

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CHELMSFORD SCHOOL COMMITTEE

and

CHELMSFORD FEDERATION OF
TEACHERS, AFT LOCAL 3569

Case No. MUP-17-6374

Date Issued: June 29, 2022

Hearing Officer: Meghan Ventrella, Esq.

Appearances:

Haidee Morris, Esq.
Harold Jones, Esq.

Representing the Chelmsford
Federation of Teachers, AFT Local 3569

Andrew Waugh, Esq.
Felicia S. Vasudevan, Esq.

Representing the Chelmsford School
Committee

HEARING OFFICER'S DECISION

SUMMARY

1 This case involves numerous issues. The first set of issues concern whether the
2 Chelmsford School Committee (School Committee) independently violated Section
3 10(a)(1) of the Law when: 1) Superintendent of the Chelmsford Public Schools, Jay Lang
4 (Lang), in the presence of unit members, requested police to remove union representative
5 Eric Blanchett (Blanchett) on November 22, 2017; 2) Lang informed employee Jennifer
6 Salmon (Salmon) that he was sending her home to prevent any further issues; 3) Lang
7 issued Salmon an administrative leave notice that precluded her from contacting any staff,
8 even Union representatives about the November 22 events; 4) Lang informed unit
9 members that Blanchett and Salmon were escorted by police from the School, that the

1 meeting at been “combative,” and that he was shocked and disappointed with the actions
2 from “some individuals,” 5) Lang stated at the November 22 meeting with unit members
3 that “there was a right way and a wrong way to get help within the school,” and that unit
4 members could work better with the Administration, 6) Lang issued an official statement
5 about the investigation into the events of November 22 to unit members and parents; 7)
6 Lang issued an email to parents and students explaining that individuals were escorted
7 by police out of the school building on November 22; 8) Lang provided a quote to the
8 Lowell Sun newspaper about the November 22 incident; 9) Lang sent a follow up email
9 about the November 22 incident to parents and unit members; 10) the School Committee
10 sought via email to preclude Blanchett from any involvement in the investigation regarding
11 the November 22 incident; 11) the School Committee informed the Union via email that
12 Blanchett and Union representative Marie O’Donnell (O’Donnell) could not act as the
13 employees’ representative at investigatory interviews; 12) the School Committee, during
14 an investigatory interview, asked Carol LaRivee (LaRivee), a first grade teacher and unit
15 member, when and why she went to Salmon to discuss her working conditions; 13) John
16 Moses (Moses), the Chair of the School Committee posted on Facebook that he would
17 “no longer engage in negotiations with the State Union Representative...I will not sit
18 across the table from a bully”; and 14) Patricia Tobin (Tobin), interim principal at
19 Harrington Elementary School, raised her voice and used profanity when she informed
20 Salmon that a matter concerning another teacher was none of her business.¹

¹ Harrington Elementary School is a school in Chelmsford Public School District for students in kindergarten through fourth grade.

1 The second set of issues concerns whether the School Committee violated Section
 2 10 (a)(3), and derivatively, Section 10(a)(1) of the Law by: 1) issuing Salmon an
 3 administrative leave notice prohibiting her from contacting staff members, including union
 4 representatives about the events on November 22, 2017, 2) instructing a School
 5 Resource Officer to escort Salmon from the building; and 3) issuing Salmon a written
 6 reprimand.

7 I find that the School Committee violated the Law as described below, and for other
 8 reasons stated below, dismiss the remaining allegations.

9 STATEMENT OF THE CASE

10 On December 5, 2017, the Chelmsford Federation of Teachers, AFT Local 3569
 11 (Union) filed a charge of a charge of prohibited practice (Charge) with the Department of
 12 Labor Relations (DLR) alleging that the School Committee had engaged in prohibited
 13 practices within the meaning of Sections 10(a)(1), (2), (3) and (5) of Massachusetts
 14 General Laws, c.150E (the Law).² On February 12, 2018 and March 5, 2018, a DLR
 15 Investigator investigated the Charge.³ On June 27, 2018, the Investigator issued a
 16 seventeen-count Complaint of Prohibited Practice and Partial Dismissal (Complaint)
 17 alleging that the School Committee violated Section 10(a)(3) and, independently and
 18 derivatively, Section 10(a)(1) of the Law.⁴ On July 9, 2018, the School Committee filed its

² On December 18, 2017, the Union filed an amended charge.

³ The Investigator left the record open for the parties to submit final versions of their exhibits on March 19, 2018, and to submit written arguments in support of their positions on April 9, 2018.

⁴ The Investigator dismissed several allegations including the Union's allegations regarding a violation of Section 10(a)(2) of the Law.

1 Answer to the Complaint. On January 27, 2020, and February 24, 2020, I conducted a
2 hearing in person, and on October 15, 2020, October 22, 2020, October 29, 2020, and
3 November 13, 2020, I conducted a hearing by video conference. During the hearing, the
4 parties received a full opportunity to be heard, to examine and cross-examine witnesses,
5 and to introduce evidence. On April 23, 2021, the parties filed post-hearing briefs. Based
6 on my review of the record, including my observation of the demeanor of the witnesses, I
7 make the following findings of fact and render the following opinion.

8 STIPULATIONS OF FACT

- 9
- 10 1. The Employer is a public employer within the meaning of Section 1 of the Law.
 - 11 2. The Union is an employee organization within the meaning of Section 1 of the
 - 12 Law.
 - 13 3. The Union is the exclusive bargaining representative for certain employees
 - 14 employed by the Employer, including the position of teacher.
 - 15 4. The Employer and the Union are parties to a collective bargaining agreement
 - 16 for the period July 1, 2016 to June 30, 2019.
 - 17
 - 18
 - 19
 - 20

21 FINDINGS OF FACT

22 Background

23

24

25 In 2013, the American Teachers Federation (AFT) hired Eric Blanchett (Blanchett)

26 as a field representative. In that capacity, he would help union officials and unit members

27 by representing them in investigatory interviews, grievance proceedings, collective

28 bargaining, advising on workplace issues, and help with labor organizing and leadership

29 development. In 2014, the AFT assigned Blanchett as field representative to four

30 bargaining units represented by the Chelmsford AFT (Union). The Union was the

1 collective bargaining representative for the bargaining units, including teachers, in the
2 Chelmsford School District (School District).

3 For approximately 18 years, Jennifer Salmon had worked as a teacher for the
4 Chelmsford School Committee (School Committee). In September of 2017, Salmon
5 worked as a third-grade teacher at Harrington Elementary School (Harrington) and was
6 a member of the bargaining unit represented by the Union.⁵

7 In 2016, Salmon was elected president of the Union. As the Union president,
8 Salmon sat in on collective bargaining negotiations for the teachers, custodial staff, and
9 paraprofessional bargaining units. If a bargaining unit member had a question or concern
10 about their working conditions or the contract, they would speak with the Union officials.
11 If the Union officials needed help on the matter, they would contact Blanchett for
12 assistance. As a new president, Salmon often sought help from Blanchett.

13 Additionally, Salmon sought help from Blanchett due to the number and level of
14 concerns regarding student and teacher safety. For example, several teachers
15 approached Salmon about concerns relating to classroom evaluations, teacher safety and
16 issues with certain students allegedly not receiving specialized services required in their
17 individualized education plans (IEPs). Also, Salmon frequently contacted Blanchett about
18 assaults on unit members from students, students bolting from their classrooms, and
19 issues surrounding classroom evacuations.⁶ Blanchett encouraged Salmon to schedule

⁵ Before working at Harrington, Salmon worked as a sixth-grade teacher for the School Committee at the Parker Middle School.

⁶ Under the Department of Children and Families (DCF), teachers are considered mandatory reporters and must report any incidents that indicate a child is endangered. Also, DCF considers teachers as “caretakers” and thus teachers must ensure students have a safe and healthy learning environment. If a teacher fails their duties as a

1 meetings with management to discuss these topics of concern. Salmon had a few
2 productive conversations about the above referenced issues with management, but the
3 occurrences of student assaults on staff, children bolting from classrooms, and
4 evacuations persisted.

5 During the 2017/2018 school year, Lang was the Superintendent for the
6 Chelmsford Public School District. Also, during the 2017/2018 school year, Patricia Tobin
7 (Tobin) was the interim Principal for Harrington. At Harrington, Michelle Page (Page) was
8 Tobin's secretary and she worked in the main office at Harrington. At all relevant times,
9 Amy Reese (Reese) was the Director of Student Support Services for Chelmsford Public
10 Schools. Patricia Doherty (Doherty) was the Administrative Team Chairperson for the
11 Special Education Department in the Chelmsford Public School District. Linda Hirsch
12 (Hirsch) was the Assistant Superintendent for the Chelmsford Public School District.

13 **Student Confidentiality**

14 The School Committee's Policy # 6311 states: "Records management will provide
15 for accessibility by the appropriate teachers, counselors, health personnel, and
16 administrators to each student's files...only those persons authorized under law and in
17 conformance with these statements of policy and regulation may see a student's file."

18 The School Committee, on an annual basis, provides training to the teachers,
19 including Salmon, on student record confidentiality. The School Committee informed the
20 staff that only parents and students (if they are 14 years of age and older or in 9th grade),

mandatory reporter or caretaker, DCF could take adverse actions against their teaching licensure. In addition to DCF's actions, a teacher who fails their duties as a mandatory reporter or caretaker may receive discipline or other adverse action from their employer.

1 authorized school personnel, and other individuals with written consent of the parents or
2 student (if the student is 14 years of age or older or in 9th grade) are entitled to access
3 student records. Additionally, the School Committee informs staff that parent/student
4 consent is not required prior to accessing student record information to authorized school
5 personnel. The School Committee defined authorized personnel as administrators,
6 teachers, counselors, and other professionals who are: 1) employed by the School
7 Committee or who are providing services to the student under an agreement between the
8 School Committee and a service provider; and 2) who are working directly with the student
9 in an administrative, teaching, counseling, and/or diagnostic capacity.

10 In October of 2016, after Salmon sent an email to the Union that included the name
11 of a student, Doherty emailed Salmon stating that “moving forward, please be mindful
12 and respectful of student confidentiality. Details about specific students can certainly be
13 discussed by phone or in person. In addition[,] information concerning a student must not
14 be shared with people who do not work directly with the student.” Salmon responded to
15 Doherty asking for a specific policy on confidentiality. Doherty responded with links and
16 information on the Family Educational Rights Act (FERPA). Salmon responded stating
17 that she found no information to support Doherty’s position. Additionally, Ms. Haywood,
18 a member of the Union’s board, emailed Salmon that Doherty “is correct that you can only
19 include names of students to those who work with the student. I believe that this is not
20 only part of sped laws but included in FERPA.”

21 At some point in November of 2017, Salmon accessed the binder in the main office
22 to count the number of incident reports that were filed for the classroom of first-grade
23 teacher and unit member, Carol LaRivee. The binder is organized by classroom so

1 Salmon was able to find LaRivee's classroom and count the number of incident reports.
2 Salmon counted 26 incident reports for that first-grade classroom. Salmon was not
3 working directly with the students in LaRivee's first-grade classroom in an administrative,
4 teaching, counselling, and/or diagnostic capacity. Additionally, Salmon did not have prior
5 consent from any students' parents to review the student's record. The incident binder
6 contains information on students in classrooms who exhibit non-compliant behaviors and
7 other confidential information.

8 **Teacher Complaints**

9 In September of 2017, LaRivee approached Salmon about safety issues in her
10 classroom and alleged lack of support from the administration. From approximately
11 September to November of 2017, Salmon often volunteered to help LaRivee in her
12 classroom.

13 Also, from September to November, Salmon would frequently hear over the
14 school's loudspeaker that the crisis team was needed in a certain classroom. When a
15 serious incident occurs, such as a student becoming violent or bolting from a classroom,
16 the school calls in a crisis team to aid in the situation. As a result of the crisis team
17 intervening, sometimes the students would be evacuated from the classroom and placed
18 in another classroom, which disturbed the lessons for the day. When there is a major
19 incident such as a child bolting from a classroom, the teacher of the classroom is required
20 to fill out a "Major Incident Report Sheet" and place the document in a binder that resides
21 in the main office.⁷ The binder with the major incident sheets is in an area of the office
22 that is accessible to anyone who walks into the office.

⁷ The binder is broken into sections for each teacher.

1 On or about October 13, 2017, a teacher at Harrington complained to Salmon
2 about an issue where 50 students were allegedly going to be grouped together for gym
3 because a music teacher was out sick. Salmon went to speak with the gym teacher and
4 offered to help as it was her prep period, and she did not have any classes. The gym
5 teacher declined help, but Salmon informed her that if she felt overwhelmed or unsafe at
6 any point, she could contact Salmon.⁸ Later that day, Tobin called Salmon while she was
7 teaching. Tobin yelled at Salmon: "I don't know who you think you are going down and
8 causing a problem in the building and running around undermining me". By email dated
9 October 16, 2017, O'Donnell informed Tobin that:

10 "Please be aware that I have copied the [Chelmsford Federation
11 Teachers] e-board and Dr. Lang on this email. I'm writing in
12 response to an incident that took place between you and Jen
13 Salmon on Friday, October 1[, 2017]. The specifics are not
14 important to me, but as the Executive Vice President of the
15 Chelmsford Federation of Teachers, I am gravely concerned
16 about the manner in which you spoke with Ms. Salmon. My
17 understanding is that you had concerns, you called her on the
18 phone and yelled at her while she was teaching her class. We
19 have several similar reports from other teachers at Harrington. I
20 understand you are new here. Perhaps you do not understand the
21 culture of our system. It's important that you know. We believe
22 raising your voice in anger to your subordinates is bullying and
23 completely un[acceptable]. Further, directing the union president
24 to withhold her support for union members is called "obstruction
25 of union business". This is a violation of labor law. Going forward,
26 this behavior will not be tolerate[d] and will result in reports to the
27 MA Labor Board. In the future, when you have concerns of any
28 kind with Ms. Salmon, I must insist to be included at the meeting
29 either in person, or via technology."
30

⁸ Tobin testified that the gym teacher informed her that Salmon told the gym teacher that she didn't have to listen to Tobin. However, Tobin was not present during the conversation between Salmon and the gym teacher, and the gym teacher did not testify. I credit Salmon's testimony on the subject.

1 By email dated November 1, 2017, a teacher at Harrington emailed Salmon about
2 various behavioral issues with students in her classroom including hitting, punching, and
3 pushing. Additionally, the teacher complained that incident reports need to be filed when
4 such behaviors occur and other consequences implemented, but none of it was
5 happening. Also, the teacher noted that several mothers had sent emails regarding
6 concerns about certain student problems and expressing anger that their child was
7 experiencing anxiety over the situation. The teacher invited Salmon to come to her
8 classroom at any time.

9 **November Communications**

10 Earlier on November 16, 2017, Salmon was volunteering in LaRivee's first-grade
11 classroom, and she observed a student ("Student A") exhibiting non-compliant behaviors
12 with a pair of scissors. The classroom had to be evacuated as a result. As noted above,
13 Salmon subsequently accessed the binder in the main office to count the number of
14 incident reports that were filed for LaRivee's classroom. By email dated November 16,
15 2017, Salmon informed Reese, Tobin, and Doherty that:

16 I am writing to you to arrange a meeting with both of you to
17 discuss the safety and well-being of the students in Room 4,
18 Carole LaRivee's classroom. I was in there today during lunch to
19 help the students. During this time, a student was very disruptive
20 and then bolted from the class. I followed this student along with
21 the support staff in that classroom. My understanding is that this
22 support staff is in this class to support a number of other students
23 not the student who bolted. Therefore, this left the class
24 unsupported and in violation of these students' IEP[s]. After
25 reviewing the Major Incident Report Binder, it appears there are
26 a minimum of 23 major incident reports completed for this
27 student who bolted. My understanding also is that we are in the
28 process of collecting data. 23 major incident reports are enough
29 data. It is also my understanding that this student at one point
30 bolted from the playground/ back of the school and ran to the
31 front. It goes without saying, this is major safety concern for this

1 student as well as the other students and adults. There is no
2 immediate or long-term plan at the moment for this student or at
3 least not communicated to the classroom teacher. Is there a day
4 and time next week at 8[:00a.m.] which all three of you are
5 available to meet? This situation can no longer continue without
6 a plan in place to support this student, the other students and the
7 staff working in this classroom.

8
9 Again, on November 16, 2017, Salmon emailed Tobin that she and Blanchett were
10 available November 22 at 8:00 a.m. at Harrington. "Please make yourselves available as
11 today's major incident was number 24. We are requesting a meeting prior to thanksgiving
12 break as the safety of this student, the staff and other students is of immediate concern.
13 If you are unavailable to meet or discuss these concerns and a plan of action, my next
14 step is to go to the School Committee with these incident reports..."⁹

15 By email dated November 20, 2017, Salmon followed up with Tobin about the
16 requested meeting. Salmon wrote: "I am checking in to see if Wednesday morning works
17 to meet, as this is an urgent matter. Not only is the safety of the adults and students a
18 concern but students are going without scheduled IEP services as a result of no plan
19 being implemented at this time. My expectation is that we meet this week to discuss,
20 otherwise on Tuesday, November 28th my plan is to go before the [School Committee]
21 and the SEPAC to ask for advice."¹⁰

22 Later that same day, Tobin briefly met with Salmon to discuss her issues
23 concerning IEPs. After the meeting, Salmon emailed Reese and Hirsch stating that:

24 "I have copied the board on this email as well as Patty Tobin.
25 Today I was asked to come meet with Patty and she informed
26 me that the message has been given to Patty that I have said in
27 your presence she is here as a one year insinuating she is not

⁹ Blanchett was copied on the communication.

¹⁰ Blanchett was copied on this communication.

1 as vested or possibly effective. I would be more than willing to
2 have this conversation with you and her as I have never said
3 those comments or made those statements. In the future, I
4 advised Patty if a staff member, bargaining unit member or
5 administrator, tells her I said something to immediately phone
6 me and bring me into this meeting to ask me if the statement is
7 true. I do not operate behind closed doors. I am honest and will
8 continue to be.”

9

10 Approximately thirty minutes later, Hirsch responded to Salmon's email that:

11 “I met with Patty today to catch her up on a few things that are
12 happening in the building. One of the discussions that we had
13 was that it came to my attention that when she speaks about
14 being at the school for only the year that it is being interpreted
15 as she only here for the year, so there is really nothing she can
16 do rather than she is only here for a year and can only take the
17 building so far for someone to take the reins. I wanted her to
18 have that feedback so she could be aware that this may be the
19 perception. I am not sure about what “in my presence” means.
20 That is not what was discussed. It doesn't require me to call you.
21 If it did, I would have called. I have been nothing but upfront and
22 honest. I would be more than happy for the three of us to meet
23 and talk to you. Please let me know when you[re] available.”

24

25 Salmon responded to Hirsch that she was confused and thought a meeting with Blanchett

26 would be helpful.

27 Also, on November 20 Salmon emailed Tobin, Reese, and Doherty stating that:

28 “Today I attended a meeting with Patty Tobin. She questioned
29 why the issue with the first grade is a union issue. I will reiterate
30 to you what I said to her. If a situation involves students, staff or
31 parents, please assume it is a union issue. I was also questioned
32 as to why and how I am able to go into this first grade classroom
33 to support this teacher. I go into this class during my time and do
34 not need to ask permission to do so. I am there to support a staff
35 member. I was also asked if I am there to support a “friend.” I
36 want to be very clear in the role/roles I am in. I am acting as the
37 Union President. I am requesting a meeting on Wednesday,
38 November 22 at 8[:00a.m.] at Harrington. As this is Patty Tobin's

1 building, her presence is also crucial. I am awaiting a response
2 from you Amy and Patty Doherty.”¹¹
3

4 Later that evening, Tobin emailed Salmon to thank her for meeting during the lunch
5 period. Also, Tobin informed Salmon that she would be happy to attend any meeting she
6 scheduled. Salmon responded to Tobin’s email stating that: “I am responding from my
7 union account so there is no question as to whether or not I am acting as the Union
8 President. Eric and I are still available 8:00a.m. on Wednesday. If Amy and Patty Doherty
9 are unable to attend and you would like to meet with Eric and I, I think that would be great.
10 Please let me know. I have also added Eric to this email.”

11 By email dated November 21, 2017, Salmon reached out to Tobin, Reese, and
12 Doherty to check if they were going to meet her and Blanchett on November 22 at 8:00
13 a.m. at Harrington. Reese responded via email to Salmon that: “this is not a union matter
14 and I will not meet with you as union president to discuss this student-related matter
15 confidential information for Harrington students other than those in your direct care.(sic) I
16 am certain Ms. Tobin and Ms. Doherty would meet with the first-grade classroom teacher,
17 if requested, to discuss student-related concerns specific to her classroom.” Salmon
18 responded that:

19 We, the Federation, are deeply concerned about the safety and
20 [well-being] of our members and the students our members
21 serve. We absolutely believe the behaviors in our schools are
22 having a negative impact on our working conditions.
23 Respectfully, you are in no position to tell us that it is not a “union
24 matter”. Your unreasonable unwillingness to have a
25 conversation about solutions is cowardly. While there is no
26 contractual provision to force you to meet with us - there is

¹¹ Also on November 20, Marie O’Donnell, the Union’s Vice President, emailed Hirsch stating she heard about the meeting between Tobin and Salmon. O’Donnell informed Hirsch that it would be best if she was included in any meetings between Salmon and Tobin.

1 absolutely nothing preventing us from advocating for our
2 students and our members. It's a shame you don't have the
3 same desire to make Chelmsford great. We are requesting, one
4 last time, to meet. We will be greatly disappointed if you are
5 unwilling to fulfill your professional obligations. Eric [Blanchett]
6 will be here at 8[:00a.m.] tomorrow morning. We look forward to
7 hearing your response then."
8

9 Tobin responded that evening that she could not meet the next day due to being busy
10 with classroom visits.¹² Salmon immediately responded that she thought it was great that
11 Tobin would be checking in on the concerns [of the] first grade classroom and would let
12 the staff know Tobin would be checking in on classrooms for support. Also, Salmon
13 emailed Tobin and copied Blanchett inquiring what time the following week would work
14 for Tobin to meet with Salmon and Blanchett to discuss classroom concerns.¹³

15 Later on November 21, Salmon emailed Lang and Tobin stating that "Eric and I
16 have requested a meeting to discuss the working conditions of a member at Harrington.
17 At this point, Amy Reese is refusing to meet with us. Patty said she is willing to but is now
18 unavailable. We have stated that we will work within her schedule to accommodate her
19 for this meeting. We are asking for your help in directing Patty to meet with us to discuss
20 the working conditions of this member, as it is Patty's building."

21 **November 22**

22 Even though Tobin informed Salmon that she could not make the 8:00 a.m.
23 November 22 meeting at Harrington, Salmon and Blanchett decided to meet at Harrington
24 before school started to speak with a few first-grade teachers who had concerns about

¹² November 22, 2017 was the Wednesday before the Thanksgiving holiday and a half day for Harrington.

¹³ By email dated November 21, 2017, timestamped for approximately 3:52 p.m., Tobin informed Salmon that "I am sorry I am not available tomorrow."

1 their working conditions.¹⁴ On the morning of November 22, 2017, Blanchett informed
2 Salmon that he had arrived at Harrington and asked if she could meet him out front to let
3 him into the building. Salmon sent her son to let Blanchett into the building, but the doors
4 were already unlocked.¹⁵ At approximately 7:50 a.m., Blanchett and Salmon met with a
5 group of first grade teachers. After briefly speaking with the teachers, Blanchett informed
6 the unit members that he was going to set up a meeting with the Harrington Principal to
7 discuss their concerns about classroom safety. During the meeting with the first-grade
8 teachers, someone in the main office accidentally hit the intercom and over the school's
9 intercom system, Blanchett heard Tobin's voice. Blanchett told the unit members that he
10 would stop by the main office and schedule an appointment with Tobin to try to resolve
11 the issues. At that time, Blanchett and Salmon headed to the main office to speak with
12 Tobin.¹⁶

13 When Blanchett and Salmon first arrived in the main office, Tobin was in the
14 storage closet.¹⁷ Blanchett stood in front of the storage closet doorway and greeted

¹⁴ Blanchett had been to the various schools within the Chelmsford School District to meet with management and unit members on many occasions over the years. At Harrington, the school day starts at 8:55 a.m.

¹⁵ Salmon taught at Harrington and her sons went to school there. Salmon brought her sons to school early that day so she could meet with Blanchett and the first-grade teachers.

¹⁶ Within the main office is a round table, storage closet, a desk for the Principal's assistant, and the door to the Principal's office.

¹⁷ Prior to November 22, neither Blanchett nor Salmon told Tobin that they wanted to speak to her about evaluations, students who bolted from their classrooms, or assaults on teachers.

1 Tobin.¹⁸ While still standing in the storage closet with Blanchett effectively blocking the
2 doorway, Tobin asked Blanchett why he was in the office. Blanchett informed Tobin that
3 they had a meeting scheduled. Tobin responded that she didn't have time for a meeting
4 that day and asked Blanchett to step aside so she could exit the closet. Blanchett
5 complied and stepped out of the doorway. After Tobin exited the storage closet, Blanchett
6 repeatedly stated they had a meeting scheduled, and Tobin repeatedly stated that they
7 did not have a meeting scheduled.¹⁹ While facing each other, Blanchett stepped into
8 Tobin's personal space and pointed his finger at her and stated that he was not leaving
9 until they scheduled a meeting. Blanchett had been speaking at a loud volume, so Tobin
10 told him to lower his voice.²⁰ Also, present in the main office at this time was Page.²¹
11 Blanchett responded that Tobin's refusal to schedule a meeting was unacceptable and to
12 "get your calendar and let's pick a date."²² Eventually, Tobin informed Blanchett that he
13 could "wait until the cows come home," but she was not meeting with him, then she exited

¹⁸ Prior to this interaction, Blanchett had meet Tobin.

¹⁹ During the interaction between Blanchett and Tobin in the main office, Blanchett did not touch Tobin or use insulting or degrading language.

²⁰ Tobin testified that she did not feel threatened by the interaction with Blanchett, but was embarrassed.

²¹ Page has worked as a secretary at Harrington for approximately ten years. At the time of the November 22 incident, Page used her maiden name, which was Gareri.

²² At this point, Tobin was standing near the exit of the main office holding boxes of supplies.

1 the main office.²³ During this entire interaction, Salmon remained seated at the round
2 table and silent.²⁴

3 When Tobin left the main office, she went to the cafeteria to instruct a group of
4 volunteers on how to complete a project. After setting up the volunteers, Tobin left the
5 cafeteria and stopped at the School Counselor's office to use the landline in the office.
6 Tobin called Page in the main office to inquire if Salmon and Blanchett had left the office.
7 Tobin did not request Page to instruct Salmon and Blanchett to leave the main office or
8 school building. Page responded that Blanchett and Salmon were still in the main office.
9 Tobin hung up with Page and attempted to call Lang, but could not recall his phone
10 number. Tobin called Page and asked if she could get her cell phone to look for Lang's
11 number. Page called Tobin back and explained that she could not find her cell phone in
12 the office, but that she did get a hold of Lang's secretary. Tobin did not return to the main
13 office so the situation with Blanchett did not escalate. After speaking with Page on the
14 phone, Tobin returned to the cafeteria to check on the volunteers. Next, Tobin went to the
15 kindergarten classroom because it was closer to the main office, and she could see what
16 was happening near the main office.²⁵

²³ At the round table, Blanchett sat with his back to the Principal's office door and Salmon sat to his right facing the door to the main office. No one else sat at the round table.

²⁴ In its post-hearing brief, the School Committee argues that Lang and Tobin asked Blanchett to leave the premises, but he refused. Although Tobin did inform Blanchett that she could not meet that day and he demanded that she meet with him or schedule a meeting, Tobin never asked Blanchett to leave the building or instructed Salmon to return to her classroom. Additionally, the record is clear that Lang did not directly ask Blanchett to leave the building until he informed the police officers that Blanchett needed to be escorted from the building.

²⁵ Eventually, Lang arrived at the kindergarten room to ask Tobin what had happened that morning. Tobin explained to Lang what had transpired, and then Lang returned to the

1 After Tobin left the main office at approximately 8:15 a.m., Blanchett informed
2 Salmon that they should just “sit tight” and wait for Tobin to return so they could schedule
3 a meeting.²⁶ At no point did Tobin instruct Blanchett or Salmon to leave the main office.
4 Blanchett and Salmon continued to sit at the round table in the main office for
5 approximately 20 minutes and noticed fellow teachers and staff begin to arrive at school.
6 While sitting at the round table, Blanchett noticed a cell phone ringing and he picked it up
7 to see that there was an incoming call from Lang.²⁷ At this point, Page saw the cellphone
8 on the round table ringing with Lang’s contact information. Blanchett discovered that the
9 cellphone cover had a compartment on the back where cards could be stored. Blanchett
10 noticed one of the credit cards displayed Tobin’s name. Page requested Blanchett hand
11 over Tobin’s cell phone, but he refused. Blanchett stated that Tobin could come back to
12 the office to get the phone.

13 While Blanchett and Salmon were in the main office, Page had called the
14 administrative offices to speak with Lang. Gennero informed Page that someone would
15 call her back. Shortly thereafter, Hirsch returned Page’s phone call. Page informed Hirsch

main office. Lang then returned to the kindergarten classroom to ask Tobin to return to the main office to provide the police officers with her statement. Tobin did not ask Lang to call the police.

²⁶ The school day at Harrington starts at 8:59 a.m., but the students start to arrive at 8:45 a.m.

²⁷ On the morning of November 22, Lang was at the Central Office meeting Hirsch and Kirkpatrick. During the meeting, Gennero (Gennero), secretary for the administrative building, came into the office to explain that Harrington needed assistance and either Lang or Hirsch were to call the Harrington. Lang attempted to call Tobin on his cellphone, but it went to voicemail. Lang instructed Hirsch to call Harrington and ask Page what was happening. Page informed Hirsch that Salmon and Blanchett were in the main office and “they needed help.”

1 that Tobin was upset, and that Blanchett and Salmon were still in the office, and someone
2 needed to come over to Harrington.

3 After Hirsch informed Lang that Page was requesting help at Harrington, Lang left
4 the central office and drove over to Harrington. On the drive to Harrington, Lang called
5 the Chelmsford Police Department and informed the Chief of Police that he had received
6 a call from Tobin indicating that they needed assistance with a union representative and
7 an employee. Lang requested that the Chief send a police car over to Harrington. Page
8 had not requested that Lang call the police.

9 Shortly thereafter, Blanchett saw through the window in the main office that Lang
10 had arrived in the lobby of the school. Blanchett stood from the round table and exited
11 the main office to approach Lang who was heading out of the school lobby down the
12 hall.²⁸ As Blanchett sought to catch up with Lang, he observed Tobin speaking with Lang
13 at the end of the hallway.²⁹ Tobin pointed at Blanchett and informed Lang that he had
14 yelled at her. Blanchett informed Lang that he was trying to schedule a meeting and
15 requested his help. Lang informed Blanchett that “they were not doing that now.” Lang
16 turned around and headed back down the hallway towards the lobby, and Blanchett
17 followed. While walking back to the lobby, Blanchett stepped in front of Lang and placed
18 his hand on Lang’s arm twice.³⁰ In the lobby, Lang and Blanchett met a uniformed police

²⁸ Throughout the entire interaction between Blanchett, Tobin, Lang, and Page, Salmon remained seated at the table in the office and did not say a word.

²⁹ When Lang arrived at Harrington, he went to seek out Tobin, who was in the kindergarten classroom down the hall from the main office.

³⁰ While Blanchett did not seem to be violent or dangerous, he was upset and agitated.

1 officer, and Lang shook the officer's hand to introduce himself.³¹ Lang informed the officer
2 that Blanchett needed to leave the building. Immediately afterwards, Lang went into the
3 main office to speak with Salmon.

4 Lang entered the main office and informed Salmon that she was being sent home.
5 Salmon began to cry and asked Lang if she had done anything wrong. Lang responded
6 no. Salmon asked Lang if she was on leave and Lang responded no. Lang informed
7 Salmon that he was just trying to get everyone out of the building to de-escalate the
8 situation. While Lang was in the main office with Salmon, Blanchett took out a business
9 card to hand to the officer as a means of identifying himself as a field representative of
10 the Union. Blanchett informed the officer that he was on the school premise to schedule
11 a meeting with the Principal.³² During this interaction between the uniformed officer and
12 Blanchett, another uniformed police officer arrived on scene and approached Blanchett.

13 Once Lang and Salmon exited the office, Salmon saw Blanchett speaking with the
14 police officers, and she informed Blanchett that Lang was sending her home. Blanchett
15 asked Lang if Salmon was on leave, and again Lang responded no - he was just trying to
16 clear the area before the children arrived. Next, Salmon requested to go back to her

³¹ Police detective George Tyros (Tyros) was at the High School for a pep rally when he heard the call about a disturbance at Harrington. Also, Becky Tyros (Becky), the school resource officer for the high school, heard the call over the dispatch radio. Becky turned on her surveillance cameras for Harrington. Tyros observed Blanchett and Lang in the hallway of Harrington and also observed Blanchett place his hand on Lang's shoulder. Tyros was worried that the exchange would become physical, so he ran out of the High School and headed straight for Harrington. When Tyros arrived at Harrington, Officer Fernald and Officer Leczynski were already on scene speaking with Blanchett and Lang.

³² Lang testified that he never felt physically threatened by Blanchett. Also, Lang testified that he was not aware of Salmon posing a threat to anyone at Harrington.

1 classroom to gather her belongings and tend to her sons. Once Salmon got to her
2 classroom, she informed both her sons to go to another room, and she called a fellow
3 teacher, Stacey Gilbert, because school had not started, and Salmon did not want to
4 leave her sons unattended.³³

5 After Salmon left the lobby to collect her belongings, the two officers, Lang, and
6 Blanchett spoke in the lobby, Detective Tyros arrived on scene.³⁴ The uniformed officer
7 asked Blanchett to follow him out of the school. Blanchett asked if he could get his coffee
8 from the main office, and the police officers allowed him to retrieve it. Afterwards,
9 Blanchett complied with the request and followed the officers outside the school
10 building.³⁵ While the police were speaking with Blanchett and escorting him from
11 Harrington, teachers and other staff were in the hallway and lobby. As the union is the
12 exclusive representative for teachers in Harrington, bargaining unit members observed
13 police officers escort Blanchett from the school. Once outside of the school, the officers
14 informed Blanchett he was not free to leave just yet as the school buses were starting to
15 arrive.³⁶

³³ On the video submitted by the parties, Blanchett is viably agitated and distraught.

³⁴ Tyros wore jeans and a black jacket with his police badge visibly placed on his chest.

³⁵ Later on, Tyros asked Lang if he wanted to press charges against Blanchett for placing his hands on his shoulder. Lang responded that he considered Blanchett's touch to be an incidental contact, and not a hit or a strike, and he did not want to press charges.

³⁶ In April of 2018, Lang, Salmon, Hirsch and Blanchett met to discuss Salmon's concerns about various working conditions and safety concerns. During the meeting, Salmon outlined the concerns the Union had about evaluations, students who bolted from their classrooms, and assaults on teachers. The parties discussed the need for placing additional paraprofessionals in certain classrooms.

1 Meanwhile, Gilbert came to Salmon's classroom and started to help her gather her
2 belongings. At this point, Tara Trainer (Trainor), a third-grade teacher, entered the
3 classroom and discovered Salmon crying. Salmon informed Trainor that she was asked
4 to go home. At this point, Detective Tyros entered the classroom and informed Salmon
5 that he was instructed to escort her from the building and motioned for her to proceed to
6 the front door of the building.³⁷ Salmon said that her car was parked in the back of the
7 building. The police officer walked Salmon and Trainer out of the side door of the building.
8 Before leaving the building, the police officer allowed Salmon to say goodbye to her
9 children who were in another classroom. Trainor drove Salmon home. Gilbert and Trainor
10 witnessed Tyros inform Salmon that he was instructed to escort Salmon from the building.
11 Additionally, Trainor walked out with Salmon when Tyros escorted her from the building.
12 As Gilbert and Trainor are teachers at Harrington and the Union is the exclusive
13 representative for all teachers in Harrington, bargaining unit members witnessed Salmon
14 being escorted from the building by police.

15 When Trainor returned to Harrington, she discovered that a voluntary meeting was
16 being held after school in the library. Trainor attended the meeting along with
17 approximately 50 other staff members. At the meeting, Lang, Hirsch, and Tobin informed
18 the staff that certain staff members and a Union representative had demanded to meet
19 with Tobin despite the original meeting being cancelled. Lang stated that police were
20 called because the Union representative refused to leave the building when he was asked
21 to leave. Additionally, Lang stated that the staff member had been asked to leave the

³⁷ After Lang allowed Salmon to gather her belongings from her classroom, Tyros had offered to check on Salmon to see if she had vacated the building. Lang agreed to allow Tyros to go upstairs to ensure Salmon had left.

1 building as well, but it was not a disciplinary action. Lang stated that he was “disappointed
2 that this type of incident had occurred at Harrington.” Lang informed the staff that
3 “everyone should use the proper channels if they had an issue in their classroom and
4 they should contact the administration, that they did not have to go straight to the Union.”³⁸
5 Lang said that he preferred that the staff discuss issues with the administration first,
6 before contacting the Union.

7 **Email to Parents and Staff**

8 By email dated Wednesday, November 22, 2017, Lang advised the parents and
9 staff of Chelmsford Public School District that:

10 I am writing to inform you of an unfortunate incident that
11 occurred at the Harrington Elementary School this morning at arrival
12 time. I was called to the school by Principal Tobin when individuals
13 demanded a meeting with her and refused to leave the building. The
14 request for a meeting had previously been denied by the
15 administration. The Chelmsford Police Department was contacted,
16 and the individual was escorted from the building. I would like to thank
17 the Chelmsford Police Department for their quick response and let you
18 know that at no time during this incident were the students unsafe. I
19 wish you and your families a wonderful Thanksgiving.
20

21 **Administrative Leave**

22 By letter dated November 22, 2017, Lang placed Salmon on administrative leave
23 with pay pending the results of an investigation into the incident that occurred at
24 Harrington Elementary School earlier that day. Lang informed Salmon that the
25 administrative leave would start immediately and continue until further notice. The letter

³⁸ The School Committee argued that Lang did not state he was disappointed that this type of incident occurred at Harrington. However, I credit Trainor’s testimony that Lang did state he was disappointed, or words to that effect. Also, Lang informed unit members that a staff member was removed from the building, but it was not disciplinary. However, neither Lang nor Trainor testified that Lang stated it was no longer appropriate for Salmon to remain in the school.

1 further stated that: "While you are on paid administrative leave you are not to contact staff
2 members or students of the Harrington Elementary School pertaining to this incident,
3 including e-mail or social network websites, such as Facebook, nor visit the premise[s] of
4 the Harrington Elementary School. Failure to follow this order will be deemed
5 insubordination and you may be subject to suspension and/or termination from your
6 employment with the Chelmsford Public Schools."³⁹

7 **Superintendent's Statement**

8
9 Shortly after the events of November 22, 2017, Lang issued the following
10 statement to the parents of Harrington:

11 On Wednesday[,] November 22, just prior to student arrival,
12 there was an incident at the Harrington Elementary School at
13 8:00 a.m. Due to laws governing both staff and student
14 confidentially, we are limited in the information we can release.
15 The incident is also the subject of a pending investigation. What
16 we can say is that this entire incident was unfortunate and
17 avoidable.

18
19 On that morning, a staff member arrived at the school with a state
20 representative of the American Federation of Teachers (AFT),
21 demanding to meet with Principal Patricia Tobin, despite the fact
22 that Ms. Tobin had denied the request for a meeting the day
23 before. As detailed in the police report, when the AFT
24 representative began to shout at Ms. Tobin, approaching her
25 pointing his finger in her face, the Chelmsford Police Department
26 was contacted and both the AFT representative and the teacher
27 were safely escorted from the premises.

28
29 The staff member was placed on administrative leave with pay
30 pending the results of an investigation into this incident. It is
31 important to recognize that this leave is not punitive; it is simply
32 standard procedure following an incident of this nature.
33

³⁹ Salmon understood the above letter to indicate that she could not speak with any of the teachers at Harrington. The School Committee placed Salmon on administrative leave until December 6, 2017.

1 Our school district, like districts across the country, must adhere
2 to clear processes and procedures that protect all parties. Due
3 to strict confidentiality laws in student-related matters, the public,
4 teachers and other students may not be aware of the work that
5 is being done to support our staff and students- and we
6 understand that this can lead to some frustration.

7
8 I take seriously my charge to protect and preserve the rights of
9 every student in this school district, and we have sound
10 procedures in place to protect the welfare of our students and
11 our teachers. If any parent or teacher has concerns, we welcome
12 their input and feedback so that we can address those concerns
13 appropriately. What we know for certain is that circumventing this
14 process is not how professionals work collaboratively towards a
15 common goal of ensuring our students and teachers a safe and
16 supportive learning environment, as it undermines the
17 professional and cohesive work being done by the outstanding
18 teaching and administrative teams in the Chelmsford Public
19 Schools.

20
21 Our Chelmsford schools provide safe, nurturing learning
22 environments, built upon mutual trust, respect and a
23 collaborative spirit among our teachers, students, parents, and
24 administrators. Working together, we will continue to do what is
25 in the best interest of our teachers, our students, our schools,
26 and our community.

27
28 The statement was posted and shared on Facebook.

29
30 **Newspaper Article**

31
32 On or about November 24, 2017, the Lowell Sun, a local newspaper, published an
33 article about the November 22 incident at Harrington. The article stated:

34 The head of Chelmsford's teachers' union has been placed on
35 administrative leave following an altercation between a state-
36 level union official and Superintendent of Schools Jay Lang on
37 Wednesday. Police escorted Jennifer Salmon, Chelmsford
38 Federation of Teachers president, and Eric Blanchett, field
39 representative for the American Federation of Teachers, out of
40 Harrington School following the incident. "From my perspective,
41 it's totally unfortunate this entire incident took place," Lang said
42 Friday. "It's not appropriate any time to do anything that would
43 disturb a school assembly and do anything that would detract
44 from kids coming to school and having a good educational

1 experience.” Lang said he could not comment further, because
2 the incident involves school personnel. Here is what happened
3 on Wednesday, according to an official police report and emails
4 obtained by the Sun:
5

- 6 • Salmon requested a meeting with Harrington Interim Principal
7 Patricia Tobin, District Director of Student Support Services Amy
8 Reese, and Patricia Doherty, the school’s special education
9 chair. Salmon wanted to speak with them about a situation
10 involving a first-grade student and teacher.
11
- 12 • “In your role as union president and parent at Harrington you are
13 not entitled to student-related confidential information,” Reese
14 wrote in a Tuesday afternoon email. Further, as a third-grade
15 teacher at Harrington you are not entitled to student-related
16 confidential information for Harrington students other than those
17 in your direct class.” She went on to say school leadership would
18 be happy to meet with the student’s classroom teacher if
19 requested.
20
- 21 • In an emailed response, Salmon said the union is concerned
22 about safety and well-being of its members and students, and
23 that “behaviors in our schools are having a negative impact on
24 our working conditions.” “Respectfully, you are in no position to
25 tell us that it is not a ‘union matter’”, Salmon wrote. “Your
26 unreasonable unwillingness to have a conversation about
27 solutions is cowardly.”
28
- 29 • Salmon requested a second meeting, and said she and
30 Blanchett, the AFT representative, would be at the school at
31 8a.m. Wednesday.
32
- 33 • On Wednesday morning, Tobin again declined to meet with
34 Salmon and Blanchett when they arrived at the School. Blanchett
35 allegedly went into Tobin’s office and demanded the meeting,
36 and began to shout at her and point his index finger at her face.
37
- 38 • Feeling threatened, Tobin left the room to call Lang, leaving her
39 cell phone behind. When the secretary went to her office to
40 retrieve it. Lang’s number showed up on the phone. Blanchett
41 then allegedly picked the phone up and told the secretary, “No!
42 She (Tobin) can come get it herself,” the report stated.
43
- 44 • Lang then arrived and notified Blanchett the police had been
45 called. Blanchett then allegedly left the phone to follow Lang
46 down the hall and begin a heated discussion with him.

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- A detective watching school cameras from the high school resource office observed Blanchett allegedly place his hands on Lang a few times during the incident, leading to additional officers being called to the scene. Lang declined to press charges but asked officers to remove Blanchett from the property. Salmon also was escorted from the building and sent home.
- When the police attempted to explain to Blanchett “the ridiculousness of his actions on an active school day,” he replied that “he has a job to do”, the report states. Police told him he came close to being charged with disturbing a school assembly, and that criminal charges may be forthcoming for assault and battery on Lang and assault on Tobin. Police also informed Lang of procedures of a no-trespass order for Blanchett, and advised he contact school legal counsel. Lang sent a message to Harrington parents Wednesday afternoon telling them of the incident. He did not name the individuals involved and said students were never in danger. Salmon declined comment on Friday, citing a directive from Lang. AFT-MA could not immediately be reached for comment. “At this time, I am unable to give a statement per Dr. Lang’s directive to me on Wednesday,” Salmon said in a Friday morning text message. Under district procedures, staff placed on administrative leave may have no contact with other staff members, students and parents while under investigation. Salmon taught at Parker Middle School before transferring to Harrington this school year.

30 The School Committee never provided any evidence to suggest that Blanchett was
31 charged with disturbing a school assembly or assault and battery on Tobin or Lang.⁴⁰
32 Also, the School Committee did not provide any information to establish that it sought a
33 no-trespass order against Blanchett.⁴¹

34 **Facebook**

⁴⁰ Lang provided the reporter with emails regarding Salmon’s request to schedule a meeting for November 22, 2017.

⁴¹ At the hearing, Lang did not deny that he spoke with the reporter or state that she inaccurately quoted him in the article.

1 On or about November 25, 2017, Blanchett was looking at the Chelmsford
2 Community Facebook group's page. Under a thread pertaining to the above referenced
3 newspaper article, Blanchett saw that John Moses (Moses), the chairperson of the School
4 Committee, had publicly posted the below comment:

5 I've stated this privately, and will be stating this publicly during the next
6 School Committee [meeting] as well, I will no longer engage in
7 negotiations with the State Union Representatives for any negotiations. I
8 will not sit across the table from a bully under civilized rules of order.
9

10 Despite the above Facebook post, Moses continued to work with the Chelmsford
11 Federation of Teachers to negotiate a first collective bargaining agreement for the newly
12 organized custodians in Chelmsford Public School District. The negotiation team for the
13 Union included Blanchett, Salmon, and several custodians. Moses and another School
14 Committee member were on the negotiations team for the School Committee.

15 **Investigation**

16 By email dated November 27, 2017, Felicia Vasudevan (Vasudevan), an attorney
17 hired by the School Committee, relayed to Blanchett the following message:

18 I hope that you had a good Thanksgiving. My understanding is that you
19 have been texting with Linda Hirsch about union representative
20 representation and including Ms. Salmon on those texts. The District is
21 currently investigating what occurred last week, which involves the actions
22 of both you and Ms. Salmon. I would ask that you cease involvement in
23 the investigation. Marie O'Donnell was also involved in the events that
24 preceded the incident last Wednesday and cannot be the union
25 representative present at the interviews. The CFT needs to have another
26 union representative present at the interview. Our understanding is that
27 Margaret Blakely is willing and able to serve as the representative. Cindy
28 Acheson, Erica Arrington or Katy Sullivan could also serve as the
29 representative.
30

31 By letter dated November 29, 2017, Lang informed Salmon that she was to report to the
32 Central Administrative offices in Chelmsford on Thursday, November 30, 2017. Lang

1 informed Salmon that “the purpose of this meeting is to interview you regarding your
2 involvement in the incident that unfolded on November 22, 2017 and your access to and
3 use of confidential student record information before the incident. You will be paid for your
4 time participating in the interview beyond the normal workday. Although no discipline is
5 being issued at this time, the investigation into these matters may lead to discipline, and
6 you are thus advised that pursuant to Federal and State law, including but not limited to,
7 Massachusetts General Laws Chapter 71, Section 42D, that you have a right to be
8 represented by counsel and/or a union representative during this interview.

9 On November 30, 2017, Salmon attended the interview that Lang ordered with
10 Carolyn LaFlamme (LaFlamme), a union representative assigned to attend the interviews
11 in Blanchett’s stead and Margaret Blakely (Blakely), a member of the Union’s executive
12 board. The November 30 interview was conducted by Sheryl Kirkpatrick (Kirkpatrick), the
13 Director of Personnel and Professional Learning for the School Committee.⁴² At the onset
14 of the meeting, Kirkpatrick informed Salmon that the meeting was confidential. Salmon
15 inquired what Kirkpatrick meant by “confidential”. Salmon wanted to know if she could talk
16 about the interview with her husband, the Union’s Executive Board, or fellow unit
17 members. Kirkpatrick explained that while Salmon could speak about the interview with
18 her husband, the Union’s Executive Board, or unit members, the School Committee was
19 asking as a professional courtesy that Salmon not talk with anyone about the interview.

⁴² Kirkpatrick testified that she reviewed LaRivee’s reports in the incident binder, but did not actually read the incident reports. Upon reviewing the incidents for LaRivee’s classroom, Kirkpatrick discovered the reports were for different children.

1 In addition to interviewing Salmon, the School Committee interviewed LaRivee. At
2 the interview, the School Committee asked LaRivee if she had contacted Salmon about
3 any issues, what issues she contacted Salmon about, and if she asked Salmon to set up
4 a meeting with Tobin about the issues.

5 By email dated December 4, 2017, Lang informed Salmon that the investigation
6 was completed and a meeting with Salmon would be scheduled to discuss the findings of
7 the investigation and any employment actions.⁴³ Additionally, Lang informed Salmon that
8 any employment action taken would not prevent her from returning to her position at
9 Harrington, and she was to meet Tobin the next day to have a re-entry meeting. Finally,
10 Lang informed Salmon that she would return to work on December 6, 2017.

11 By letter dated December 6, 2017 and addressed to Salmon, Vasudevan
12 summarized the findings in her investigation on behalf of the School Committee.
13 Vasudevan stated:

- 14 - A 1st grade teacher brought some of her concerns about a
15 particular student to your attention several weeks ago. During
16 the investigative interview, she stated that she was
17 concerned about the student's safety, however, she also
18 confirmed that she did not ask you to request a meeting on
19 her behalf, nor did she ask you to consult confidential student
20 information related to the student.
- 21
- 22 - On the morning of November 22, 2017, you [Salmon]
23 appeared in the Harrington main office with Mr. Eric Blanchett
24 to demand a meeting with Ms. Patty Tobin regarding this

⁴³ Throughout the investigation, Vasudevan, and Kirkpatrick interviewed several teachers. During the interviews, Kirkpatrick never asked any of the teachers about performance evaluations or issues with 51As, which is a report of child abuse or neglect. Kirkpatrick testified that she did not recall if Vasudevan asked the teachers about performance evaluations or issues with 51As. Vasudevan did not testify, but Kirkpatrick stated that she took notes during the interview and the notes did not reflect Vasudevan asking such questions. As such, I find that neither Vasudevan nor Kirkpatrick asked any of the teachers about performance evaluations or issues with 51As.

1 student. Both Ms. Amy Reese and Principal Tobin had
2 previously alerted you prior to that morning that your request
3 for this meeting was denied. In an email, Ms. Reese
4 explained that the denial was due to the fact that this was a
5 student-related matter and that you are not entitled to
6 student-related confidential information regarding students
7 for whom you are not the teacher. You received both of those
8 emails as you responded to both of them.

- 9
- 10 - An email from you indicates that a few days before the
11 meeting you accessed the school's "incident binder" to
12 consult the incident reports of your colleague's student. Our
13 interviews indicated that the binder and its proper use was
14 discussed at a staff meeting earlier in the year and staff knew
15 it would be inappropriate to look at the incident reports of a
16 student who is not in their classroom.
 - 17
 - 18 - CPS staff are asked to read and sign policies on student
19 record confidentiality each year. You signed off on these
20 policies indicating that you had reviewed the policy this year.
21 You were also provided detailed information about student
22 records confidentiality and informed of FERPA last year in an
23 email from Ms. Patty Doherty.
 - 24
 - 25 - Reports indicate that your conduct during the incident on
26 November 22, 2017 was calm and cooperative. You sat
27 quietly at the table outside Ms. Tobin's room. You left the
28 premises without incident, when asked.
 - 29

30 Vasudevan found Salmon's conduct to be insubordinate with regards to her appearing for
31 and demanding a meeting that had been previously denied by two supervisors. Also,
32 Vasudevan found that Salmon violated District policy with regards to student
33 confidentiality. Finally, Vasudevan stated that she shared her findings with Lang, and he
34 would make a determination about any employment actions.

35 After Kirkpatrick and Vasudevan concluded their investigation, Vasudevan issued
36 a report to Lang dated December 6, 2017. In the investigation report, Vasudevan
37 concluded that Salmon had requested the meeting with Tobin to address concerns about
38 a student in LaRivee's classroom. Vasudevan stated that Salmon could not cite any

1 specific concerns that she had about LaRivee's classroom during her interviews for the
2 investigation. Vasudevan wrote: "I find [Salmon's] statement about the purposes of the
3 meeting to discuss staff safety and the fact that it was "pressing" not to be credible and
4 directly contradicted by other statements. Ms. Salmon requested a meeting to discuss the
5 education of a particular student in a classroom that was not her own." ⁴⁴

6 With one exception, Vasudevan concluded that Salmon did not engage in
7 inappropriate conduct on November 22, 2017. Vasudevan concluded that Salmon was
8 insubordinate when she demanded to meet with Tobin knowing that the meeting was
9 cancelled. Vasudevan stated that Salmon did not provide any information to indicate that
10 the meeting was in response to an emergency as she claimed. Additionally, Vasudevan
11 concluded that Salmon violated the School Committee's policy on student record
12 confidentiality. Vasudevan stated that Salmon received yearly training on student
13 confidentiality and was warned in the past about complying with the policy. Vasudevan
14 found that Salmon violated the policy when she accessed the incident binder in the main

⁴⁴ In the investigation report, Vasudevan wrote: "Although concerns over safety of staff certainly fit within the role of a union representative, concerns about student safety and student educational plans do not. There are specific laws that govern the process of providing an education to students. Those laws cannot be subverted due to union demands. The staff member of the student in question was not at the meeting and did not request the meeting. Although Ms. McCormack, the paraprofessional in the class, claimed in her second interview that there was a safety concern, I do not find her explanation credible. The incident reports do not support a safety concern for staff and Ms. McCormack explicitly stated in her first interview that she was not concerned for staff and Ms. McCormack explicitly stated in her first interview that she was not concerned for her safety. She never reported that she was concerned for her safety to any adult. Ms. LaRivee did not list any staff safety concerns. The student is a first-grader. Consequently, the Federation should not be involved in matters such as this one. Although this matter was outside the Federation's jurisdiction, I do not believe that any discipline is appropriate for this concern. I would recommend that clear expectations are communicated to the Federation moving forward about the nature of what will be discussed at meeting with the Federation and when the Federation can request meeting."

1 office to look at the incident reports for LaRivee's classroom. As such, Vasudevan
2 recommended that Salmon receive a written reprimand for her insubordination and
3 violation of student record confidentiality.⁴⁵

4 **Communications During Administrative Leave**

5 By email dated November 26, 2017, Salmon emailed O'Donnell about an
6 insurance advisory board meeting O'Donnell was going to attend on behalf of the Union.
7 By email dated November 27, 2017, Salmon notified Allen Thomas (Thomas), the
8 chairman of the School Committee, about a grievance that had previously been filed. By
9 email dated November 29, 2017, Salmon requested a meeting with Facilities Manager,
10 Kathleen Canavan (Canavan), and Canavan suggested meeting, Friday, December 7,
11 2017. Salmon and Canavan exchanged a few emails until a meeting was scheduled for
12 December 6, 2017.⁴⁶ By email dated November 30, 2017, Salmon emailed Blanchett and
13 Lang about corrections for the Teachers' and Nurses' contract.

14 On December 3, 2017, Reese emailed Salmon to provide several case citations
15 explaining rules regarding missed case services. By email dated December 4, 2017,
16 Salmon responded to Reese thanking her for doing research. Also, on December 3, 2017,
17 Salmon emailed Kirkpatrick a grievance regarding union release time.

18 On December 4, 2017, Salmon exchanged several emails with Kirkpatrick
19 regarding the Evaluation Committee, including an email stating that she was speaking on

⁴⁵ In the investigation report, Vasudevan recommended that Blanchett receive a no trespass order for his aggressive behavior with school staff. However, neither party established on the record whether the School Committee moved forward with a no trespass order against Blanchett.

⁴⁶ Salmon sent the email from her Union President email account. Also, the parties did not reveal what the hearing issue entailed.

1 behalf of the Union's Executive Board, and they were not interested in the requested
2 changes to the evaluation forms.

3 By email dated December 4, 2017, Salmon emailed Lang stating that O'Donnell
4 would be present at the meeting on December 5 and requested that substitute coverage
5 be provided for O'Donnell to attend the meeting. Also on December 4, Salmon emailed
6 Matthew Beyrandvend (Beyrandvend), Math Coordinator for the School Committee and
7 a union official for the administrative unit, asking if the nursing position was in his unit
8 now.

9 By email dated December 5, 2017, Katherine Harris, a second grade teacher at
10 Harrington and unit member, forwarded Salmon a string of emails regarding a Follow-up
11 November Education Evaluation Committee Meeting. Salmon responded to the email:
12 "Kick a**!"

13 **Written Reprimand**

14 By letter dated December 12, 2017, Lang issued Salmon a written reprimand. In
15 the letter, Lang informed Salmon that:

16 The purpose of this letter is to document disciplinary action
17 based on your conduct on the morning of November 22, 2017
18 and events leading up to that date and to clarify in writing the
19 aspects of your conduct that require immediate attention and
20 corrective action.

21
22 Specifically, I have reviewed the investigative report on this
23 matter and concur with the finding that you were insubordinate
24 in demanding a meeting on November 22, 2017 with Principal
25 Tobin, where Ms. Tobin and Ms. Reese, the Special Education
26 Director, had already notified you that they were denying your
27 request. You responded to those emails indicating that you
28 understood that the meetings were not going to occur. In the
29 future, I expect that if your request is denied that you respect and
30 comply with the decisions of your supervisors.
31

1 Second, the investigative report concluded that you had
2 inappropriately accessed confidential student record
3 information. After reviewing the investigative report, I conclude
4 that you inappropriately accessed confidential student records
5 under the premise of supporting your membership as Union
6 President. You should not have accessed the incident reports of
7 a student who was not your responsibility, in the days preceding
8 November 22, 2017. Union officials are not authorized school
9 personnel who would have access to the student records of
10 students who are not their responsibility. The fact that you have
11 read our policies on student record confidentiality, and that you
12 have been made aware of the law regarding student
13 confidentiality in the past, make me confident that you should
14 have known this requirement. Your decision to disregard your
15 responsibility on this instance was inappropriate. In the future, I
16 expect that you will not access student records except for
17 students for whom you have responsibility as a teacher.

18
19 Your compliance with your supervisor's requests, as well as your
20 adherence to expectations and policies governing student record
21 confidentiality is critical to your job performance. Additional
22 misconduct could result in further disciplinary action up to and
23 including termination of employment. A copy of this written
24 reprimand will be placed in your personnel file. You are welcome
25 to submit a response that will be attached to this reprimand.

26 Opinion

27 10(a)(3) Written Reprimand

28 Prima Facie Case

29 A public employer that retaliates or discriminates against an employee for
30 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the
31 Law. Southern Worcester Reg. Voc. School District v. Labor Relations Commission, 388
32 Mass. 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass.
33 App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party
34 must show that: 1) an employee was engaged in activity protected by Section 2 of the
35 Law; 2) the employer knew of that conduct; 3) the employer took adverse action against

1 the employee; and 4) the employer took the adverse action to discourage the protected
2 activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000);
3 Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9, 1985).

4 Protected Activity

5 The School Committee argues that Salmon was not engaged in protected,
6 concerted activity when she arrived at Harrington on November 22 without an
7 appointment and attempted to force a meeting with Tobin. The School Committee asserts
8 that Salmon wanted to meet with Tobin to discuss one particular student (“Student A”) in
9 LaRivee’s classroom. The School Committee contends that Salmon’s actions on
10 November 22 were an attempt to become involved in the education and placement of
11 Student A whom Salmon did not teach. According to the School Committee, Salmon’s
12 concerns over Student A did not impact staff safety or any other working condition. As
13 such, the School Committee argues that Salmon’s attempts to demand a meeting with
14 Tobin on November 22 or to schedule future meeting with Tobin were not concerted,
15 protected activity under the Law.

16 Further, the School Committee contends that it denied Salmon’s request for a
17 meeting because she was attempting to bargain over Student A’s education/placement,
18 and that was not an appropriate subject for the Union to address. I agree with the School
19 Committee that the doctrine of the non-delegability protects the School Committee’s
20 ability to formulate and administer education policy such as the placement of a student
21 on an IEP. School Committee of Boston v. Boston Teachers Union, Local 66, 378 Mass.
22 65, 66 (1979). Moreover, I agree with the School Committee that the decision of when
23 and how to place a student on an IEP such as Student A is a nondelegable decision that

1 is not subject to the collective bargaining process. In this case, the School Committee did
2 not have to bargain with the Union over the types or amount of education services Student
3 A receives. However, the fact that the School Committee did not have to bargain over the
4 educational services for Student A does not mean that Salmon's actions on November
5 22 were not protected.

6 The facts show that Salmon wanted to schedule a meeting with Tobin, in large part
7 to discuss various issues including problems in LaRivee's classroom.⁴⁷ Specifically,
8 Student A was exhibiting non-compliant behaviors in the classroom, such as disengaging
9 from the class, walking around, crumpling papers, sliding materials off his desk and
10 sometimes leaving the classroom. While the topic of which education services Student A
11 may require to address the behaviors may not be bargainable, the impacts on working
12 conditions that arise from a student exhibiting non-complaint behaviors in the classroom
13 is an appropriate topic of discussion for the Union. When a student exhibits such
14 behaviors as described above, it impacts the teacher's working conditions in a variety of
15 ways, i.e. performance evaluations, if they cannot effectively teach due to the disruptions,
16 or a student is injured on their watch, and staff safety, if a child could injure a teacher. Job
17 duties, performance evaluations, and employee safety are mandatory subjects of
18 bargaining. Since Student A was exhibiting non-compliant behaviors that impact
19 mandatory subjects of bargaining, the Union is not prohibited from discussing with

⁴⁷ Although the School Committee argued that it denied Salmon's request for a meeting because she was attempting to bargain over a student's education/placement, in the submitted emails between Salmon and various members of management, she clearly indicated that she wanted to discuss the safety concerns associated with the student in LaRivee's classroom. Even if Salmon had not expressly listed all her concerns in the request to meet with Tobin and Reese, her pursuit of a meeting with management still would be considered protected, concerted activity.

1 management the topic of student issues in the classroom. As such, Salmon's request to
2 meet with Tobin or schedule a meeting with Tobin to discuss issues with Student A in
3 LaRivee's classroom was concerted, protected activity.

4 Next, the School Committee argues that Student A did not raise staff safety
5 concerns as the student was only six years old and their behaviors were non-violent.⁴⁸
6 Additionally, the School Committee argues that during the investigation into the
7 November 22 incident, Salmon never explicitly cited specific concerns or examples of
8 staff safety concerns. As Student A was not impacting staff safety, the School Committee
9 contends that Salmon's attempts to meet with Tobin were attempts to become involved
10 in the education/placement of a particular student who was not in her own classroom, and
11 thus her conduct did not constitute protected, concerted activity.

12 I disagree. First, the School Committee did not establish that Kirkpatrick or
13 Vasudevan asked Salmon in the investigative interview to cite specific staff safety
14 concerns. Moreover, the School Committee's opinion that Student A did not pose any
15 staff safety concerns does not take Salmon's request to discuss the Union's concerns
16 about staff safety and other issues with Tobin out of the realm of concerted, protected
17 activity.

18 The School Committee and Union could have opposing opinions on whether a
19 situation impacts bargaining unit members' safety or other working conditions. Even if the
20 meeting does not result in a resolution or results in the employer's continued belief that
21 there are no impacts on working conditions to discuss or bargain, the request to meet and
22 the meeting itself still constitutes protected, concerted activity. In this case, the School

⁴⁸ I have used gender neutral pronouns to protect the anonymity of Student A.

1 Committee and the Union did not have to agree that Student A posed safety concerns to
2 staff or agree that additional paraprofessionals would be appropriate for Salmon's
3 meeting request to be concerted, protected activity.

4 Next, the School Committee argues that Salmon was insubordinate when she
5 attempted to demand a meeting or schedule a future meeting on November 22 with Tobin,
6 and as such, her actions were not protected. According to the School Committee, an
7 employee's rights must be balanced against the employer's rights to maintain order by
8 punishing acts of insubordination. The School Committee contends that Tobin and Reese
9 told Salmon in an email that they could not meet on November 22. Despite knowing that
10 Tobin could not meet with Salmon on November 22, she showed up at Harrington with
11 Blanchett to demand a meeting and thereby attempted to dictate Tobin's actions.

12 In certain circumstances, a unit member's concerted actions, even if they pertain
13 to terms and conditions of employment, may lose the veil of protection under the Law.
14 Thus, I consider whether Salmon's actions on November 22 lost the protection of the Law
15 since Tobin and Reese had previously advised Salmon that they could not, or in Reese's
16 case would not, meet with Salmon on November 22. I find that Salmon was not
17 insubordinate on November 22 when she attempted to either meet with Tobin or schedule
18 a meeting with Tobin in the future.

19 First, Salmon was trying to meet with Tobin on November 22, not Reese, therefore
20 Reese' refusal to meet with Salmon about Student A in LaRivee's classroom is
21 immaterial. Additionally, even if Reese felt that concerns regarding the student should not
22 involve the Union, Tobin never refused to meet with Salmon regarding the topic, and

1 stated in one of her emails that she would try to attend any meeting Salmon scheduled.
2 Thus, unlike Reese, Tobin was willing to meet with Salmon.

3 Second, despite knowing that Tobin was unavailable on the morning of November
4 22, Salmon's attempt to see if Tobin had a few minutes to meet with her and Blanchett or
5 to schedule a future meeting does not constitute insubordination. Both parties agree that
6 during the entire interaction between Blanchett and Tobin, Salmon sat quietly at the table
7 in the main office. Moreover, Tobin never told Salmon not to try to meet on November 22
8 or to schedule a meeting in the future. Additionally, Salmon never encouraged or
9 condoned Blanchett's conduct when he interacted with Tobin or Lang, and therefore she
10 is not responsible for Blanchett's conduct. Even if Blanchett could have handled the
11 request to meet with Tobin on November 22 in a more professional manner, it does not
12 mean that Salmon's actions amounted to insubordination. Therefore, Salmon's actions
13 on November 22 did not fall outside the realm of protection, and thus constitute concerted,
14 protected activity.⁴⁹

15 Employer Knowledge

16 The Union demonstrated that the School Committee was aware of Salmon's
17 concerted, protected activity. It is undisputed that the School Committee knew that
18 Salmon and Blanchett arrived at Harrington on November 22 to meet with Tobin or
19 schedule a meeting in the near future.

20 Adverse Action

⁴⁹ The School Committee argues that Salmon's review of the incident binder for LaRivee's classroom is not concerted, protected activity. Although the Union argues that Salmon as a teacher was allowed access to the information in the binder, it does not argue that her review of the binder was protected, concerted activity.

1 It is undisputed that the School Committee took adverse action against Salmon
2 when it issued her discipline in the form of a written reprimand. The School Committee's
3 decision to issue Salmon a written reprimand impacted her employment, and therefore
4 was an adverse action under the Law. City of Holyoke, 35 MLC 153, 156, MUP-05-4503
5 (2009) (citing Town of Dracut, 25 MLC 131, 133, MUP-1397 (February 17, 1999)).

6 Unlawful Motivation

7 To support a claim of unlawful motivation, the last element of a prima facie case,
8 a charging party may proffer direct or indirect evidence of discrimination. Lawrence
9 School Committee, 33 MLC 90, 97, MUP-02-3631 (December 13, 2006) (citing Town of
10 Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002), aff'd sub nom. Town of
11 Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005)). Direct evidence is
12 evidence that, "if believed, results in an inescapable, or at least a highly probable
13 inference that a forbidden bias was present in the workplace." Wynn & Wynn, P.C. v.
14 Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (quoting
15 Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)).

16 Unlawful motivation also may be established through circumstantial or indirect
17 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35 MLC
18 29, 48, MUP-03-3894 (June 30, 2008) (citing Town of Brookfield, 28 MLC at 327-
19 328). Several factors may suggest unlawful motivation, including: the timing of the
20 alleged discriminatory act in relation to the protected activity; triviality of reasons, or
21 shifting and inconsistent reasons given by the employer; disparate treatment; an
22 employer's deviation from past practices; or expressions of animus or hostility towards a
23 union or the protected activity. Town of Carver, 35 MLC at 48 (citing Melrose School

1 Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006)); Lawrence School
2 Committee, 33 MLC 90, MUP-02-3631 (December 13, 2006); Cape Cod Regional
3 Technical High School District Committee, 28 MLC 332, 335, MUP-2541 (May 15, 2002).

4 The Union contends that the investigation report and the written reprimand clearly
5 indicated that the School Committee issued Salmon discipline for acting in her role as
6 Union president. According to the Union, the School Committee's written warning
7 demonstrates that Salmon was being disciplined for being insubordinate in demanding a
8 meeting on November 22 with Tobin. Moreover, the Union contends that the School
9 Committee took issue with Salmon's attempt to meet with Tobin to discuss the impacts of
10 Student A in LaRivee's classroom on teachers' working conditions.

11 I agree with the Union that both the investigation report and the written reprimand
12 clearly indicate that the School Committee disciplined Salmon in part for pursuing a
13 meeting with Tobin on November 22. The School Committee does not dispute that it
14 disciplined Salmon partly because she tried to meet with Tobin on November 22, but, as
15 noted above, it contends that her actions constituted insubordination. As explained above,
16 I do not agree with the School Committee on that point. And for the following reasons, I
17 also find that the School Committee's reasons behind disciplining Salmon for
18 insubordination are trivial.

19 As noted above, Reese's refusal to meet with the Union is immaterial, and Tobin
20 never informed Salmon at any time that she would not meet with Salmon regarding issues
21 in LaRivee's classroom. Tobin never directed Salmon not to try to schedule a future
22 meeting with Tobin, or not to stop in the office to see if she was available to meet.

1 Significantly, on November 22, Tobin never directed or even requested that Salmon leave
2 the main office.

3 The School Committee argued that Salmon's insubordination set into motion
4 Blanchett's egregious actions. However, the School Committee did not prove this
5 assertion because it failed to demonstrate that Salmon did anything other than enter the
6 main office with Blanchett and quietly sit at the table in the office. It is clear from the record
7 that Salmon did not provoke or encourage Blanchett's behavior. The School Committee
8 provided cases in which an employee acted in an aggressive or egregious manner.
9 However, in this case, Salmon did not exhibit aggressive, egregious or unprofessional
10 behaviors. It is undisputed that once Salmon entered the main office on November 22
11 that she did nothing but sit quietly at the table, and she cooperated fully when Lang sent
12 her home for the day and the Detective Tyros escorted her from the building. Given that
13 Salmon only sat quietly sat in the main office during the entire incident and did not provoke
14 or encourage Blanchett's behavior, the School Committee's reasons behind disciplining
15 Salmon for demanding a meeting on November 22 with Tobin are trivial. Therefore, the
16 Union has demonstrated that the written reprimand was motivated by a desire to penalize
17 or discourage protected activity, and it has satisfied the fourth element of the prima facie
18 case of retaliation.

19 *Legitimate, Non-Discriminatory Motive*

20 Under the three-part Trustees of Forbes Library analysis, once a charging party
21 establishes a prima facie case of retaliation, it is the employer's burden to produce a
22 legitimate, non-discriminatory reason for taking the adverse action. The employer's
23 burden to produce a legitimate, non-discriminatory reason for taking the adverse action

1 is more than simply stating an unsubstantiated allegation. Commonwealth of
2 Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998). The employer must state
3 a lawful reason for its decision and produce supporting facts indicating that the lawful
4 reason was actually a motive in the decision. Trustees of Forbes Library, 384 Mass. at
5 566; Quincy School Committee, 27 MLC at 92; Commonwealth of Massachusetts, 25
6 MLC at 46.

7 Here, the School Committee contends that it issued Salmon a written warning for
8 insubordination and for violating student confidentiality rules, including FERPA. The
9 School Committee argues that Salmon was trained on a yearly basis about student
10 confidentiality and warned on numerous occasions about preserving student
11 confidentiality. As explained above, I do not find that Salmon's actions on November 22
12 amounted to insubordination, and therefore, insubordination is not a legitimate reason for
13 discipline. As for the violation of student confidentiality, I find the School Committee did
14 satisfy its burden to produce credible evidence that it issued Salmon a written warning for
15 a non-discriminatory reason.

16 The Union argues that Salmon had the right to access the information in the
17 incident binder under LaRivee's classroom because she was a teacher, and FERPA does
18 not expressly prohibit her from reviewing student information from another classroom.
19 Furthermore, the Union contends that Salmon did not review any confidential student
20 information as she simply counted the number of incident reports that were in the binder
21 for LaRivee's classroom. I disagree with the Union. The School Committee's yearly
22 trainings on student confidentiality policy clearly indicate that only teachers who are
23 working directly with the student are not required to have prior consent to review student

1 records. The Union did not provide any evidence to demonstrate that Salmon had been
2 assigned to work with Student A directly in any teaching, counseling, administrative, or
3 other professional capacity, or that she received prior consent from Student A's parents
4 to review the student's records. Also, even if Salmon only glanced at the incident reports
5 for LaRivee's classroom from the incident binder to count the number of incidents, Salmon
6 still violated the student confidentiality policy because reviewing the incident binder gave
7 her access to confidential records for students she did not teach directly. As such, the
8 School Committee satisfied its burden to produce credible evidence that it issued Salmon
9 a written reprimand for violating student confidentiality for legitimate, non-discriminatory
10 reasons.

11 *But for Test*

12 Ultimately, the Union proved that but for her protected activity, the School
13 Committee would not have issued Salmon a written reprimand. As explained above,
14 Salmon's action on November 22 did not constitute insubordination. The School
15 Committee established that Salmon had violated the student confidentiality in the past,
16 and someone from the School Committee immediately counseled Salmon about her
17 actions. In this case, Salmon informed Tobin and Reese several days before the
18 November 22 incident that she had reviewed the incident binder for LaRivee's classroom.
19 However, neither Tobin nor Reese mentioned Salmon's violation of student
20 confidentiality. It was not until after the November 22 incident that the School Committee
21 determined that Salmon's actions warranted discipline. The School Committee did not
22 provide any evidence to indicate that it had viewed her actions as a violation of student
23 confidentiality or that such actions warranted discipline until she pursued a meeting with

1 Tobin on November 22. The School Committee's delay in addressing Salmon's violation
2 of student confidentiality, and its inaccurate accusation that she was insubordinate on
3 November 22 demonstrates that, but for Salmon's concerted, protected activity, the
4 School Committee would not have issued Salmon a written reprimand.

5 **10(a)(3) Sending Salmon Home on November 22**

6 Protected Activity and Employer Knowledge

7 As explained above, Salmon was engaged in concerted, protected activity when
8 she attempted to meet with Tobin on November 22, and the School Committee knew of
9 Salmon's efforts to meet with Tobin.

10 Adverse Action

11 The CERB has decided that an employer's conduct is not an adverse employment
12 action unless it materially disadvantages the affected employee in some way. City of
13 Boston, 35 MLC 289, MUP-04-4077 (May 20, 2009). There is a material disadvantage
14 when objective aspects of the work environment are affected. See King v. City of Boston,
15 71 Mass. App. Ct. 460, 468 (2008) (failing to provide female superior officers with rank-
16 specific locker rooms rises to the level of an adverse action).

17 The Union argues that the School Committee has admitted that Salmon was
18 cooperative on November 22 and has not provided any reason for Salmon's removal from
19 Harrington other than to minimize harm. However, the Union has failed to explain how
20 Lang's decision to remove her from the Harrington on November 22 materially
21 disadvantaged Salmon.⁵⁰ The Law requires proof of real harm, and subjective feelings of

⁵⁰ In its post-hearing brief, the Union cited several cases in which the CERB found the employer violated Section 10(a)(1) of the Law when it made disparaging remarks toward

1 disappointment and disillusionment will not suffice. See MacCormack v. Boston Edison,
2 Co., 423 Mass. 652, 663-664 (1996) (former employee's claims of adverse action were
3 based upon subjective feelings of disappointment and disillusionment rather than
4 objective evidence that he had been disadvantaged in terms and conditions of
5 employment); see also City of Holyoke, 35 MLC 253, 156 (2008) (co-workers' subjective
6 opinions and office banter do not render as adverse a previously requested transfer).⁵¹

7 Salmon may have felt disadvantaged by the School Committee's decision to send
8 her home on November 22, but the Union did not provide any evidence that she was
9 materially disadvantaged. Consequently, the School Committee's decision to send
10 Salmon home on November 22 was not an adverse action under the Law. Therefore, the
11 Union failed to present sufficient evidence to fulfill the third prong of the prima facie case
12 when Lang instructed Salmon to leave the school on November 22. Accordingly, there is
13 insufficient evidence to find that the School Committee violated the Law in the manner
14 alleged, and I dismiss this portion of the complaint.

15 **10(a)(3) Administrative Leave**

16 Protected Activity and Employer Knowledge

17 As explained above, Salmon was engaged in concerted, protected activity when
18 she attempted to meet with Tobin on November 22 and the School Committee knew of
19 her actions.

a union or the exercise of protected activity, even without a direct threat of adverse consequences. However, the Union did not provide any case cites or explanation how Lang's decision to send Salmon home on November 22 was an adverse personnel action under 10(a)(3) of the Law.

⁵¹ In this case, Salmon was still paid for November 22 despite being sent home early and she was not required to take a vacation, personal, or sick day.

1 Adverse Action

2 After sending Salmon home from school on November 22, the School Committee
3 removed her from active duty until December 6, 2017, while it investigated her for the
4 November 22 incident. Although the School Committee placed her on paid administrative
5 leave, Salmon could not report to work, and the administrative leave became a part of her
6 personnel record. Southbridge School Committee, 40 MLC 218, MUP-06-4762, MUP-07-
7 5010 (H.O. January 30, 2014), aff'd, Southbridge School Committee, 41 MLC 199
8 (January 30, 2015) (Placement of early childhood coordinator on administrative leave with
9 pay constitutes adverse action). Therefore, I conclude that the School Committee's
10 decision to place Salmon on administrative leave was an adverse action under the Law.

11 Unlawful Motivation

12 The administrative leave letter to Salmon clearly states that the School Committee
13 placed Salmon on leave so that it could investigate the events of November 22. However,
14 on November 22, Salmon had sat quietly in the main office while Blanchett interacted with
15 Tobin and Lang. In fact, on November 22, all witnesses including the police, stated that
16 Salmon was cooperative and was not a threat. Immediately after the interaction with
17 Blanchett, Tobin and other witnesses provided the police officers with a statement. In the
18 November 22 police report, the officer noted that Salmon was being sent home as a
19 formality and that she had not caused any issues at the school. Finally, Lang observed
20 firsthand that Salmon was sitting quietly in the main office while Blanchett was out in the
21 hallway. Lang observed Salmon's demeanor and conduct when he spoke with her in the
22 main office about being sent home. Finally, when Lang informed Salmon she was being
23 sent home for the day and she inquired if she did anything wrong, Lang responded no. It

1 is clear from the record that the School Committee placed Salmon on administrative leave
2 for engaging in protected, concerted activity, specifically attempting to meet with Tobin
3 about issues in another teachers' classroom. In sum, the Union demonstrated that the
4 School Committee's decision to place Salmon on administrative leave was motivated by
5 a desire to penalize or discourage protected activity. Thus, the Union has satisfied the
6 fourth element of the prima facie case of retaliation.

7 *Legitimate, Non-Discriminatory Motive*

8 The School Committee argues that it placed Salmon on administrative leave to
9 investigate the incident on November 22. The School Committee argues that it has placed
10 other bargaining unit members on administrative leave during investigations, and
11 therefore its decision to place Salmon on leave was legitimate. Given that the November
12 22 incident escalated to the point that individuals were escorted out of Harrington by the
13 police, I find the School Committee's decision to place Salmon on administrative leave so
14 it could investigate her role in the events of November 22 was a legitimate, non-
15 discriminatory reason for placing Salmon on administrative leave.

16 *But for Test*

17 The Union proved that but for her protected activity, the School Committee would
18 not have placed Salmon on administrative leave. Although the School Committee
19 provided a legitimate reason for placing Salmon on administrative leave, it was
20 abundantly clear on November 22 that her only involvement in the incident between
21 Blanchett and Tobin was sitting quietly in the main office and cooperating with Lang and
22 the police. Also, the School Committee knew several days before November 22 that
23 Salmon had accessed the incident binder to look at LaRivee's section, but it did not place

1 her on administrative leave until November 22, after she attempted to meet with Tobin. It
2 is clear that the School Committee placed Salmon on administrative leave because she
3 attempted to speak with Tobin about issues in LaRivee's classroom. Given that the
4 School Committee knew on November 22 that Salmon had not engaged in any
5 unprofessional or aggressive behavior on that date and already knew that she accessed
6 the incident binder but made no prior effort to address any student confidentiality
7 violations, the Union has demonstrated that but for Salmon's concerted, protected activity,
8 the School Committee would not have placed Salmon on administrative leave.

9 **10(a)(1) Escorting Blanchett from the Harrington School**

10
11 A public employer violates Section 10(a)(1) of the Law when it engages in conduct
12 that may reasonably be said to interfere with, restrain or coerce employees in the exercise
13 of their rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91,
14 MUP-1986 (December 29, 2000); Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11,
15 1999); Town of Winchester, 19 MLC 1591, 1595, MUP-7514 (December 12, 1992);
16 Groton-Dunstable Regional School Committee, 15 MLC 1551, 1555, MUP-6748 (March
17 20, 1989). The focus of a Section 10(a)(1) analysis is the effect of the employer's conduct
18 on reasonable employees' exercise of their Section 2 rights. Town of Winchester, 19 MLC
19 at 1596. The Commonwealth Employment Relations Board (CERB) does not analyze
20 either the motivation behind the conduct, Town of Chelmsford, 8 MLC 1913, 1916, MUP-
21 4620 (March 12, 1982), aff'd sub nom., Town of Chelmsford v. Labor Relations
22 Commission, 15 Mass. App. Ct. 1107 (1983) or whether the coercion succeeded or failed.
23 Groton-Dunstable Regional School Committee, 15 MLC at 1555-1556. Proof of illegal

1 employer motivation is not required. Quincy School Committee, 27 MLC 83, 91, MUP-
2 1986 (December 29, 2000).

3 As explained above, Salmon engaged in concerted, protected activity by seeking
4 a meeting with Tobin to discuss issues in a bargaining unit member's classroom that
5 affected her working conditions. The School Committee argues that Blanchett's conduct
6 on November 22 is beyond the pale of protection because he behaved like a bully.
7 However, Blanchett is an employee of the Union and not a unit member. Blanchett's
8 conduct does not need to be within the realm of protection because Salmon, as a unit
9 member, did engage in protected, concerted activity.

10 The School Committee argued that Lang did not use disparaging or offensive
11 language when he requested the police officers to escort Blanchett out of Harrington, and
12 therefore his actions did not violate the Law. However, an employer's actions, without
13 accompanying disparaging or offensive language, can reasonably be said to interfere
14 with, restrain or coerce employees in the exercise of their rights. In this case, Lang
15 instructed police officers to escort Blanchett out of Harrington, and then a police officer
16 proceeded to Salmon's classroom upstairs and escorted her out of Harrington in front of
17 fellow bargaining unit members, Trainor and Gilbert. When Lang asked the police officers
18 to escort him from the building, Blanchett was not being verbally or physically abusive
19 towards Lang or the officers. The CERB has found expressions of employer anger,
20 criticism, and ridicule directed at employees' protected activities are sufficient to constitute
21 interference, restraint, and coercion of the employee in violation of Section 10(a)(1).
22 Athol-Royalston Regional School District, 25 MLC at 31. Lang expressed his criticism and

1 anger towards the Union's protected, concerted activity when he requested the police
2 officers escort Blanchett from Harrington in front of bargaining unit members.

3 Further, bargaining unit members saw Blanchett identify himself as a union
4 representative to the police officers, explain that he was trying to schedule a meeting, and
5 then be escorted from the building by police, even though he was not behaving in a
6 threatening manner. Although Tobin did inform Blanchett that she would not meet with
7 him that day, neither Tobin nor Lang ever asked Blanchett to leave Harrington before the
8 police escorted him from the premises, and thus Blanchett never refused a request or an
9 order from school personnel to leave. Both Tobin and Lang testified that they did not find
10 Blanchett threatening during their interactions with him on November 22. Given that no
11 one felt threatened, and no one had asked Blanchett to leave Harrington before the police
12 escorted him from the premises, Lang instructed the police to escort Blanchett from the
13 premises prematurely and unnecessarily. Lang or Tobin could have instructed Blanchett
14 to leave the premises and warned him that if he did not comply, they would call police
15 officers to the scene. Moreover, even when the police officers arrived on scene, Lang still
16 didn't ask Blanchett to leave Harrington. Lang requested the police officers escort
17 Blanchett from the building without giving Blanchett a warning or choice to leave of his
18 own accord. Given that Blanchett was never asked to leave or warned to leave before the
19 police became involved, Lang's decision to have police officers escort him from
20 Harrington in front of bargaining unit members was an expression of criticism and anger
21 towards the Union's attempts to meet with Tobin.

22 In short, the totality of the circumstances shows that Lang's decision to have the
23 police escort Blanchett from Harrington in front of bargaining unit members would chill a

1 reasonable employee in their Section 2 rights. Therefore, I find that the School Committee
2 independently violated Section 10 (a)(1) of the Law in the manner alleged in the
3 Complaint.

4 **10(a)(1) Escorting Salmon from the Harrington School**

5
6 I similarly find that Lang's decision to allow Salmon to be escorted from Harrington
7 in front of bargaining unit members would chill a reasonable employee in their Section 2
8 rights. The School Committee argues that it did not violate the Law when Detective Tyros
9 escorted Salmon from the building because Lang never directed the police to escort
10 Salmon from the building. The School Committee asserts that the police officer
11 volunteered to check to see if Salmon left the building. Although I agree with the School
12 Committee that Lang did not expressly order or request police officers to escort Salmon
13 from the building, he did say that he wanted Salmon gone from the building and allowed
14 Detective Tyros to go upstairs to ensure she had left. Lang's actions were clearly a
15 decision to allow police officers to escort Salmon from Harrington.

16 Additionally, the School Committee argues that because Detective Tyros was
17 wearing plain clothes, escorting Salmon from the building would not reasonably have
18 been considered chilling conduct. Although Detective Tyros was not in uniform, he clearly
19 had a police badge in the center of his chest. In addition to his attire notifying the public
20 he was a police officer, Tyros was also seen standing with the other uniformed police
21 officers and assisted in escorting Blanchett from the building. Any reasonable person
22 would have known that Tyros was a police officer, and bargaining unit members
23 witnessed their Union president being escorted from the building by a police officer. Given
24 that Salmon had been cooperative through the entire exchange with Tobin, Lang, and the

1 police officers, I find that Lang's decision to allow Salmon to be escorted from the building
2 by a police officer in front of bargaining unit members would chill a reasonable employee
3 in their Section 2 rights. Therefore, I find that the School Committee independently
4 violated Section 10 (a)(1) of the Law in the manner alleged in the Complaint.

5 **10(a)(1) Administrative Leave Letter**
6

7 On November 22, the School Committee issued Salmon an administrative leave
8 letter which stated: "While you are on paid administrative leave you are not to contact
9 staff members or students of the Harrington Elementary School pertaining to this incident,
10 including e-mail or social network websites, such as Facebook, nor visit the premises of
11 the Harrington Elementary School. Failure to follow this order will be deemed
12 insubordination and you may be subject to suspension and/or termination from your
13 employment with the Chelmsford Public Schools."

14 The Union argues that the administrative leave letter placed a gag order on Salmon
15 which prohibited her from speaking with staff members, and that the gag order restricted
16 Salmon's ability to conduct Union business. The School Committee argues that it
17 prohibited Salmon from contacting staff about the November 22 incidents to preserve the
18 integrity of the investigation. Although the School Committee's reasons for prohibiting
19 Salmon from contacting staff about the November 22 incidents were sensical, an
20 employer's motivation is not material because the effect of the employer's conduct on
21 employees' exercise of their Section 2 rights is the focus. Town of Chelmsford, 8 MLC
22 1913, 1916, MUP-4620 (March 12, 1982).

23 First, the administrative leave letter clearly states that the School Committee
24 ordered Salmon not to contact staff "pertaining to the November 22 incident," and it did

1 not in any way order Salmon to refrain from contacting staff about any other issues
2 pertaining to the Union or personal matters. I do not find that a reasonable person would
3 have believed that the administrative leave letter restricted Salmon's ability to speak with
4 staff about issues other than the events of November 22. Additionally, the letter states
5 that Salmon is prohibited from contacting "staff and students" regarding the November 22
6 incident, and it does not prohibit Salmon from contacting Union representatives who are
7 employed by CFT or AFT.

8 Further, the School Committee did not prevent Salmon from contacting Union
9 representatives or from conducting union business. Consequently, I do not find that the
10 administrative leave letter was overly broad. Therefore, the Union failed to establish that
11 the contents of the letter itself would have chilled a reasonable employee in their Section
12 2 rights. Accordingly, I find that the School Committee did not independently violate
13 Section 10 (a)(1) of the Law in the manner alleged in the Complaint.

14 **10(a)(1) Lang's Statements at the November 22 Meeting with Unit Members**
15

16 On November 22, Lang addressed bargaining unit members during an after-school
17 meeting about the incident earlier that day. Lang informed the bargaining unit members
18 that a staff member and Union representative had demanded a meeting and refused to
19 leave the school. Lang informed the bargaining unit members that police escorted the
20 representatives from the building. Finally, Lang informed bargaining unit members that
21 he was disappointed that this type of incident had occurred at Harrington.

22 The School Committee argues that Lang did not name Blanchett and Salmon in
23 the after-school meeting. However, even if Lang did not mention Salmon and Blanchett
24 by name, several unit members had witnessed Salmon and/or Blanchett being escorted

1 from the building by police. Therefore, at least some, if not all of the unit members present
2 at the meeting knew that Lang was referring to Salmon and Blanchett. The School
3 Committee next asserts that Lang's statements were not disparaging remarks, or
4 expressions of anger, criticism or ridicule directed at an employee's protected activity,
5 and therefore his remarks did not violate the Law. I disagree. Lang's statements of
6 disappointment are an expression of criticism of Salmon and Blanchett's attempts to meet
7 with Tobin which was concerted, protected activity. I find that Lang's statement of
8 disappointment in the Union's concerted, protected activity, coupled with the news that
9 the police had escorted the Union representatives from Harrington would chill a
10 reasonable employee in their Section 2 rights. Therefore, I find that the School Committee
11 independently violated Section 10 (a)(1) of the Law in the manner alleged in the
12 Complaint.

13 **10(a)(1) Lang's Statement at November 22 meeting Regarding a "Right Way and a**
14 **Wrong Way to get Help Within the School"**

15
16 The School Committee argues that during the November 22 meeting referenced
17 above, Lang did not discourage the bargaining unit members from reaching out to the
18 Union. The School Committee asserts that Lang's comments served to draw a distinction
19 between requests to discuss a matter with the administration or the Union and raising
20 issues in a manner that is disruptive or combative. However, I found that during the
21 November 22 meeting with bargaining unit members, Lang informed the staff that
22 everyone should use the proper channels if they had an issue in their classroom and they
23 should contact the administration, that they did not have to go straight to the Union. Lang
24 said that he preferred that the staff discuss issues with the administration first, before
25 contacting the Union.

1 Lang's comments would lead a reasonable employee to assume that he did not
2 find it appropriate for staff to first speak with the Union about issues, and a reasonable
3 person would view Lang's comments as a criticism of staff who did involve the Union in
4 issues with administration. These statements, coupled with Lang's decision to have police
5 escort Salmon and Blanchett from the building, would chill a reasonable employee in their
6 Section 2 rights. Therefore, I find that the School Committee independently violated
7 Section 10 (a)(1) of the Law in the manner alleged in the Complaint.

8 **10(a)(1) Lang's November 22 Facebook Post**

9 On November 22, 2017, Lang issued a brief statement to the Harrington
10 Community which was posted and shared on the Chelmsford Public Schools Facebook
11 page, regarding the incident earlier that day. The School Committee argues that Lang's
12 statement did not identify Blanchett or Salmon by name, and therefore the statement did
13 not violate the Law. Again, even though the statement did not specifically mention Salmon
14 and Blanchett by name, several bargaining unit members saw Blanchett and Salmon
15 escorted out of the building by police and knew exactly who Lang was referring to in this
16 statement.

17 Next, the School Committee argues that the statement was merely a recount of
18 events and a means of letting the parents and students of Harrington know that everything
19 was under control. Whether Lang should have involved police in this matter does not
20 change the fact that police were present on school property. Lang, as the superintendent,
21 understandably needed to inform the parents of the students as to why police were called
22 to the elementary school and if the situation was dangerous. Although I concur that Lang
23 needed to inform parents why police were at the Harrington school, Lang's statement

1 informed unit members that a staff member was placed on administrative leave pending
2 an investigation into an incident involving said staff member demanding to meet with
3 Tobin. Given that unit members witnessed Blanchett and Salmon being escorted from the
4 school by police, Lang's statement that Salmon had been placed on administrative leave
5 because of the incident would chill a reasonable employee in their Section 2 rights.
6 Therefore, I find that the School Committee independently violated Section 10 (a)(1) of
7 the Law in the manner alleged in the Complaint.

8 **10(a)(1) Lang's November 22 email to Students and Parents**
9

10 On November 22, Lang emailed the students and parents of students at Harrington
11 stating that individuals demanded a meeting with Tobin, the police were contacted, and
12 the individuals were escorted from the building. Additionally, Lang informed everyone that
13 at no point were the students unsafe. The School Committee argues that Lang's
14 statement does not provide any identifying information about Salmon or Blanchett. Again,
15 unit members witnessed Blanchett and Salmon being escorted from Harrington by police
16 earlier that day, and therefore at least some unit members knew who Lang was
17 referencing in this email.

18 The Union argues that Lang's email reported untrue and disparaging comments
19 that "individuals demanded a meeting and refused to leave the building" which implied
20 that the students were unsafe. While I agree that Salmon and Blanchett did not refuse to
21 leave the building, I do not agree that such a statement disparaged protected activity.
22 Lang needed to inform the parents of Harrington students that the police were present,
23 explain why they were present, and assure the parents that the children were safe at all
24 times. Despite some unit members knowing Lang was referencing Salmon and Blanchett,

1 the email does not mention the Union. Also, unlike the statement discussed above, Lang's
2 email does not express criticism of the Union or its actions, nor does it mention that the
3 individuals involved were placed on administrative leave. Thus, I do not find that Lang's
4 email would chill a reasonable employee in their Section 2 rights. Therefore, I find that
5 the School Committee did not independently violate Section 10 (a)(1) of the Law in the
6 manner alleged, and dismiss this portion of the Complaint.

7 **10(a)(1) Newspaper Article**

8 On November 24, 2017, the Lowell Sun published an article about the November
9 22 incident at Harrington. The article quoted Lang as stating: "From my perspective, it's
10 totally unfortunate this entire incident took place. It's not appropriate any time to do
11 anything that would disturb a school assembly and do anything that would detract from
12 kids coming to school and having a good educational experience." Additionally, Lang
13 provided the Lowell Sun with emails between Salmon and Tobin. The School Committee
14 argues that it did not violate the Law when Lang spoke with the Lowell Sun because he
15 was responding appropriately to Salmon's mischaracterization of the situation.

16 However, even if the School Committee viewed Salmon's statements to the Lowell
17 Sun as inaccurate, the School Committee did not establish that Lang's statements were
18 necessary or appropriate. Unlike the need to inform parents that police were present at
19 the elementary school and assure them that everyone was safe, it was not necessary for
20 Lang to provide a quote to a newspaper. Lang did not simply restate facts to the Lowell
21 Sun; he added his opinion on the actions of Salmon and the Union. Lang gave the Lowell
22 Sun emails that identified Salmon, then provided a quote that criticized her protected,
23 concerted activity. The statements Lang provided to the Lowell Sun would chill a

1 reasonable employee in their Section 2 rights. Therefore, I find that the School Committee
2 independently violated Section 10 (a)(1) of the Law in the manner alleged in the
3 Complaint.

4 **10(a)(1) December 8 email**

5 On December 8, 2017, Lang sent a follow up statement to unit members and the
6 parents of Harrington students.⁵² In the email, Lang states that, prior to Thanksgiving an
7 incident escalated into a regrettable situation... “Nothing positive or productive is
8 accomplished when difference of opinion deteriorates into personal confrontations and
9 raised voices. We are extremely disappointed that this situation has escalated to this
10 unnecessary level and hope that we can all move forward in a more positive manner and
11 get back to focusing on our serious work of educating our student[s].”

12 The School Committee argues that nothing in the email identifies Salmon and
13 Blanchett or connected the statement to Salmon or Blanchett. I disagree. It’s clear from
14 the content of the email that Lang is referring to the November 22 incident and as stated
15 above, unit members already knew that the individuals involved were Salmon and
16 Blanchett because they had witnessed police escort them from the building. Additionally,
17 Lang identified them in the Lowell Sun when he provided the newspaper with emails.

⁵² The School Committee argues that the Union never submitted a November 28 email into the record, and therefore this portion of the Complaint should be dismissed. However, at hearing, the Union submitted an email into the record from Lang to the parents and unit members which states exactly what was alleged in the Complaint. The email was marked and entered into the record as Union Exhibit No. 33: December 8, 2017 email. However, the School Committee did not deny that Lang sent the email marked as Union 33, and it is identical to the email referred to in Count 11 of the Complaint. It is clear from the record that the email referred to in Count 11 of the Complaint and the email marked and entered into her record as Union No. 33 is one and the same. I decline to dismiss this portion of the Complaint based on this inadvertent clerical error.

1 Lang's comments in the email were not a necessary means of informing the parents of
2 Harrington that police were present at school. Lang's statements clearly criticized
3 Salmon's protected, concerted activity and the Union's engagement in protected activity
4 that would chill a reasonable employee in their Section 2 rights. Therefore, I find that the
5 School Committee independently violated Section 10 (a)(1) of the Law in the manner
6 alleged in the Complaint.

7 **10(a)(1) Precluding Blanchett and McDonald from Attending Interviews**

8
9 In determining whether an employer has unlawfully denied union representation to
10 an employee during an investigatory interview, the CERB has been guided by the general
11 principles enunciated in NLRB v. Weingarten, 420 U.S. 251 (1975); Commonwealth of
12 Massachusetts, 22 MLC 1741, 1747, SUP-4105 (May 16, 1996); Commonwealth of
13 Massachusetts, 4 MLC 1415, 1418, SUP-2067 (March 9,1977). The CERB has applied
14 the Weingarten rule in cases involving G. L. c. 150E, Section 2. See Commonwealth of
15 Massachusetts, 9 MLC 1567, SUP-2665 (January 11,1983); Commonwealth of
16 Massachusetts, 4 MLC 1415, SUP-2067 (March 9, 1977). General Laws c. 150E, Section
17 2, provides, "[e]mployees shall have the right of self-organization and the right . . . to
18 engage in lawful, concerted activities for the purpose of collective bargaining or other
19 mutual aid or protection, free from interference, restraint, or coercion."

20 A public employer that denies an employee the right to union representation at an
21 investigatory interview the employee reasonably believes will result in discipline interferes
22 with the employee's Section 2 rights in violation of Section 10(a)(1) of the Law.
23 Commonwealth of Massachusetts, 26 MLC 139, 141, SUP-4301 (March 9, 2000) (citing
24 Commonwealth of Massachusetts, 9 MLC 1567, 1569, SUP-2665 (January 11,1983)).

1 The right to union representation arises when the employee reasonably believes that the
2 investigation will result in discipline and the employee makes a valid request for union
3 representation. Commonwealth of Massachusetts, 22 MLC at 1747, SUP-4105 (May 16,
4 1996) (citing Commonwealth of Massachusetts, 4 MLC at 1417-1418, MUP-2067 (March
5 9, 1977)). An interview is investigatory in nature if the employer's purpose is to investigate
6 the conduct of an employee and the interview is convened to elicit information from the
7 employee or to support a further decision to impose discipline. Commonwealth of
8 Massachusetts, 26 MLC at 141, SUP-4301 (March 9, 2000),(citing Baton Rouge Water
9 Works, 103 LRRM 1056, 1058 (1979); Commonwealth of Massachusetts, 8 MLC 1287,
10 1289, SUP-2443 (August 20,1981)). An interview is investigatory if a reasonable person
11 in the employee's situation would have believed that adverse action would follow.
12 Commonwealth of Massachusetts, 8 MLC at 1289.

13 On or about November 27, the School Committee commenced an investigation
14 into the events of November 22. On that same day, Vasudevan asked Blanchett to cease
15 his involvement in the investigation. Vasudevan informed Blanchett that: "Marie O'Donnell
16 was also involved in the events that preceded the incident last Wednesday and cannot
17 be the union representative present at the interviews. The CFT needs to have another
18 union representative present at the interview. Our understanding is that Margaret Blakely
19 is willing and able to serve as the representative. Cindy Acheson, Erica Arrington or Katy
20 Sullivan could also serve as the representative."

21 "The decision as to who will serve (as union representative) is properly decided by
22 the union officials, unless the employer can establish special circumstances that would
23 warrant precluding one of the two officials from serving as representative." Town of

1 Hudson, 29 MLC 52, MUP-2425, (September 19, 2002); New Jersey Bell Telephone
2 Company, 308 NLRB 277, 308 (1992). The School Committee argues that Blanchett's
3 involvement in November 22 incident warranted its decision to preclude him from serving
4 as a union representative during the investigative interviews. Specifically, the School
5 Committee argued that it would be inappropriate for Blanchett to represent the unit
6 members during the interviews because he was one of the subjects of the investigation.

7 I agree with the School Committee that unit members might have reasonably been
8 uncomfortable answering questions about Blanchett's behavior on November 22 if he was
9 present in the room and acting as their union representative. Given Blanchett's presence
10 could have made the unit members uncomfortable answering questions, the School
11 Committee's investigation might have been compromised by Blanchett's involvement in
12 the interviews. Also, the School Committee argued that as Blanchett was the subject of
13 the investigation, other witnesses could alter their stories. Again, I agree that Blanchett's
14 presence in investigatory interviews about an event that he was directly involved in may
15 result in unit members altering their story out of discomfort. Additionally, during the
16 investigation, the School Committee was still weighing filing a trespass order against
17 Blanchett and the investigatory interviews were to take place at Harrington. As such, I do
18 not find the School Committee's decision to exclude Blanchett from the investigatory
19 interviews violated the Law as alleged in the Complaint.

20 In the November 29 communication, the School Committee also preemptively
21 prohibited O'Donnell from attending investigative interviews with unit members. Unlike
22 Blanchett, O'Donnell was not involved in the incident. The School Committee did not
23 provide any evidence to demonstrate that special circumstances warranted its refusal to

1 allow O'Donnell to serve as a Weingarten representative at the investigative interviews,
2 and it argued that the issue was moot because it eventually allowed O'Donnell to
3 participate in the interviews. However, the School Committee's reversal of its decision
4 does not change the fact that it initially attempted to interfere with the unit members' rights
5 to seek assistance from the Union. The School Committee's decision to preclude
6 O'Donnell from participating in investigatory interviews interfered with unit members'
7 rights to seek assistance from the Union. Therefore, I find that the School Committee
8 independently violated Section 10 (a)(1) of the Law in the manner alleged in the
9 Complaint.

10 **10(a)(1) Precluding Blanchett from Communicating with Unit Members**

11
12 In addition to prohibiting Blanchett from participating in the investigatory interviews,
13 the School Committee attempted to limit his communications with unit members about
14 the November 22 investigation. As explained above, unit members who were required to
15 submit to an investigatory interview with the School Committee might have felt
16 uncomfortable answering questions about Blanchett's conduct with him in the room acting
17 as their Union representative, and therefore the School Committee's investigation might
18 have been compromised by his presence. However, unlike submitting to an investigatory
19 interview with the School Committee, unit members do not have to communicate with
20 Blanchett if they are uncomfortable. Additionally, the School Committee failed to explain
21 how Blanchett communicating with Hirsch and copying Salmon would compromise its
22 investigation.

23 I find Blanchett's communications to Salmon and any other unit members
24 regarding an investigation that may result in discipline for unit members to be protected,

1 concerted activity. Additionally, I find that the School Committee's attempts to prohibit
2 Blanchett from speaking with unit members about the investigation interfered with the unit
3 members' rights to communicate with their Union representative. Therefore, I find that the
4 School Committee independently violated Section 10 (a)(1) of the Law in the manner
5 alleged in the Complaint.

6 **10(a)(1) LaRivee Interview**

7 An employer who coercively interrogates employees about their union activities or
8 union membership or how employees would vote in a union election violates Section
9 10(a)(1) of the Law. Plymouth County House of Correction, 4 MLC 1555, 1572, MUP-
10 2234, MUP-2429 (December 6, 1977). The CERB has held that an interrogation, which
11 itself is not threatening, does not constitute an unfair labor practice unless it meets certain
12 standards. Id., (citing Bourne v. NLRB, 332 F.2d 47 (2nd Cir. 1964)). In examining whether
13 an interrogation was unlawful, the CERB considers a variety of factors including: 1) the
14 background, whether there a history of employer hostility and discrimination; 2) the nature
15 of the information sought, including whether the interrogator appeared to be seeking
16 information on which to base taking action against individual employees; 3) the identity of
17 the questioners, including their position in the employment hierarchy; 4) the place and
18 method of interrogation, including whether the employee was called into the supervisor's
19 office and whether there was an atmosphere of unnatural formality; and 5) the truthfulness
20 of the reply. Bourne v. NLRB, 332 F.2d at 50. No single factor is outcome determinative.
21 Rather, it is a totality of the circumstances test. See, Rossmore House, 269 NLRB 1176,
22 1178 (1984) (under the totality of circumstances, it was found that certain questions to an
23 employee were not inherently coercive).

1 During an investigatory interview with LaRivee, the School Committee asked
2 LaRivee if she had contacted Salmon about any issues, what issues she contacted
3 Salmon about, and if she asked Salmon to set up a meeting with Tobin about the issues.
4 The School Committee initiated the investigation in which LaRivee was interviewed, after
5 it had police officers escort Salmon and Blanchett out of the building. Additionally, the
6 School Committee interviewed LaRivee after it had made several statements of criticism
7 against Salmon's protected, concerted activity. As such, the context surrounding the
8 interview with LaRivee was riddled with employer hostility towards the Union.

9 Next, the School Committee sought information about communications between
10 Salmon and LaRivee. The School Committee asserts that it asked about the
11 communications in order to determine whether there was a staff safety issue or whether
12 Salmon interjected herself into a student issue.

13 If the School Committee was concerned about safety in the classroom, it could
14 have inquired about LaRivee's working conditions and not focused on her
15 communications with Salmon. The School Committee sought information from LaRivee
16 about her communications with Salmon in order to assess whether or not it would take
17 adverse action against Salmon. The investigative interviews were conducted by
18 Vasudevan, an attorney hired by the School Committee, and Kirkpatrick, Director of
19 Personnel and Professional Learning for the School Committee. The interview was
20 conducted at Harrington, but the record is not clear where in the building it occurred. As
21 the School Committee hired Vasudevan to help conduct the investigation instead of
22 having Human Resources solely handle the matter, the interview had a certain formality.
23 Neither party alleged that LaRivee was untruthful in the interview. Given the totality of the

1 circumstances in this case, I find the School Committee's questions during LaRivee's
2 interview about her communications with Salmon to be inherently coercive. Therefore, I
3 find that the School Committee independently violated Section 10 (a)(1) of the Law in the
4 manner alleged in the Complaint.

5 **10(a)(1) School Committee Chair's Facebook Post**

6 On or about November 25, 2017, Blanchett was looking at the Chelmsford
7 Community Facebook group's page. Under a thread pertaining to the above referenced
8 newspaper article, Blanchett saw that Moses had publicly posted the comment below:

9 I've stated this privately, and will be stating this publicly during the next
10 School Committee [meeting] as well, I will no longer engage in
11 negotiations with the State Union Representatives for any negotiations. I
12 will not sit across the table from a bully under civilized rules of order.

13
14 The School Committee argues that it did not violate the Law when Moses posted the
15 above message on Facebook because it was not an approved statement from the School
16 Committee, and the parties did negotiate a successor contract. However, even if the
17 School Committee did not take an official vote to issue the above statement, Moses is still
18 a member of the School Committee and his clear expressions of criticism of the Union's
19 engagement in protected activity would chill a reasonable employee in their Section 2
20 rights. Also, an employer's threats need not be successful for the threat to chill a
21 reasonable employee in their Section 2 rights. In this case, Moses' statement was not just
22 a criticism of the Union, but a threat not to engage in collective bargaining with the Union
23 because of the Union's protected activity. As such, I find that the School Committee
24 independently violated Section 10 (a)(1) of the Law in the manner alleged in the
25 Complaint.

26 **10(a)(1) October 13, 2017 Telephone Conversation**

1 During an October 13, 2017 phone conversation, Tobin yelled at Salmon: “I don’t
2 know who you think you are going down and causing a problem in the building and
3 running around undermining me.”⁵³ Tobin was referring to an earlier conversation
4 between Salmon and a gym teacher. The School Committee argues that Salmon’s
5 interference and conversation with the gym teacher was not protected activity because
6 the gym teacher did not actually complain to Salmon. Additionally, the School Committee
7 contends that the situation at hand involved student issues, not working conditions for the
8 gym teacher. As explained above, certain student issues may impact teachers’ working
9 conditions. In this case, the inclusion of 50 students in one classroom would impact the
10 working conditions of the teacher. Even though the gym teacher never sought Salmon
11 out, Salmon engaged in protected, concerted activity when she approached the teacher
12 to inquire if she felt unsafe or overwhelmed with her working conditions.

13 The School Committee argues that Salmon’s actions were outside the scope of
14 concerted, protected activity because she attempted to override Tobin’s decision on
15 staffing coverage. I disagree. The record does not indicate that Salmon instructed the
16 gym teacher to disobey Tobin or alter Tobin’s staffing decision. Next, the School
17 Committee argues that Tobin’s comments were not disparaging and did not express
18 anger, criticism, or ridicule towards protected, concerted activity. This is factually
19 incorrect, because Tobin’s statement was an expression of criticism of Salmon’s
20 engagement in protected, concerted activity. Tobin’s comments and the fact that she

⁵³ Count XVII of the Complaint alleges that Tobin used profanity during the conversation and noted that Salmon had been a problem at her previous school. I did not find that Tobin used profanity or that she referenced any issues from Salmon’s previous school.

1 yelled the statements would chill a reasonable employee in their Section 2 rights.
2 Therefore, I find that the School Committee independently violated Section 10 (a)(1) of
3 the Law in the manner alleged in the Complaint.

4 CONCLUSION

5 Based on the record and for the reasons explained above, I find that the School
6 Committee independently violated Section 10(a)(1) of the Law when: 1) Lang requested
7 police remove Blanchett from Harrington and they did so in the presence of unit members,
8 2) Lang allowed a police officer to escort Salmon from Harrington, 3) Lang made
9 comments of disappointment at a November 22 meeting with unit members, 4) Lang
10 made comments at a November 22 meeting with unit members regarding the “right way
11 and a wrong way to get help within the school,” 5) Lang made a November 22 statement
12 which was posted on Facebook, 6) Lang made comments in a Lowell Sun newspaper
13 article, 7) Lang made comments in the December 8 email, 8) the School Committee
14 decided to preclude McDonnell from attending interviews, 9) School Committee decided
15 to prohibit Blanchett from communicating with unit members about the investigation, 10)
16 the School Committee engaged in coercive questioning in LaRivee’s investigative
17 interview, 11) Moses made threatening comments in his Facebook post, and 12) Tobin
18 criticized Salmon’s engagement in protected activity on October 13, 2017. Additionally, I
19 find when the School Committee violated Section 10(a)(3) of the Law, and derivatively
20 violated Section 10(a)(1) of the Law when it issued Salmon a written warning and placed
21 her on administrative leave in retaliation for her protected, concerted activity.

22 ORDER

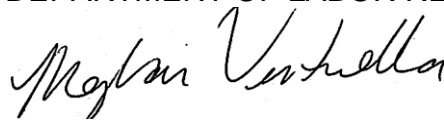
23 WHEREFORE, based upon the foregoing, it is hereby ordered that the School
24 Committee shall:

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1. Cease and desist from:
 - a) Disciplining unit members in retaliation for their protected, concerted activity;
 - b) In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.
2. Take the following action that will effectuate the purposes of the Law:
 - a) Rescind the written warning issued to Salmon;
 - b) Rescind the administrative leave letter placed in Salmon's personnel file;
 - c) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;
 - d) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, ESQ.

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 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 Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.