportunity to litigate these counts and thus was not prejudiced by the Hearing Officer's decision to hold the motion in abeyance until the conclusion of the hearing. Cf. City of Worcester, 5 MLC 1397, 1398 (1977) (adopting NLRB's standard that the agency may find a violation of the law where the illegal conduct relates to the general subject matter of a complaint even though not specifically alleged in the complaint and the issue has been fully litigated). Accordingly, we DENY the School Committee's motion to dismiss on this ground and proceed to analyze the merits of the individual allegations.

B. The Individual Allegations

Count I - This count alleges that, in September 2003, the School Committee violated Section 10(a)(1) of the Law by removing the five high school teachers who had signed

the "Vote No" letter from their classrooms to attend a meeting in Papagiotas' office and informing them at this meeting that the high school principal and superintendent needed to preauthorize items distributed in teacher mailboxes.

The facts adduced at the hearing, as reflected in the findings, support this allegation. The facts also demonstrate that during the course of the meeting described in that count, Assistant Superintendent of Personnel Callahan stated that the teachers might suffer discipline because they had distributed the "Vote No" letter. The findings further reflect that Callahan took Flynn aside at the end of the meeting and asked if he had "learned anything." For the following reasons, we conclude that the School Committee's actions violated the Law in the manner alleged.

A public employer violates Section 10(a)(1) of the Law if it engages in conduct that may reasonably be said tends to interfere with employees in the free exercise of their rights under Section 2 of the Law. Worcester County Jail and House of Correction, 28 MLC 76, 78 (2001); Quincy School Committee, 19 MLC 1476, 1480 (1992). Since 1980, the focus of the Board's Section 10(a)(1) analysis has been the effect of the employer's conduct on reasonable employees' exercise of their Section 2 rights, rather than the employer's motivation in taking the action. City of Cambridge, 30 MLC 31, 32 (2003) (discussing City of Boston, 8 MLC 1281 (1980)). Absent a showing of animus, an employer may still violate the Law if it discharges or takes other adverse action against an employee while he or she is engaging in protected activity so long as the employee's own conduct does not remove him or her from the Law's protection. Whitman Hanson Regional School Committee, 9 MLC 1615, 1618 (1983).

As a preliminary matter, we find that the employees who drafted and distributed the "Vote No" letter in the teachers' mailboxes were engaged in protected, concerted

activity. The School Committee argues that under Article IX of the contract, only the Union with a capital "U" had permission to use teacher mailboxes. During his testimony, Superintendent Levine also asserted that allowing large scale use of teacher mailboxes would cause a "subversion" of the collective bargaining process. We disagree that contractual or bargaining concerns removed the act of distributing this letter from the protections of the Law.

First, while the contract provision allows the Union to use teacher mailboxes, it does not prohibit other groups of employees from doing the same. Moreover, there is no evidence that allowing groups other than the Union to use the mailboxes would subvert the collective bargaining process. In fact, the stated purpose of the "Vote No" letter (reprinted in Appendix 1) was to "allow[] the negotiating team the opportunity to go back to the table and address these problems that affect us all," an outcome that was clearly contemplated by and consistent with the parties' collective bargaining process.[104]

Second, under Section 2 of the Law, employees have the right to distribute union literature and the right to observe and read that material. City of Quincy/Quincy Hospital, 23 MLC 201, 202 (1997) (citing Massachusetts Board of Regents of Higher Education 13 MLC 1686, 1701 (1987)). The "Vote No" letter pertained to the Union and discussed matters relating to collective bargaining and was written to foster concerted activity directly affecting terms and conditions of employment. The protection to be accorded to this conduct is determined by what the Law authorizes, rather than by what the union membership or its leadership authorizes. City of Lawrence, 15 MLC 1162,

[104] In so holding, we acknowledge the line of decisions holding that efforts to engage in separate bargaining by dissenting employees, thus bypassing their exclusive representative, does not constitute activity protected under the National Labor Relations Act. See, e.g., Emporium Capwell Co. v. Community Org., 420 U.S. 50 (1975) and cases cited therein. The facts of this case are easily and obviously distinguishable.

1165 (1988). Consequently, regardless of whether the Union authorized the pamphlet, its distribution to other bargaining unit members in a peaceful, non-disruptive manner is protected under Section 2 of the Law. Moreover, the protected nature of the subject matter is not disturbed by the means through which the employees chose to communicate. Id. Here, using teachers' mailboxes at a time when such use was not banned in any way did not remove this activity from the Law's protection.

Accordingly, the question becomes whether the September 12, 2003 meeting and the pre-authorization rule imposed at the meeting interfered with employees' rights under Section 2 of the Law. We hold that it does. During the meeting, Callahan questioned the five employees regarding the circumstances under which they distributed the letter. 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 (2006) (citing Plymouth House of Correction, 4 MLC 1555, 1572 (1977)). The Board 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 Board 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 interrogator appeared to be seeking information on which to base taking action against individual employees; 3) the identity of the questioners, including their position in the employment hierarchy; 4) the place and method of interrogation, including whether the employee was called into the supervisor's office and whether there was an atmosphere of unnatural formality; and 5) the truthfulness of the reply. No

single factor is outcome determinative. Rather, it is a totality of the circumstances test. Id.

The meeting that took place on September 12, 2003 satisfies all these criteria. Callahan, the Assistant Superintendent of Personnel, is a high-ranking school official who took the unusual step of removing five teachers from their classroom in the middle of the school day, and, after securing Union representation for them, questioned them, about the circumstances surrounding the distribution of the letter. The questions caused at least one of the teachers to be concerned that discipline was forthcoming and Callahan did nothing to dispel this notion. It is evident from the totality of the circumstances, that the purpose and conduct of the meeting would have a coercive and chilling effect on a reasonable employee. In so concluding, we note in particular the unusual and unduly harsh act of taking employees out of their classroom, in front of students, to question them about their protected activities and the fact that Callahan treated the meeting as an investigatory interview from which discipline could result.[105]

We also find that the Employer violated Section 10(a)(1) of the Law by implementing the rule that no mail or information could be circulated through school buildings without prior administration approval. An employer's rule that conflicts with employees' Section 2 rights must be supported by a legitimate and substantial business

[105] It is of no import that the administration ultimately did not impose any discipline upon the employees for distributing the letter, since adverse action is not a necessary element of a Section 10(a)(1) charge. The standard is whether an employer's actions may reasonably be said to interfere with the free exercise of employees' rights under the Law, not whether the behavior had an actual coercive effect on employees. Massachusetts Board of Regents of Higher Education, 13 MLC 1697, 1702 (1997). In any event, there is evidence that the five employees were chilled by the meeting because they did not hand out the "Vote No" letter to teachers on the day of the ratification vote because they did not want to risk further action by school administrators.

justification. Any diminution of employee rights occasioned by application of the employer's rule must be balanced against the employees' interests. The Board has consistently held that an employer's discriminatory restriction on the use of its facilities is unlawful. City of Quincy, 23 MLC 201 (1997) (discriminatory denial of use of table outside cafeteria held unlawful); Quincy School Committee, 19 MLC 1476 (1992) (blanket policy prohibiting union solicitation held unlawful); Commonwealth of Massachusetts, 9 MLC 1842 (1983) (employer unlawfully permitted employee use of workplace bulletin board for personal and not union matters). Although an employer may promulgate rules regulating the distribution of protected materials, the employer's rules must be neutral and non-discriminatory so that employee access to the information is not unduly restricted. Quincy Hospital, 23 MLC at 203. A rule that is enforced only against literature that constitutes protected, concerted activity demonstrates the lack of any legitimate purpose for the rule. Id.

The findings reflect that prior to September 12, 2003, the School Committee allowed teachers to use mailboxes to distribute educational materials to each other, including non-work related information, such as announcements for social gatherings and birthday cards. Although the record does not reflect whether the rule was discriminatorily enforced against materials protected by Section 2 of the Law after the new rule was imposed, Superintendent Levine testified at hearing that he created this new policy to prevent large scale use of school mailboxes so as not to allow the "subversion" of the collective bargaining process, because the School Committee had a responsibility to bargain in good faith with the Union's officers. The Superintendent was clear that he did not impose the rule to prevent teachers from sending birthday cards or other social communications. The rule was thus admittedly aimed at the very type of

materials distributed by the five teachers that day and therefore discriminatory in its intended application. As such, it violated Section 10(a)(1) of the Law.[106] Quincy Hospital, 23 MLC at 203.

Count II - This count alleges that the statement that Union business agent Porter made to bargaining unit members, that Callahan wanted to have unit members arrested or dispersed for distributing the "Vote No" memo on the day of the ratification vote, violated Section 10(a)(1) of the Law. The findings reflect that though Callahan told Porter and Union President McGrath that he did not believe there were problems at the site of the picketing, he nevertheless asked these Union representatives if they wanted the teachers distributing flyers to be removed by calling the police. Porter told Callahan that he did not. Porter subsequently relayed this exchange to three bargaining unit members, to the effect that he had intervened on their behalf because "Callahan wanted to have them arrested" if they did not stop distributing the "Vote No" letter.

The complaint alleges that the School Committee violated the Law by Porter's repetition of Callahan's statement to bargaining unit members. Thus, this count requires the Board to address the issue of whether an indirect statement to bargaining unit members violates Section 10(a)(1) of the Law. Callahan's statement plainly indicated his willingness to have bargaining unit members arrested for publicly airing their views about collective bargaining matters. As such, we find that this statement, as

[106] In her brief, Babcock also alleges that this incident violated the teachers' Weingarten rights. This allegation was not in the Board's original complaint and we decline to consider it now because it was not litigated and is not properly before us.

made directly to McGrath, a bargaining unit member,[107] would tend to chill employees in the exercise of protected rights.

We also conclude that Callahan's indirect statement to bargaining unit members violated Section 10(a)(1) as alleged in the complaint. The NLRB has held that an indirect attempt to interfere with protected activities violates Section 8(a)(1) of the NLRA, where the object of the attempt is to interfere with such activities. In Best Yet Market, 339 NLRB 860 (2003), the NLRB considered whether an employer who had informed the owner of the shopping center of a union's lawful picketing and handbilling violated Section 8(a)(1) of the NLRA. The NLRB held that it did because the employer's goal in transmitting the information was to disperse the lawful picketers and in fact caused the owner to issue a letter asking the union handbillers and pickets to leave the shopping center parking lot. In so holding, the NLRB opined that the owner ought not to be allowed to accomplish indirectly that which it was prohibited from doing directly. Id. at 864 (citing Wild Oats Community Markets, 336 NLRB 179-181-182 (2001)).

Here, Callahan asked Union officials and representatives if they wanted him to call the police to disperse the teachers who were handing out the "Vote No" letter. As in Best Yet Market, this was an indirect attempt to remove the individuals handing out the leaflets from the voting site, even though Callahan himself acknowledged that he had no basis to do so. We conclude that this constitutes unlawful interference under Section 10(a)(1) of the Law. The fact that Porter repeated Callahan's statement to the three

[107] In reaching this conclusion, we reasonably assume, and there is some evidence in the record to the effect, that the Union President McGrath was a veteran 31 year teacher at Salem High and a member of the Union's bargaining unit. (Transcript Vol. II, p. 131, line 14).

bargaining unit members, albeit not verbatim,[108] further adds to the chilling and coercive effect that Callahan's statement had on protected activity and thus violates Section 10(a)(1) of the Law.

Count III - This count alleges that Papagiotas' October 22, 2003 notice to all high school staff reminding them that she must pre-approve all requests to distribute information or materials through the mailboxes violated Section 10(a)(1) of the Law.

As noted in Count I above, Levine testified that he created this new policy regarding the large-scale use of school mailboxes, not to prevent the distribution of birthday cards or party invitations, but to prevent the "subversion of the collective bargaining process." For the reasons set forth in Count I above, we conclude that this rule violated Section 10(a)(1) of the Law. Even though employers have the right to promulgate rules that regulate the dissemination of literature, the rules must be neutral and non-discriminatory. The intended application of this rule was neither. In addition, the rule was not promulgated until the five teachers distributed their letter opposing ratification of the contract. We conclude that the timing and discriminatory nature of the rule reasonably discourages employees from engaging in protected, concerted activities in violation of Section 10(a)(1) of the Law.

Count IV – This count alleges that the School Committee's failure to schedule a Step 3 hearing for Babcock's grievance over the new mailbox policies violated Section 10(a)(1). The findings support the basic allegations in the complaint – that though

[108] Callahan asked Porter and McGrath if they wanted the teachers distributing the fliers removed by calling the police. Porter in turn told the bargaining unit members that Callahan had told him that Callahan wanted to arrest them if they did not stop distributing the fliers. Though Porter's statement was not entirely accurate, because it reflected Callahan's willingness to put an end to the picketing by calling the police, Porter's rendition of their conversation does not materially change the gist of Callahan's message.

Babcock appealed Superintendent Levine's denial of her Step 2 grievance on October 22, 2003, the School Committee did not schedule a Step 3 hearing until January 7, 2004, after Babcock decided to file the instant charge. The School Committee scheduled the hearing to be held on January 12, 2004, which Babcock did not attend because she filed the instant charge.

Filing and processing a grievance constitutes activity protected by Section 2 of the Law. School Committee of East Brookfield v. Labor Relations Commission, 16 Mass. App. Ct. 46, 51 (1983). Consequently, an employer's conduct that tends to interfere with, restrain, or coerce employees in the exercise of this right violates the Law. City of Boston, 8 MLC 1281 (1981).

The School Committee argues that scheduling difficulties with both the Union and the School Committee prevented it from scheduling Babcock's hearing before January 12, 2004. In turn, Babcock argues that the School Committee's treatment of her grievance from Step 1 forward reflects its efforts to deny or avoid processing it altogether. She questions the sincerity of Callahan's statements that he could not schedule her grievance before January, noting that nothing in the contract required the full complement of School Committee members to hear her grievance. She also claims that the School Committee was bound by the contract to hear her grievance within ten days. She finally claims that, ultimately, her filing the instant charge caused the School Committee to schedule her grievance.

With respect to her final point, the facts as found by the Hearing Officer, and not challenged by Babcock, reflect that Levine's secretary informed Babcock on January 7, 2004, the day before Babcock filed this charge, that it had rescheduled the Step 3 hearing for January 12th. Babcock's claim that her charge caused her grievance to be

scheduled is not supported by the findings of fact. The School Committee's failure to schedule the matter for a Step 3 hearing within the ten days as required by the contract, is explained since the Union has traditionally given the School Committee leeway in scheduling Step 3 grievance hearings, particularly in the months of November, December and January. The initial five week delay in scheduling the hearing would not necessarily lead a reasonable bargaining unit member to believe that the employer was unlawfully interfering, restraining and coercing employees in the exercise of protected rights.

The findings further reflect that the School Committee originally scheduled the hearing for December 8, but the Union asked to reschedule it because Porter could not attend. Under Section 5 of the Law, an employer must afford the exclusive representative the opportunity to be present at any grievance conference in which an employee presents a grievance. We do not fault the School Committee for rescheduling the December 8th hearing date to accommodate the Union's schedule. In the end, because the School Committee ultimately did schedule a Step 3 hearing, which Babcock chose not to attend, and because the failure initially to schedule the hearing in a timely manner was not unusual for the School Committee, viewed objectively, the School Committee did not tend to restrain employees in the exercise of Section 2 rights. Count IV is therefore dismissed.

Count V – This count alleges that Papagiotas' mid-year decision to change the person who conducted the evaluations of Chrystie, Cammarata, Clement and Moore, four bargaining unit members who signed the "Vote No" letter, which resulted in critical and negative evaluations, Clement's constructive discharge and Cammarata's, Chrystie's and Moore's non-reappointment, violated Section 10(a)(1) of the Law. With limited

exceptions set forth below, we conclude that School Committee violated the Law in the manner alleged.

The findings reflect that the four individuals named in this count engaged in protected, concerted activities, including signing the "Vote No" letter. Specifically, Cammarata filed an affidavit with the Board in February 2004, made various postings to the *salemhigh.net* website referred to throughout the findings, and signed the October 22 petition protesting the imposition of restrictions on teacher mailbox usage. Clement also signed the "Vote No" letter, filed an affidavit with the Board and signed the October 22, 2003 petition. Moore signed the "Vote No" letter and transformed *salemhigh.net* into an open forum in which students and teachers could speak about school-related issues.[109]

The record further reflects that in late September 2003, just two weeks after the "Vote No" letter was distributed and the first ratification vote held, Papagiotas indicated that she, instead of Scuderi, would evaluate math and science teachers. Both Cammarata and Chystie, who taught science and math classes were affected by this change. In March 2004, Papagiotas removed Sorrentino from evaluating eleven non-tenured teachers, including Clement and Moore. Prior to Papagiotas performing these evaluations, both Moore and Cammarata had received generally good evaluations. Afterwards, Papagiotas prepared two reports regarding Cammarata that contained a number of suggestions for improving his work, but no performance improvement plan. Papagiotas' final evaluation indicated that Cammarata had failed to meet several

[109] The record does not reflect protected activity on the part of Chrystie other than signing the "Vote No" letter.

performance standards and by letter dated June 7, 2004, Papagiotas informed Cammarata that his appointment would not be renewed.

Papagiotas conducted Moore's final evaluation. His appointment was not renewed either, although unlike Cammarata, he never received a copy of the final evaluation, or an explanation for the decision, despite having asked for it. The record is silent as to the content of Chrystie or Clement's final evaluations or why Clement resigned or Chrystie's appointment was not renewed. At least with respect to Chrystie however, it is reasonable to infer that his appointment was not renewed based on his most recent evaluation. There is no information however regarding either teachers' earlier evaluations.

The School Committee argues that it had legitimate business reasons for changing evaluators, specifically that Sorrentino's absences caused her to miss too many evaluations and that it made sense for Papagiotas to evaluate math teachers because of her background in math. However, the Hearing Officer did not find those explanations credible and the School Committee did not challenge these findings. Accordingly, they must stand. Notably, the School Committee made no effort to justify the content of Moore's or Cammarata's evaluations or its decision not to renew their appointments. Instead, it claims it resolved the issue of the change in evaluators by giving the affected teachers the option to remove and destroy the evaluation and to be reevaluated by a supervisor of the teacher's choice before the end of the year. However, other than entering into the settlement agreement, the School Committee did nothing to publicize its actions or to renounce future similar actions, nor did it expunge the evaluations from the individual's records, instead leaving it up to the individual teachers to take affirmative action to do this. Furthermore, there is nothing in the record

to indicate that the School Committee would not commit similar acts in the future. Accordingly, the fact that the School Committee settled the grievance over the change in evaluators neither cures the prohibited practice nor renders it moot. Brockton Education Association, 12 MLC 1497, 1507 (1986) (only a clear written repudiation of conduct by administration, posted in schools, coupled with expungement of letters from record could remedy harm); see also Passavant Memorial Area Hospital, 237 NLRB 138, 138-139 (1978) (to cure or remedy prohibited practice, the employer's repudiation must be timely, unambiguous, specific in nature to the coercive conduct, free from other proscribed conduct, adequately publicized to the employees involved, not followed by other proscribed conduct, and accompanied by assurances to employees that the employer will not interfere with the exercise of their rights under Section 7 of the Act).

We therefore consider whether the School Committee's conduct here violated Section 10(a)(1) of the Law. With respect to Cammarata and Moore, the evidence supports the conclusion that, in light of their protected activities and the timing of the School Committee's actions, a reasonable employee would have felt chilled, restrained and coerced by the School Committee's decision to change their evaluators and ultimately, its failure to renew their contracts based on poor evaluations.

We reach a slightly different conclusion with respect to Chrystie and Clement. Because both teachers signed the "Vote No" letter and were removed from their classrooms on September 12, 2003, a reasonable employee would have felt restrained and coerced by the mid-term, unexplained change in evaluators. However, because the record is silent as to why Clement resigned, or the contents of Chrystie's or Clement's evaluations, there is no basis to conclude that a reasonable person would have been

chilled by the School Committee's evaluations of these two individuals. Accordingly, we dismiss this narrow aspect of Count V of the complaint.

Count VI - This count concerns the meeting between Moore and Levine regarding Moore's website, at which, accompanied by a police officer, Levine told Moore to shut the website down and stated that a teacher in Beverly had faced consequences for his actions. The findings support the allegations contained in this count, and we conclude that the School Committee's actions here violated Section 10(a)(1) of the Law.

The conversation at issue here took place after Levine ordered a lockdown of the school because of a student posting on the website. Although the School Committee does not deny that Levine made the various statements attributed to him in Count VI of the Second Amended Complaint, it notes that Levine only requested, not ordered, Moore to take down the site, and that it did so for legitimate business reasons. We disagree.

The facts reflect that on two other occasions during this meeting, Levine asked Moore to shut the website down entirely, refused to reconsider his decision to allow open access to teachers' mailboxes, had a police officer present and implied, by his reference to the Beverly school teacher, that Moore could lose his job if he did not comply with Levine's suggestion. Accordingly, even if Levine were justified in asking Moore to cease allowing students to post on this site because of the recent incident, his request that Moore "do the right thing" and shut the site down entirely was overly broad and inherently coercive. As such, it improperly infringed on the teachers' rights to discuss matters of mutual concern. See, e.g., Town of Mashpee, 11 MLC 1252,1270 (1984) (police chief's reprimand violated Section 10(a)(1) of the Law because it failed to distinguish between an employee's unprotected use of the telephone during work-time

and an employee's permissible solicitation of the union's assistance). We therefore conclude that the School Committee violated Section 10(a)(1) of the Law in the manner alleged in this count.

Count VII - This count concerns a conversation that Levine had with Arnold in or around November 2003 in which Levine told Arnold that he had engaged in "a dishonorable act" when Arnold posted on *salemhigh.net* a description of a conversation they had had about the new mailbox rule.[110] The findings support this allegation.

The expression of anger, criticism or ridicule directed to an employee's protected activity has been recognized to constitute interference, restraint and/or coercion of employees. Groton-Dunstable Reg. School Committee, 15 MLC 1551,1557 (1989). Labeling Arnold's posting a "dishonorable act" clearly reflects Levine's anger and criticism. Levine's statement, particularly when considered in light of the other actions taken by the School Committee here, constitutes a violation of the Law. That the remark did not directly threaten discipline and that none was immediately imposed[111] does not change this result for all the reasons set forth above.

Count VIII - This count alleges that Arnold's transfer from the high school, where he had been a social studies teacher, to the middle school to teach special education classes constitutes a violation of Section 10(a)(1) of the Law. There is no dispute that the School Committee transferred Arnold as described in this count.

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[110] The facts reveal that Arnold also distributed a flyer describing the meeting in the teachers' cafeteria.

[111] See Count VIII.

There is also no question that Arnold was engaged in a host of protected concerted activities that were aimed at reversing and publicizing the new mailbox policy, and protesting the Federal Grant policy including:

- Writing letters to Papagiotas and Levine regarding the mailbox policy in October 2003;
- Being vocal and critical of high school leadership and the superintendent at various school Committee meetings throughout the 2003/2004 school year;
- Signing the petition started by Schultz in October 2003, meeting with Levine in November 2003;
- Filing an affidavit with the Board in January 2004;
- Writing to Papagiotas in January 14, 2004 asking her to answer questions about block scheduling and to allow him to distribute her answers through teachers mailboxes;
- Writing a letter to the Salem News in February 10, 2004 that was critical of block scheduling and Levine's leadership;
- Distributing a report in June 2004 to the School Committee that criticized Levine and Papagiotas for a number of reasons, including their alleged unprofessional treatment of teachers.

Against this backdrop, the School Committee decided in the summer of 2004 to transfer Arnold from the high school to teach a difficult and undesirable class in the Middle School's Diversion and Mainstream special education program. Although Arnold was certified as a special education teacher and had taught special education classes at the high school for four years, in or around 2002, he sought and obtained a transfer from the high school's special education department to its Social Studies department because he preferred to teach Social Studies.

The School Committee attempts to justify its actions by claiming that Arnold was qualified for the position, and transferred him because no one else was qualified to fill it. However, the Hearing Officer, in a careful and well-reasoned footnote declined to credit this explanation and the School Committee did not challenge this finding. Accordingly, we conclude that the School Committee's decision to transfer one of the most vocal

critics of the school administration without credible explanation or warning to teach a difficult and undesirable class outside of Salem High School would reasonably tend to inhibit employees from engaging in the types of protected, concerted activities that led to the transfer, especially when the transfer is viewed in conjunction with the School Committee's other actions with respect to the other individuals who signed the "Vote No" letter. Accordingly, we conclude that the School Committee's conduct violated Section 10(a)(1) of the Law in the manner alleged.

Count IX - This count relates to Patrick Schultz, who like Moore and Arnold, was one of the more vocal critics of the school administration. Schultz engaged in the following protected activities:

- Filed an affidavit with the Board in this case;
- Began and signed a petition in October 2003 protesting the mailbox policy;
- Questioned Levine in January 2004 at a meeting concerning block grants;
- Quoted in Salem News article in February 2004 as complaining that teachers had been excluded from decisions regarding implementing block scheduling.

Count IX alleges that the School Committee unlawfully denied Schultz' request to participate in a research project while he was out on a leave of absence. The School Committee makes no effort to justify its actions in its brief, except to state that the facts do not support the allegation.

However, the facts show that Schultz requested and was granted a one year leave of absence for the 2004/2005 school year on June 14, 2004. Approximately one week later, Schultz was offered the opportunity to participate in a SALEM in History project, which would have required him to join the group's advisory board and serve as a paid "master teacher." On July 16, 2004, Levine denied Schultz's request to participate in the project. The findings reflect that it was Levine's practice not to allow employees on leaves of absence to receive job-related benefits, like professional

development. Because Levine's actions were generally consistent with his practice of denying benefits to employees on leaves of absence, we decline to conclude that this decision would reasonably tend to interfere with employees exercise of rights under Section 2 of the Law. This count is therefore DISMISSED.

Count X – This count concerns the letter that Levine wrote to Schultz on September 16, 2004 regarding an August 20, 2004 article in the Salem News titled "Salem teachers say they lost their jobs for speaking out. " The article quoted Schultz as stating that he had decided to take a leave of absence because the school was "dysfunctional, as the result of awful leadership at the school."[112] Levine's letter to Schultz regarding the article also referenced an August 24, 2004 letter to the editor of the Salem News that Schultz and Moore had written criticizing the school for targeting teachers who had spoken out about problems in the administration. Levine's letter chastises Schultz for not telling him in June 2004 that Schultz was requesting a leave of absence because he believed the school to be "dysfunctional." Levine's letter stated that Schultz lacked the "courage of his convictions" because he was willing to talk publicly about his reasons for taking a leave to the newspaper but failed to do so when he first asked Levine for the leave of absence. The letter further indicates that though Levine considered revoking Schultz's leave as a result of Schultz's dishonesty, it would be "more disturbing for [Schultz] to return at this late date." Levine ultimately did not revoke Schultz's leave of absence.

The question is whether aspects of Levine's letter violated Section 10(a)(1) of the Law. Levine's letter clearly criticized Schultz for his public remarks, and states that

[112] Though the findings do not contain this exact quote, the article was entered as an exhibit in the record and supports the allegation contained in paragraph 60 of the Second Amended Complaint.

Levine had even contemplated revoking Schultz's leave of absence. Thus, whether the letter violated the Law is dependent upon whether the letter's statements and implicit threat were directed at Schultz's protected activity, writing the letter to the newspaper, or at Schultz's purported failure to be forthright regarding his reasons for taking a leave of absence. We conclude that Levine's anger was directed at Schultz's protected conduct. By the time Schultz requested a leave of absence in June 2004, he had participated in numerous meetings and engaged in multiple actions that made his dissatisfaction with the administration's leadership quite clear. Moreover, Schultz's written request for a leave of absence stated, among other things, that it had been a "particularly taxing" school year. In light of Schultz' open and frequent protected activities protesting various administration actions, it is disingenuous of Levine to claim that he did not know that at least part of Schultz' reason for taking the leave had to do with the various battles that Schultz had been fighting over the past ten months. Because Levine must have known this, it is reasonable to infer that the true object of Levine's expressed criticism was not Schultz's alleged lack of candor, but Schultz's statements to the Salem News. Accordingly, we conclude that the critical and angry statements contained in Levine's letter violate Section 10(a)(1) of the Law.

Count XI –This count, as amended,[113] alleges that Cammarata, Clement, Arnold, and Schultz filed affidavits with the Board, and that, by constructively discharging Clement, refusing to renew Cammarata's appointment, and denying Schultz's request to

[113] As set forth in note 5, supra, and accompanying text, the Board granted Babcock's motion to amend Count XI to include Eric Arnold. We also amend Paragraph 66 of the Second Amended Complaint to include Arnold's transfer to the Middle School, described in paragraph 49.

participate in the research project, the School Committee violated Section 10(a)(1) of the Law.

Although it is undisputed that Cammarata, Arnold, Clement and Schultz filed affidavits with the Board in connection with the Board's investigation of this case, for the reasons set forth in our analysis of Counts V and IX, above, we decline to find that Clement's decision to resign and the School Committee's denial of Schultz's request to participate in a research project violated Section 10(a)(1) of the Law in the manner alleged in this Count. However, for the reasons set forth in Counts V and VIII, above, we conclude that the School Committee violated Section 10(a)(1) of the Law by changing Cammarata, Moore, and Clement's evaluators, giving Cammarata a negative evaluation, failing to renew Cammarata's and Moore's appointments and transferring Arnold to the Middle School.

Conclusion

Based on the record and for the reasons stated above, we conclude that the School Committee violated Section 10(a)(1) by engaging in conduct that would tend to interfere with, restrain and coerce employees in the exercise of rights guaranteed under Section 2 of the Law, as described in our analysis of Counts I, II, III, V, VI, VII, VIII, X and XI. For the reasons stated above, we find that the School Committee's conduct as described in our analysis of Counts IV, IX and those aspects of Counts V and XI concerning Chrystie's resignation and Clement's evaluation, did not reasonably tend to interfere with employees' Section 2 rights in the manner alleged.

Remedy –

Among other things, Babcock seeks a make-whole remedy for Cammarata,

Chrystie, Clement, Moore and Arnold.[114] We decline to order one in this case for the following reasons. With limited exception,[115] the traditional remedy in a Section 10(a)(1) case is a cease and desist order and a notice and posting. See, e.g., Groton-Dunstable Regional School Committee, 15 MLC at 1557; Town of Chelmsford, 8 MLC 1913, 1919 (1982). More importantly, while Babcock has standing to assert the Section 10(a)(1) allegations contained in the Second Amended Complaint, we conclude that she cannot seek monetary and other damages on behalf of individuals who are not parties to this case. We are not aware of any cases in which the Board has awarded backpay to an individual where the charge was brought by someone other than the individual or by a

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[114] Babcock filed a document titled "Remedies Sought" with the Commission on September 20, 2005 in which, in addition to a notice and posting, she sought the following remedies:

1. A make-whole remedy for Cammarata, Chrystie, Clement, Moore and Arnold, including back wages, loss of accumulated sick leave, loss of professional teaching status, loss of seniority and damages to reputation;
2. Desist from making a statement to any new employer or prospective employer of the five employees that would interfere with, restrain or coerce them in the exercise of their rights under the Law.
3. Prominently post a paid advertisement on the "Salem" page of the local section of the Salem News on four successive Fridays after the date of service of the decision, offering a public apology to Cammarata, Clement, Moore Arnold, Schultz and Babcock for violations found by the .....(fill in)
4. Desist from making derogatory statements in public about Babcock, Cammarata, Chrystie, Clement, Moore, Arnold and Schultz at Salem School Committee meetings and in local newspapers.
5. Compensate Charging Party, Elizabeth A. Babcock for her time and expense in preparing and presenting this case before the Commission.

[115] The Board has carved out a narrow exception for Weingarten cases and awarded backpay where the evidence shows that the employer's decision to impose discipline is based upon information obtained at the interview where the employer denied the employee's request for union representation. Commonwealth of Massachusetts, 8 MLC 1287, 1290-1291 (1981); Commonwealth of Massachusetts, 18 MLC 1018, 1022-1023 (1991). There are no Weingarten allegations before us and therefore, these decisions are inapposite.

union in a representative capacity. In declining to order a make-whole remedy here, we recognize that Section 11 of the Law authorizes us to award backpay for a discharge or layoff resulting from any prohibited practice described in section 10 of the Law. See Newton School Committee v. Labor Relations Commission, 388 Mass. 577, 586 (1983). We therefore do not rule out the possibility that Babcock may have been entitled to some type of make-whole remedy had there been evidence that she, as the Charging Party, suffered monetary losses as a direct result of the School Committee's prohibited practices. Nevertheless, where Babcock brought this claim as an individual and not in a representative capacity, and where the named individuals are not parties to this case, we decline to award a make-whole remedy to those individuals. Cf. Klein v. Catalono, 386 Mass. 701 (1982) (a plaintiff who lacks individual standing may generally not assert the rights of others not before the court).

Babcock also seeks a number of other non-traditional remedies, including compensation for preparing her case before this Board.[116] However, treating this request as the equivalent of a request for attorneys' fees, it is well-established that the Board is without authority to order attorneys fees or similar compensation. City of Boston v. Labor Relations Commission, 15 Mass. App. Ct. 122 (1983).

[116] Babcock also asks the Board to order the School Committee to cease and desist from making statements about Cammarata, Chrystie, Clement, Moore, Arnold and Schultz. Because those statements were not the subject of a complaint or fully litigated, we decline to issue such an order.

Order

WHEREFORE, based upon the foregoing, it is hereby ordered that the Salem School Committee shall:

1) Cease and desist from:

   a) Making statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law;
   b) Imposing rules regarding access to teacher mailboxes that would tend to interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law;
   c) Conducting meetings with employees regarding activities protected under Section 2 of the Law in a manner that would tend to interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law;
   d) Changing the person who conducts evaluations of teachers in a manner that would tend to interfere with, restrain or coerce employees in the exercise of rights under the Law;
   e) Transferring or refusing to renew the appointments of employees in a manner that would tend to interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law;
   f) In any like manner, interfere with, restrain or coerce employees in the exercise of their rights under Section 2 of the Law;

2) Take the following affirmative action that will effectuate the purposes of the Law:

   a) Post in all conspicuous places in all schools where teachers 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.

b) Notify the Division in writing of the steps taken to comply with this decision within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

Marjorie F. Wittner

MARJORIE F. WITTNER, CHAIR

Elizabeth Neumeier

ELIZABETH NEUMEIER, BOARD MEMBER

Pursuant to M.G.L. c.150E, Section 11, decisions of the Board 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 Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

APPENDIX 1

An Open Letter to Fellow Salem Teachers Union Members

On Monday, September 15, you are going to be asked to ratify the contract as it was explained to the members this past Monday. Please consider the following points before casting your vote.

It was explained that the contract was financially beneficial for members who are currently on steps 5, 6, and 7 on the current pay scale. However, an analysis of the pay scales over a five-year period reveals a different result. Comparing total earnings by members currently on steps 5, 6, and 7 of the old pay scale *assuming a 0% raise* over a five-year period versus total earnings on the new pay scales reveals the following:

Starting step Year 2003-2004	Old Contract Bachelors Column	New Contract Bachelors Column	Total Earnings LOSS	Old Contract Bachelors +15 Column	New Contract Bachelors +15 Column	Total Earnings LOSS	Old Contract Masters Column	New Contract Masters Column	Total Earnings LOSS
Step 5	$221,067	$217,767	**$(3,300)**	$226,018	$224,055	**$(1,963)**	$231,664	$230,467	**$(1,197)**
Step 6	$232,891	$227,277	**$(5,614)**	$238,056	$233,566	**$(4,490)**	$243,950	$239,986	**$(3,964)**
Step 7	$243,282	$236,786	**$(6,496)**	$248,660	$243,077	**$(5,583)**	$254,794	$249,496	**$(5,298)**

This is unfair and inequitable.

It was explained that the new pay scale was based on the Danvers School System salary schedule. However, the Danvers salary schedule includes 14 steps while the new Salem plan has only 11 steps. Furthermore, the money achieved at the Salem step 11 is still less than the Danvers step 14. We are still getting less money than our colleagues in neighboring systems. We have achieved a 99% MCAS pass rate! We are worth more!

It was explained that tuition reimbursement for teachers would resume the year after it is suspended. The specific language in the contract reads:

> *The Tuition Reimbursement Program shall be suspended during School Year 2003-2004 resulting in no reimbursements made during School Year 2004-2005, and thereafter, the program shall be reinstated.*

The language omits a definitive restart date and could be construed to read anytime after the year 2004-2005. Furthermore, there is no language

that specifies how much money will be available in the program once it is reinstated.

When asked about information regarding Longevity Plan B, the membership was told that more information would be forthcoming. The simple fact here is that we are being asked to vote on a longevity plan without all the information necessary to make an informed decision that will affect the retirement futures of all our members, both present and future.

During the informational meeting, we were told to look at the contract and see how it affects us as individuals. A union is only as strong as its collective membership. If we are to remain a union, we must look at this contract, and any contract, in terms of how it affects us as a whole, not as individuals.

We were told that a 3-year contract was better than a one or two-year contract. However, 3 years from now the Mayor of Salem will be in the very first year of a new 4-year term. If we allow this, we will be giving the other side the political advantage during the next contract negotiations.

We were told that the purpose of the Monday meeting was to provide the opportunity for members to obtain information and ask questions. The reality is that the free flow of information was discouraged and, in some cases, even silenced by the chair. We, as members of a union voting on our futures, deserve the opportunity to hear all sides and have all information available to us. We may differ in our opinions, but we should all be allowed to speak and be heard. To accept less is unacceptable.

A "NO" VOTE ALLOWS THE NEGOTIATING TEAM THE OPPORTUNITY TO GO BACK TO THE TABLE AND ADDRESS THESE PROBLEMS THAT AFFECT US ALL. GIVE THEM THAT CHANCE. VOTE "NO"! [Emphasis in original.]

APPENDIX 2

Article VIII of the Agreement states in relevant part:

A. Definition
A "grievance" shall mean a complaint (1) that there has been, as to a teacher, a violation, misinterpretation or inequitable application of any of the provisions of this agreement or (2) that a teacher has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, as related to this document . . . .

B. Adjustment of Grievances

Grievances of employees within the bargaining unit shall be presented and adjusted in the following manner.

1. Step One
A teacher or his Union representative may, either orally or in writing, present a grievance to the Principal or Director within a reasonable time, normally within thirty (30) school days after knowledge by the teacher of the facts giving rise to the act or condition which is the basis of his complaint.

The teacher and the Principal or Director of the school shall confer on the grievance with a view to arriving at a mutually satisfactory resolution of the complaint. . . .

* * *

The Principal or Director shall convey his decision in writing to the aggrieved teacher and the Union within five (5) school days after receiving the complaint.

2. Step Two
If the grievance is not resolved at Step 1, the aggrieved teacher and/or the Union may appeal by forwarding the grievance in writing to the Superintendent within five (5) school days after he has received the Step 1 decision.

* * *

3. Step Three
An appeal of the foregoing step may be made in writing by the teacher(s) or the Union to the Committee for review within twenty (20) school days after the decision of the Superintendent has been received.

The Committee shall meet with the aggrieved teacher(s) and a Union Representative within ten (10) school days after receipt of the appeal. . . .

* * *

4. Step Four

* * *

A grievance, which was not resolved at Step 3 under the grievance procedure may be submitted by the Union to arbitration. The Superintendent and the Principal may be present at the meeting and state their views.

The aggrieved teacher(s) and the Union shall receive at least two (2) school days' notice of the meeting and be given the opportunity to be

heard. The Committee shall notify the aggrieved teacher(s) and the Union in writing of its decision within five (5) school days after the hearing.

C. General Matters on Grievance

* * *

2. Time Limits

a. The time limits specified in any step of this procedure may be extended or reduced, in any specific instance, by mutual agreement.

* * *

c. A failure by a teacher(s) or the union to process the grievance, from one step to the next step within the time limits provided for, will result in a disposition of this grievance unfavorable to the grievant(s) . . . .

* * *

D. Official List of Union Representatives
The Union shall furnish the Committee with a list of its officers and authorized Union Representatives, and shall as soon as possible notify the Committee in writing of any changes. No Union Representative shall be recognized by the Committee except those designated in writing by the Union.

APPENDIX 3

A letter to the editor from Erik Arnold printed in the February 10, 2004 edition of the Salem News entitled, "No Consensus for proposed changes at Salem High School," states:

> I am one of the teachers at Salem High School who, in the opinion of School Superintendent Herbert Levine, is a "constant complainer" and unhappy when the "sun comes up" each day.
>
> This is my seventh year teaching and coaching at Salem High School and I do not think anyone who knows me would refer to me as a constant complainer. However, this year has been overflowing with issues for teachers and students to be concerned about.
>
> During a faculty meeting last week, Dr. Levine stressed that even when teachers and administrators differ with each other, we must maintain a civil discourse and treat each other as professionals. Apparently this is a classic example of "Do what I say, not what I do."

In the article in Saturday's Salem News and at the faculty meeting, Dr. Levine said, "These people would have to have been living on Neptune not to know we're been working on this." That's a nice way of saying that we are stupid. This is rude and he is missing the point of our discontent entirely.

There is a large difference between "knowing" what administration wants to do, and actually achieving the support and "buy-in" of the staff, not to mention the students.

Certainly some things that Dr. Levine wants to do at the high school are not in our control and he can do them whether we like it or not. However, changing the schedule is not one of them.

The high school schedule is spelled out in detail in our contract and if he wants to change it, the teachers would have to ratify any change. This is one fact that is glaringly missing from the language of the $500,000 grant.

I think it is pretty clear, even for those of us living on "Neptune," that you cannot assure the federal government you are going to change the high school to block scheduling when you do not yet have the support of the faculty. The application for the Smaller Learning Communities grant states that the school district must provide "evidence of the involvement and support of teachers" with regards to the "planning, development and implementation of the proposal." None of this happened, and now he wonders why anyone would have reason for concern about the changes that are being implemented.

The parents of Salem should also be concerned. Ask your children what they think of the proposed changes. Many students have told me they do not want the high school to become just like Collins Middle School. Collins has a house system and an extended period schedule and that is what the administration wants for the high school.

Dr. Levine says "the research is pretty clear" that what they proposing is better for kids.

Not true. The research is not clear at all. Will students learn more and therefore perform better on MCAS and SAT exams? There is no conclusive evidence to support this.

In response, the administration states that there are more important things than test scores. I agree, but in the same breath they point to poor student test scores as evidence that we need to change in order to do better! OK, so why are we making all of these changes if the evidence does not support that the changes are going to improve student test scores? The logic does not make any sense.

Dr. Levine has done a good job at trying to squash opposition and control the discussion regarding these issues. He might believe it is an effective strategy to characterize those of us who find fault with the process that has occurred regarding these changes as dissenters and constant complainers. But I think most people living on Earth would feel it is a lack of effective management skills and an example of poor leadership.

APPENDIX 4

A letter to the editor from Patrick Schultz and Andrew Moore printed in the August 24, 2004 edition of the Salem News entitled, "SHS turmoil an unfortunate lesson for Salem's children," states:

> We know it is difficult for the Greater Salem community to understand how tumultuous and upsetting this year was at the high school.
>
> There are numerous issues that need discussion and resolution. There have been many controversies and many problems related to the teacher contract, school reform and the treatment of teachers, but very few constructive solutions. The only "solutions" we have witnessed are: 1) the administration's self-serving yet persistent mantra of "Let's move on" and 2) the firing and targeting of teachers who asked too many tough questions about the educational reform process currently underway at the school.
>
> According to almost all veteran teachers to whom we have spoken (including department heads and those who have disagreed with some of the tactics of the so-called "dissident" teachers), this has been one of the worse years, if not the worst year, in their experiences at the high school and in public education generally.
>
> With all due respect to Collins Middle School Principal Mary Manning ("Assessing true state of affairs at Salem H.S. requires good ear, sharp mind," Viewpoint, Monday, July 19, 2004), young and veteran teachers have been offended this year and were involved together in the same struggles. The divide-and-conquer mentality that pervades so many of the best administrative minds in this district needs to change before the real problems at Salem High School can be adequately addressed.
>
> We, as well as all of the other teachers who have questioned and challenged the improprieties of the high school and district administrations this year, care deeply about the children of Salem — our students. We are driven by our commitment and dedication to them. We desire more than anything to be good teachers and positive role models, and, above that, to engender in them two things: the understanding that we are part of their community and are there to help them become personally

empowered (academically, emotionally, socially, etc.) and the belief that standing up for oneself and others is always the right thing to do.

We have, therefore, also been committed to genuinely sharing influence with administration when it comes to reforming educational practices.

Students recognize when teachers feel empowered or disempowered by their environment, and parents recognize when administrators and School Committee members attempt to rubber-stamp questionable changes, rather than include parents and teachers in sweeping school reform dictated largely by a rush to fulfill mandates of a federal grant creating demands of questionable value for Salem High.

This part year, the school environment was so confused, dysfunctional and, at times, hostile, that the impact on teachers — and, it stands to reason, on students — was excruciatingly negative. Instead of a lesson in empowerment and cooperation, this year became a lesson in justified apathy as students watched the school administration either badger dissident teachers into silence or pink-slip dissident teachers out of the way.

Is it any wonder that so many students come to see civic involvement as a waste of time, to answer civic responsibilities like voting with a refrain of "it doesn't matter anyway[?"] If anything, Salem High taught students to sit down and shut up even if they see something wrong, as people who speak out will be targeted by those in charge. That's no lesson to teach students.

Ultimately, the teachers who were targeted (fired, reassigned, labeled "dissidents," etc.) by the administration were teachers who felt compelled to speak out about problems created and perpetuated by a less-than communicative and professional administration.

We didn't do it for fun, and we thought the school's culture would be strengthened by it. Our overarching issue was never the contract; it was the obvious lack of respectful and inclusive professional culture, clearly demonstrated in the way administration attempted to undermine our rights (a common theme also impacting students at the high school) to be active on school issues, including many issues related to the new reforms.

The administration reacted irresponsibly to teachers, fostering an atmosphere of division and distrust and initiating a power struggle that lasted most of the year. Almost the entire faculty had legitimate questions about the administration's desired reforms and the process by which they were to be explored, evaluated and implemented. The "dissidents" were simply the ones asking the questions and attempting to hold the administration accountable to a fair and a professional process.

The administration saw that honest dissension could make a difference, and they sought to silence us, to isolate us and to discredit us. That's the sad nutshell overview of what "really" took place at Salem High this year.

Vaclav Havel, the post-Cold War playwright-president of the Czech Republic, once wrote, "You do not become a 'dissident' just because you decide one day to take up this most unusual career. You are thrown into it by your personal sense of responsibility, combined with a complex set of external circumstances. You are cast out of the existing structures and placed in a position of conflict with them. It begins as an attempt to do your work well, and ends with being branded an enemy of society."

This administration sees us as enemies and has targeted and eliminated many of us because it can. Those teachers were not fired because they were not good teachers; most within the school would say there were, in reality, very good teachers. They loved working with Salem's kids, and they were committed to instituting a reform process that would clearly raise the academic performance of students.

When Superintendent Levine suggested recently in the paper that "we can do better," what do you think he really meant?

If administrators go after good teachers with a vengeance simply because teachers ask tough questions and expect honest answers, can those administrators really care about what's "best for kids[?

THE COMMONWEALTH OF MASSACHUSETTS
DIVISON OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF

DIVISION OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Massachusetts Division of Labor Relations, Commonwealth Employment Relations Board (Board) has found that the Salem School Committee has violated Section 10(a)(1) of the Law by engaging in conduct that tends to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

The Salem School Committee posts this Notice to Employees in compliance with the Board's order.

WE WILL NOT make statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT impose rules regarding access to teachers' mailboxes that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT conduct meetings with employees regarding activities protected under Section 2 of the Law in a manner that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT change the person who conducts evaluations of teachers in a manner that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT transfer or refuse to renew the appointments of teachers in a manner that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 2 of the Law.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

_____ _____

Salem School Committee Date

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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 Division of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).