

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

STOUGHTON SCHOOL COMMITTEE

and

STOUGHTON TEACHERS ASSOCIATION

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Case No. MUP-17-5762

Date Issued: October 2, 2018

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

Joseph A. Emerson, Jr., Esq.:

Representing the Stoughton School
Committee

Mark A. Hickernell, Esq.:

Representing the Stoughton Teachers
Association

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the Stoughton School Committee (School
2 Committee) violated Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the
3 Law) by ordering bargaining unit members at Stoughton High School to remove buttons
4 which stated "I Support Stoughton Teachers." Based on the record and for the reasons
5 explained below, I conclude that the School Committee violated the Law as alleged.

Statement of the Case

1 On January 30, 2017, the Stoughton Teachers Association (Association) filed a
2 Charge of Prohibited Practice with the Department of Labor Relations (DLR) alleging that
3 the School Committee had engaged in prohibited practices within the meaning of Section
4 10(a)(1) of the Law. On May 3, 2017, a DLR investigator issued a Complaint of Prohibited
5 Practice (Complaint). On May 15, 2017, the School Committee filed an Answer to the
6 Complaint. On May 8, 2018, the Association filed a Motion to Exclude the Testimony of
7 Mark Schaefer and an Arbitration Decision (Motion). The School Committee filed an
8 Opposition to the Motion, in which it advised that it no longer intended to call Mark
9 Schaefer as a witness. On May 17, 2018, I issued my ruling allowing the School
10 Committee's Motion to exclude an arbitration decision. I conducted a hearing on June
11 20, 2018. Following the hearing, the Association and School Committee each timely filed
12 post-hearing briefs. On the entire record, including my observation of the demeanor of
13 witnesses, I make the following findings.

Stipulations of Fact

- 14 1. The Association is an employee organization within the meaning of the Law.
15
16 2. The Town of Stoughton (Town) is an employer within the meaning of the Law.
17
18 3. The [School] Committee is the Town's representative for the purpose of collective
19 bargaining with school employees.
20
21 4. The Association is the exclusive bargaining representative for certain employees
22 employed by the [School] Committee, including teachers and professional
23 employees of the Stoughton Public Schools.
24

- 1 5. On or about January 17, 2017, certain bargaining unit employees at Stoughton
2 High School wore buttons to work which stated "I Support Stoughton Teachers."
3
- 4 6. On or about January 17, 2017, Stoughton High School Principal Juliette Miller
5 (Miller) directed those employees wearing buttons referenced in paragraph 5,
6 supra, to remove and not wear those buttons.
7
- 8 7. On or about January 19, 2017, Stoughton Public Schools Superintendent
9 Marguerite Rizzi (Rizzi) held an emergency faculty meeting at the High School at
10 which she reiterated the directive described in paragraph 6, supra.
11
- 12 8. At all relevant times, Miller and Rizzi acted as agents of the [School] Committee.
13
- 14 9. The employees wearing buttons referenced in paragraph 5, supra, complied with
15 Miller's and Rizzi's directive.
16

Findings of Fact

17 On January 11, 2017, Rizzi disciplined three teachers at Stoughton High School,
18 SM, JR, and HM,¹ in connection with complaints that they had bullied a student after an
19 incident for which the student was disciplined.² The letter to SM states, in relevant part:

20 This is a letter of reprimand which shall be placed in your personnel file for
21 violating the Stoughton Public Schools' Employee Handbook. The
22 Handbook provides that "As leaders and educators in the Stoughton Public
23 Schools, we are committed to providing an educational climate that is
24 conducive to student engagement and learning."
25

26 The reason for this action is that an investigation into a bullying complaint
27 that was filed against you revealed that while you did not engage in bullying
28 toward the student, you engaged in a lengthy discussion about the student
29 with the students in your English class and commented on the extent of the
30 discipline he received from the administration. In doing so, you failed to

¹ The parties agreed to use pseudonyms for these three teachers, and for the student at issue, who will be referred to as Student F.

² Additional details regarding Student F's conduct, which involved the use of a swastika, is provided in statements read to the School Committee by Association leaders reprinted below.

1 provide an educational climate conducive to student engagement and
2 learning. When the students discussed rumors regarding the student and
3 the discipline imposed, the educational environment was disrupted and you
4 should have intervened to stop the behavior, not join the disruptive
5 behavior.

6
7 Therefore, I have concluded that you failed to perform the roles and
8 responsibilities of a teacher as defined in the Handbook. This did not
9 advance a culture of learning for anyone; rather, it was unprofessional and
10 was disruptive to the educational process for the students in your class.

11
12 It is well established that public school teachers hold a position of special
13 public trust. They are responsible for more than teaching basic academic
14 skills and the students must be able to rely on their teachers to exercise
15 sound judgment and maintain appropriate boundaries, even when they
16 themselves may be unable to do so. I have concluded that you failed to
17 exercise sound judgment when you engaged in behavior, discussing the
18 appropriateness of a student's discipline and conduct, with students.

19
20 It is for these reasons that I am placing this letter of reprimand in your
21 personnel file.

22 Rizzi also issued JR a written reprimand. The letter of reprimand is substantially
23 similar as the letter to SM, with the disciplined conduct described as the following, in
24 relevant part:

25 Specifically, you failed to perform the roles and responsibilities of a teacher
26 as defined in the Handbook when you pulled a student aside during class
27 to make inquiry about the discipline that was imposed on another student.
28 This did not advance a culture of learning for anyone; rather, it was
29 unprofessional and was disruptive to the educational process for the
30 students in your class. In addition, you had unnecessary communications
31 with colleagues about a student and the consequences imposed for his
32 discipline.

33
34 Lastly, the disciplinary letter to SM states, in relevant part:

35 This is to inform you that in accordance with Massachusetts General Laws
36 Chapter 71, Section 42D, it is my intention to suspend you for twenty (20)
37 days. This suspension shall begin on January 25, 2017.

1 The reasons for this action are that you violated the Stoughton Public
2 Schools Employee Handbook, state law and the basic principles of teaching
3 by engaging in bullying behavior toward a student, by acting unbecoming of
4 a teacher, and by being untruthful during the investigation of a civilian
5 complaint that you bullied a student. The specifics are as follows:
6

7 1. You engaged in bullying behavior toward a student in violation of the
8 Bullying Prevention and Intervention Plan set forth in the Stoughton
9 Public Schools' Employee Handbook and defined by state law. This is
10 supported by the investigation into the bullying complaint.
11

- 12 • Specifically, your repeated communication to students and to
13 teachers targeted a student who had been disciplined for conduct
14 about which you did not have direct knowledge nor did you have
15 direct knowledge of the actual discipline imposed. As a result of your
16 actions, the student did not want to attend school and was
17 emotionally distraught to the level that Principal Miller and his mother
18 expressed concern about his emotional well-being.
19
- 20 • In addition, by contacting and reporting to the college to which he
21 applied that this student had a disciplinary infraction and recklessly
22 reporting inaccurate information, you unnecessarily targeted the
23 student. You had the option of simply removing your
24 recommendation from Naviance, but you chose to make direct
25 contact for the purpose of interfering with the student's future without
26 knowing any of the specifics of his discipline.
27
- 28 • In addition, these actions amounted to bullying but they also are in
29 violation of the Stoughton Public Schools' Employee Handbook and
30 are blatantly contrary to the mission of the school. Specifically, you
31 communicated unnecessarily with teachers and students about the
32 student and contacted the college misrepresenting the facts relating
33 to his discipline. The student learned of your communications and
34 became upset and did not want to go to school. By acting contrary
35 to the mission of the school, you exhibited behavior unbecoming of
36 a teacher.
37

38 For these reasons, I intend to suspend you for ten (10) days for bullying the
39 student and ten (10) days for violating the Handbook by acting in a manner
40 contrary to the mission of Stoughton High School and demonstrating
41 conduct unbecoming of a teacher. You shall serve these 10 day

1 suspensions concurrently. This conduct fundamentally disrupts the trust
2 and nurturing relationships necessary to achieve any school's mission. It is
3 critical that all students be treated fairly and civilly when they are in the
4 hands of their educators. Your actions targeted the student and caused him
5 to suffer emotionally. This behavior has no place in the educational
6 process.

7
8 I intend to suspend you for an additional ten (10) days for being intentionally
9 untruthful during the investigation of this matter. The integrity and efficiency
10 of an investigation is of paramount importance for Stoughton Public Schools
11 to be accountable to itself and to the public it serves. By deliberately being
12 untruthful when answering questions at your interview with the investigator,
13 you shattered the integrity of the investigation.

14 On January 12, 2017, Melanie Ingrao (Ingrao), Association Grievance and
15 Negotiation Chair, and Mollie O'Connell (O'Connell), a member of the Association's
16 Grievance and Negotiation Committee, discussed what actions the Association could take
17 in response to the disciplinary actions described above.³ After considering various
18 options, they decided to suggest that members wear buttons with the statement "I Support
19 Stoughton Teachers."⁴

20 On January 13, 2017, the Association held a meeting at which approximately 50-
21 60 high school teachers attended. O'Connell and Ingrao began the meeting by explaining
22 the discipline that had been given to the three teachers referenced above. The unit

³ The Association also filed grievances in connection with the discipline.

⁴ Teachers had worn buttons with this message in the past during contract negotiations, which were also ongoing at this time. The message had also been displayed on signs that were posted on front lawns. The administration had never prohibited teachers from wearing such buttons. O'Connell and Ingrao also considered, and then decided against, including the statement, "I am an Upstander" on the buttons, as they felt it had a direct connection to a disciplined teacher who was teaching about upstanding during the Holocaust.

1 members were asked about wearing the buttons as support, and the overwhelming
2 response was in favor of wearing the buttons. At this meeting, the unit members
3 discussed the fact that they felt the teachers were disciplined unfairly for conduct that
4 every teacher has engaged in, specifically, discussing a student with other students and
5 teachers. When unit members asked what they should say if students asked why they
6 were wearing buttons, O'Connell and Ingrao advised them to simply say that the buttons
7 are a message of support for their fellow teachers.

8 Following the meeting described above, the buttons were made and distributed,
9 and high school teachers wore them to school on January 17, 2017. When asked about
10 the buttons by students, Ingrao advised the students that she was wearing her button to
11 show her support for all her fellow teachers in the high school, but she did not reference
12 any particular teacher or student.⁵

13 That same day, Student F's mother told Rizzi that Student F was extremely upset
14 and intimidated by the teachers wearing buttons because everyone knew that they were
15 supporting the teacher who had bullied him. Student F's mother advised Rizzi that
16 Student F felt he could not come to school anymore.⁶ In response to this conversation,
17 Rizzi contacted Joseph Emerson, Jr. (Emerson), counsel for the School Committee, and

⁵ Ingrao also credibly testified that students did not ask her any follow-up questions, and she did not observe any students to be fearful or confused.

⁶ Although I allowed this totem pole hearsay testimony of Rizzi over the objections of the Association, I am not finding that Student F was intimidated or refused to come to school because of the buttons, as he himself did not testify. Rather, my findings are limited to the fact that Student F's mother reported this to Rizzi.

1 asked him to contact Joshua Levit (Levit), Massachusetts Teachers Association field
2 representative, because she believed that once the Association knew about Student F's
3 reaction they would want to stop wearing the buttons.⁷

4 On the evening of January 17th, Emerson sent a text message to Levit, asking if
5 the high school teachers would voluntarily stop wearing the buttons because they were
6 making Student F uncomfortable.⁸ Emerson also advised Levit that if the teachers did
7 not voluntarily stop wearing the buttons, the administration would instruct the teachers to
8 stop wearing them. After Levit consulted with his manager and Association members,
9 they concluded that the Association would not direct the teachers to stop wearing the
10 buttons. Later that evening, Levit advised Emerson that the teachers would not voluntarily
11 stop wearing the buttons, but that they would comply with a directive from the school
12 administration.

13 Upon learning that the teachers would not stop wearing the buttons, Rizzi asked
14 Miller to direct the teachers to stop.⁹ By email on the evening of January 17, 2017, Miller

⁷ Neither Rizzi nor Miller spoke to Student F prior to Rizzi contacting Emerson, or prior to the directive that teachers stop wearing the buttons, described below.

⁸ Emerson also acknowledged that the School Committee was aware that teachers typically have the right to wear such buttons, but felt that they could be prohibited given the circumstances here.

⁹ Rizzi testified that she and the school district had a legal obligation to do this, because if she allowed the bullying of a student, there would be potential liability for her and the district. However, she provided no specific legal support for this statement, nor did the School Committee address it in its post-hearing brief. I therefore do not find this to be a credible reason that Rizzi made the decision to direct the teachers to stop wearing the buttons.

1 advised faculty and staff, "You are directed by Superintendent, Dr. Rizzi, to remove and
2 not wear items which contain the message 'I support Stoughton Teachers.'" Unit
3 members complied with this directive and instead wore black and orange clothing as a
4 show of support for fellow teachers.¹⁰ No one in the administration ordered them to stop
5 wearing black and orange, although Rizzi was aware of the reason that the teachers were
6 wearing the colors.¹¹

7 Following the directive to stop wearing buttons, Rizzi met with teachers on January
8 19, 2017 to help them understand her decision. She explained that the privacy of students
9 is of paramount concern.¹²

¹⁰ The School Committee and Union witnesses disagreed as to whether teachers typically wore black and orange every Friday. Although Rizzi testified that it was customary for them to do so, and therefore this action would not have stood out, O'Connell testified that it was not customary to wear black and orange, and that she even had to buy black and orange clothing to take part in the action. I credit O'Connell's testimony based on her specific memory of the events and the fact that it is unlikely that the Association would ask its members to wear black and orange as a statement if it is something that they already do regularly.

¹¹ Some students also wore buttons similar to the Association's buttons, but were not instructed to stop wearing them. Other students told Miller that they wanted to wear something in support of Student F, but ultimately did not do so. The School Committee argues in its brief that the students who wore buttons in support of the teachers "were manipulated to wear the buttons because the teachers could not." However, there is no evidence as to what prompted the students to wear buttons.

¹² Miller also testified about discussions she had with Student F's mother and Student F after the teachers were ordered to stop wearing the buttons. Because these discussions occurred after Rizzi and Miller directed the teachers to stop wearing buttons, they are not relevant to my analysis of whether the School Committee violated the Law by issuing its directive on January 17, 2017. Similarly, Miller's testimony about her discussions with Student F prior to the wearing of buttons by teachers on January 17, 2017 is not relevant.

1 On January 24, 2017, John Gunning (Gunning), a 7th grade teacher in Stoughton
2 and the President of the Association, read the following statement at a School Committee
3 meeting, which he prepared with Andrea Pires (Pires), the Association Vice-President,
4 the prior day.

5 Good evening Chairwoman Pina-Enokian, School Committee Members
6 Cochran, Hill, McDonough, and Soares, Superintendent Rizzi, and Deputy
7 Superintendent Ford:
8

9 My name is John Gunning, President of the Stoughton Teachers
10 Association, and I am with Vice-President Andrea Pires to speak to you on
11 behalf of all the members of the STA regarding a matter of grave concern
12 to the STA.
13

14 Starting just before the week of Thanksgiving, there were multiple incidents
15 of anti-Semitic speech that occurred among students at Stoughton High
16 School. The High School Administration's immediate response was
17 woefully inadequate, especially when compared to the responses that
18 occurred in other school districts when similar instances occurred. School
19 Administration failed to fully address the first instance involving a swastika
20 despite the concerns voiced by teachers. Educators requested a meeting
21 with administrators to discuss what they viewed as a growing problem. The
22 Administration responded by scheduling an optional meeting for faculty and
23 staff. During this optional meeting staff urged the principal to: take the lead
24 and send a letter to the community; bring in the Anti-Defamation League for
25 an educational program; and to make an announcement on the school news
26 program. This did not happen.
27

28 Following a subsequent incident involving the use of swastikas, educators
29 brought the issue to administrators again, but still no communication was
30 sent to the school community or community at large. By ignoring the
31 requests of the faculty, the SHS administration denied students and
32 teachers a safe space to discuss the severity of these incidents and denied
33 parents the right to have these important discussions at their own dinner
34 tables. Unwilling to ignore the presence of hateful anti-Semitic speech in
35 their school, teachers used their best professional judgment to address the
36 issue with their colleagues and in some instances with their students.
37 Regrettably, some teachers are now facing disciplinary action by the

1 Stoughton Public Schools for addressing the problem of abhorrent anti-
2 Semitic speech in Stoughton High School.

3 On February 14, 2017, Gunning and Pires read the following statement to the
4 School Committee, which they had prepared with input from teachers and the Association
5 negotiating team:¹³

6 On Tuesday, January 24, I, John Gunning, and Andrea Pires, read a
7 statement to you regarding the complete mishandling of multiple incidents
8 involving swastikas at Stoughton High School and their aftermath. Tonight,
9 we would like to illustrate by comparison, how the Stoughton Public Schools
10 should have handled and should handle such egregious acts when they
11 occur in our community.

12
13 In Sharon, in the wake of the Presidential Election, swastikas were drawn
14 on students' papers at Sharon Middle School. After a brief investigation the
15 Principal of the school issued a letter to parents and guardians stating "We
16 want to make sure that everyone knows that any form of hate has no place
17 in our school system. We take great pride in the diversity of our school and
18 we value every effort our students and staff make to maintain a safe,
19 welcoming environment for all." In addition, the Superintendent of Sharon
20 Public Schools issued a heartfelt letter thanking teachers and their union for
21 the support they had given students, concluding the letter with the famous
22 and moving "First they came for Socialists" poem by Martin Neimoller.¹⁴

23
24 Around the same time as the incident in Sharon, a swastika was painted on
25 a rock outside a school in Harvard. The Superintendent of Harvard Public
26 Schools issued a statement condemning the graffiti, and asked the Harvard
27 police to investigate. Her statement also spoke of "tolerance" and

¹³ The footnotes within the below statement were included in the written statement, with different numbering, which the School Committee introduced as an exhibit.

¹⁴ Sharon Public Schools, Office of the Superintendent. *Memo to Staff*. 30 Nov. 2016. Print.

1 intensifying "efforts to assure the safety of all students and families from
2 minority and marginalized groups."¹⁵

3 In early December, multiple swastikas and hateful words were found drawn
4 in boys' bathrooms at Cambridge Rindge and Latin School over the course
5 of three days. In a letter home to parents written during the pending
6 investigation, the Principal astutely stated: "The Symbol and language are
7 provocative and upsetting. Its history as a signal for racist, anti-Semitic, and
8 hateful speech and actions is well known. It is intended to make people feel
9 unsafe and unwelcome. I am deeply saddened that this symbol and
10 language has been displayed in our community." The Superintendent also
11 reported the incidents to the Attorney General's hotline on hate crimes and
12 other biased conduct; and a "safe space" was set up in the cafeteria for
13 students to discuss the incidents.¹⁶

14
15 In Brookline, in early December, a swastika was drawn on a middle school
16 chalkboard next to the word "Trump". A statement released by the
17 Superintendent in the very same week outlines how, on the day following
18 the incident, the Principal of William H. Lincoln School held a meeting to
19 "clearly and emphatically explain the gravity of what occurred," and stating
20 that "We know that symbols and language of hate can have devastating
21 impacts on individuals and communities...We must respond to any such
22 incident immediately and decisively." Two days after the incident, middle
23 school students wrote and shared "messages of peace, inclusion and
24 tolerance."¹⁷

25
26 Right before winter recess in Milton, when swastikas were found drawn in a
27 bathroom at Pierce Middle School, the Principal swiftly issued a letter within
28 days to parents stating that this was: "extremely troubling and highly
29 inconsistent with the inclusive culture that we are committed to creating at
30 the Pierce Middle School" and that "I and the entire staff are firmly
31 committed to fostering a safe, supportive, and welcoming environment for
32 every member of our community. To that end, this type of behavior will not

¹⁵ CBS Boston. "School District Asks Police to Investigate Swastika Graffiti." *CBS Boston*.

¹⁶ CBS Boston. "Police Investigating Swastikas, Hateful Graffiti at Cambridge Rindge and Latin School." *CBS Boston*. CBS Boston, 8 Dec. 2016. Web. 30 Jan. 2017.

¹⁷ Gross, Samantha J. "Swastika and the Word 'Trump' Found Written on Chalkboard at Brookline School." *BostonGlobe.com*. Boston Globe, 03 Dec. 2016. Web. 30 Jan 2017.

1 be tolerated at the Pierce Middle School.” The letter also stated that
2 “educational next steps” were being explored and that counseling would be
3 available for all students if they wished to discuss the matter further.¹⁸

4 In Natick, also prior to winter recess, while an investigation of the heinous
5 act was underway, the Principal of Wilson Middle School confirmed in a
6 letter to parents what she described as “a hateful and unacceptable act” in
7 that anti-Semitic graffiti was written on a school wall.”¹⁹

8
9 The Stoughton Teachers Association is going on the record and letting it be
10 known that during an optional faculty meeting, held on December 1st, at the
11 request of the teachers at Stoughton High School the following requests
12 were made: that a statement go out to the school community decrying the
13 heinous and hateful speech that occurred during the week of Thanksgiving,
14 that the Anti-Defamation League be contacted, and that the Principal go on
15 the morning news program at the High School to make students aware of
16 the incidents. Only one of these three items was acted upon, and nearly
17 two months after the incidents occurred. We must reiterate that when
18 teachers tried to do the right thing as public educators and help our students
19 through these troubled times, some were disciplined for just that. In fact,
20 we are presenting to you today with statements from teachers and retirees
21 about the necessity of having conversations like the ones our members
22 were disciplined for. We want to be part of the solution going forward. From
23 the outset, the STA’s primary objective has been to see to it that all of our
24 students and staff feel safe in Stoughton Public Schools; and, that when
25 students graduate from Stoughton High School they have the core set of
26 values needed to make the world a better place. Accordingly, we
27 respectfully request that the School Committee direct the Superintendent to
28 do the following:

- 29
30 1. Provide an educational program from a third party for all students at
31 Stoughton High School in the immediate future.
32
33 2. Hold Principal Miller accountable for her mishandling, trivialization and
34 sanitization of hateful acts at her school through disciplinary
35 proceedings and the issuance of a public apology to the School
36 Community as a whole.

¹⁸ Quintana, Olivia. “Swastikas Found in Bathrooms at Milton Middle School.” *BostonGlobe.com*. Boston Globe, 22 Dec. 2016. Web 30 Jan. 2017.

¹⁹ Inc. Hearst Television. “Anti-Semitic Graffiti Found at Natick Middle School.” *WCVB*. WCVB, 22 Dec. 2016 Web. 30 Jan. 2017.

3. Work with the STA to establish a District-wide protocol for dealing with incidents of hate, hateful, racist, sexist, homophobic speech or any other speech directed to and intended to denigrate a marginalized group. This may include, but is not limited to, notifying school parents/guardians of incidents, and creating "safe spaces" for students to discuss these issues.
4. Have a third party train all Stoughton Public Schools staff on how to deal with such incidents and their ilk in one training session or set of sessions that all attend.
5. Overturn any discipline issued to staff due to their actions in response to the hate speech that occurred during the week of Thanksgiving, and remove the discipline from their personnel files along with any referencing documents, including investigatory reports.

We also request that the School Committee hold Superintendent Rizzi accountable in the same manner as Principal Miller outlined above. We would like an answer, in writing, to each of our requests no later than February 28, 2017.

We leave you with this thought: If the drawing of swastikas is hate speech enough to release statements to the public and take other remedial action in the immediate wake of such incidents in Sharon, Harvard, Cambridge, Brookline, Milton and Natick, then shouldn't we be treating it as such at taking the same proactive approaches in Stoughton?

Opinion

The Association alleges that the School Committee violated Section 10(a)(1) of the Law when it directed unit members to stop wearing buttons that contained the message, "I Support Stoughton Teachers." A public employer violates Section 10(a)(1) when it engages in conduct that tends to restrain, coerce, or interfere with employees in the free exercise of their rights under the Law. City of Fitchburg, 22 MLC 1286, MUP-9483 (November 28, 1995). A finding of illegal motivation is not generally required. Town

1 of Winchester, 19 MLC 1591, 1596, MUP-7154 (December 22, 1992). Rather, the focus
2 of the inquiry is the effect of the employer's conduct on a reasonable employee. Boston
3 School Committee, 39 MLC 366, MUP-09-5543 (June 6, 2013).

4 The School Committee acknowledges that employees generally have a protected
5 right under Section 1 of the Law to wear union insignia, including buttons, in the
6 workplace. However, it argues that special circumstances existed here that warranted
7 Rizzi's January 17, 2017 order that teachers stop wearing the buttons, specifically, the
8 effect that the buttons were having on Student F.

9 The Commonwealth Employment Relations Board (CERB) noted in City of Boston,
10 6 MLC 1096, MUP-2878 (May 23, 1979):

11 The fact that speech takes place within the context of protected activities
12 does not preclude an inquiry into the nature of the statements made.
13 Instead, a balance must be struck in each case between the rights of
14 employees to engage in concerted activities and the rights of employers not
15 to be subjected to egregious, insubordinate, or profane remarks which
16 disrupt the employer's business or demean workers or supervisors.

17
18 The facts here do not rise to the level of speech that the CERB has found to be
19 unprotected. For example, in City of Boston, the CERB held that "On balance, profane
20 and personally abusive remarks to individuals not in a position to redress an employee's
21 complaint will rarely be found to be protected speech." 6 MLC at 1097. In contrast, the
22 Stoughton teachers' buttons did not contain any profane or personally abusive remarks,
23 but rather an innocuous statement of support directed toward all Stoughton teachers.

24 Dighton School Committee, 8 MLC 1305, MUP-4233 (August 26, 1981), also
25 involves teachers wearing buttons at their school. The building principal ordered the

1 teachers to stop wearing buttons that said, "S.O.S.," an acronym for "Save Our Services."
2 The teachers wore the buttons as part of a Massachusetts Teachers Association
3 response to Proposition 2 ½ in an attempt to save school services. In finding that no
4 special circumstances existed to justify the prohibition on wearing the buttons, the CERB
5 noted that, "the wearing of the S.O.S. button had none of the characteristics that can
6 make otherwise protected activity unprotected. For example, the message
7 communicated was not profane. Nor was there any proof that the button was egregious
8 or that wearing it disrupted the educational process."²⁰

9 Similarly, the buttons worn by the Stoughton teachers had none of the
10 characteristics that would make them unprotected. Although the School Committee
11 argues that Student F's feelings of intimidation justified its actions, there is no credible
12 evidence that Student F himself was actually intimidated because he did not testify at the
13 hearing, and neither Rizzi nor Miller spoke to him directly prior to issuing the directive that
14 teachers stop wearing the buttons. Further, even if the School Committee had been able
15 to establish that Student F felt intimidated, or that he would not come to school because
16 of the buttons, he reacted unreasonably sensitively to a message that had no explicit link
17 to him as the buttons contained only a generic message of support.

²⁰ The Appeals Court cites Dighton School Committee when recognizing that "Special circumstances' rarely, if ever, are found in the absence of a comprehensive ban on all nonstandard adornments." Sheriff of Worcester County v. Labor Relations Commission, 60 Mass. App. Ct. 632, 642 (2004). Here, the School Committee presented no evidence that it prohibits the wearing of any other non-union buttons or adornment.

1 As in Dighton School Committee, where the CERB noted that “the evidence does
2 not support the School Committee’s contention that the subject was so controversial
3 among Dighton students,” there is no evidence here that any other students were
4 disturbed by the buttons, or that the wearing of them caused any disruption in any
5 classrooms. 8 MLC at 1307. There is also no evidence that any teachers told any
6 students that the buttons were directed against Student F or in any way connected to him.
7 Rather, the buttons contained the same message of support that the teachers had worn
8 on buttons in prior contract years, just as this was a contract year. When asked by
9 students what the buttons meant, the teachers responded that they were a show of
10 support for their fellow teachers, and there is no evidence that any students were troubled
11 by this response.²¹ Even if Student F chose not to come to school because of the buttons,
12 one student making this decision because of such an inoffensive message cannot be
13 considered “disruptive to the educational process” and does not outweigh the unit
14 members’ interest in supporting their fellow teachers who they believed had been unfairly
15 disciplined.

16 The School Committee also argues that the Association misled unit members as
17 to the reason why the teachers were disciplined, intending to convince unit members to

²¹ According to the School Committee, the Union’s witnesses could not confirm that all of the teachers gave this response to students. However, the School Committee did not present any evidence that any teachers told any students that the buttons were directed against Student F, or even that they were worn in support of the disciplined teachers specifically. Instead, the School Committee could only speculate that “[Student F] knew why they were being worn because friends told him and they could have only learned this from teachers.”

1 blame the student for the teachers' actions. According to the School Committee, the
2 Association advised unit members that the teachers were disciplined for engaging in
3 discussions with students about the Holocaust and how the swastika remains a symbol
4 of hate. As evidence, the School Committee points to the statements made by Gunning
5 at School Committee meetings, where he stated that teachers had been disciplined for
6 "addressing the problem of abhorrent anti-Semite speech..." and for trying "to do the right
7 thing as public educators and help our students through these troubled times, some were
8 disciplined for just that." In fact, according to the School Committee, the disciplinary
9 letters made clear that the teachers were disciplined for other reasons; specifically, they
10 were disciplined for failing to follow the rules and responsibilities of a teacher by allowing
11 students to discuss rumors about a student and engaging in a discussion about the
12 student's discipline; by speaking to another student about the disciplined student;
13 engaging in unnecessary communications with colleagues about the student and the
14 consequences for his actions; and by bullying the student.

15 I do not find any merit to the School Committee's argument, as O'Connell credibly
16 testified that prior to wearing the buttons, the unit members discussed that the teachers
17 had been disciplined for conduct that any of the teachers could have engaged in, such as
18 discussing a student with other students and teachers. This rationale is consistent with
19 the conduct for which the teachers were disciplined according to their disciplinary letters.
20 Moreover, the School Committee has offered no support for its implied contention that
21 unions are not permitted to characterize an employer's action differently than the

1 employer itself would characterize it, and that an employer can then prohibit protected
2 activity that occurs because of the perceived mischaracterization. And notably, even if
3 the statements made by Association members at School Committee meetings were
4 relevant to my analysis, they took place after the teachers were prohibited from wearing
5 the buttons and therefore do not factor into my determination of whether special
6 circumstances existed at the time the teachers were told not to wear them.²²

Conclusion

7 Based on the record and for the reasons explained above, I find that the School
8 Committee violated Section 10(a)(1) of the Law when it ordered unit members to stop
9 wearing Association buttons on January 17, 2017.

Order

10
11 WHEREFORE, based upon the foregoing, it is hereby ordered that the Stoughton
12 Committee shall:

13 1. Cease and desist from:

- 14
15 a) Prohibiting unit members from wearing "I Support Stoughton Teachers"
16 buttons; and
17
18 b) Otherwise interfering with, restraining or coercing employees in the exercise
19 of their rights guaranteed under the Law.
20

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

- 22
23 a) Rescind the directive prohibiting teachers from wearing "I Support
24 Stoughton Teachers" buttons;

²² Although the School Committee uses these statements to show that this must be the same information the Association gave to its members on January 13, 2017 when deciding whether to wear the buttons, there is no actual evidence of this.

- 1
2 b) Post immediately in all conspicuous places where members of the
3 Association's bargaining unit usually congregate and where notices to these
4 employees are usually posted, including electronically, if the School
5 Committee customarily communicates to its employees via intranet or
6 email, and maintain for a period of thirty (30) consecutive days thereafter,
7 signed copies of the attached Notice to Employees; and
8
9 c) Notify the DLR in writing of the steps taken to comply with this decision
10 within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


KERRY BONNER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations has held that the Stoughton School Committee has violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by directing members of the Stoughton Teachers Association at Stoughton High School to remove buttons which stated, "I Support Stoughton Teachers."

The Stoughton School Committee posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

- to engage in self-organization; to form, join or assist any union;
- to bargain collectively through representatives of their own choosing;
- to act together for the purpose of collective bargaining or other mutual aid or protection;
- and
- to refrain from all of the above.

WE WILL NOT prohibit unit members from wearing "I Support Stoughton Teachers" buttons.

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

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Rescind the directive prohibiting teachers from wearing "I Support Stoughton Teachers" buttons.

STOUGHTON SCHOOL COMMITTEE

DATE

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