

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
* Case No. MUP-18-6686
TOWN OF NORTH READING *
*
and * Date Issue: December 10, 2020
*
NORTH READING FIREFIGHTERS *
UNION, IAFF LOCAL 1857 *
*

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

Darren Klein, Esq. - Representing the Town of North Reading
Thomas Fowler, Esq. - Representing the North Reading Firefighters
Union, Local 1857

HEARING OFFICER'S DECISION

1 SUMMARY

2 The issue in this case is whether the Town of North Reading (Town) interfered
3 with, restrained or coerced its employees in violation of Section 10(a)(1) of
4 Massachusetts General Laws, Chapter 150E (the Law) by: 1) asking employee and
5 North Reading Firefighters Union, Local 1857 (Union) President Matthew Carroll
6 (Carroll) to attend a meeting with then Provisional Fire Chief Donald Stats Jr. (Chief
7 Stats or Stats), Public Safety Director/Police Chief Michael Murphy (Murphy), and
8 Select Board member Michael Prisco (Prisco) to discuss comments that Carroll had
9 made during a Union meeting; 2) telling Carroll during the meeting that if Prisco's name

1 was mentioned negatively at future Union meetings, “the Town would get rid of the
2 ambulance service, reduce staffing levels in the [Fire] Department and they would not
3 get a new fire station,” or words to that effect; 3) telling Carroll during the meeting that:
4 “it was wrong for the Union to interfere with the implementation of new policies that were
5 within the power of the Chief to implement” or words to that effect; and/or, 4) telling
6 Carroll that he had been promoted to Captain because he had attended the meeting
7 with Prisco, Murphy and Stats, or words to that effect, thereby telling Carroll that he had
8 been rewarded for discussing his protected, concerted activity with those individuals. I
9 find that the Town violated the Law when: 1) Stats pressured Carroll to attend the
10 meeting with Stats, Murphy and Prisco to discuss Carroll’s statements at a Union
11 meeting; and 2) Murphy told Carroll, after a discussion of Stats’ policy initiatives, that
12 Stats ran the Fire Department and “needed to be supported by both the Town and the
13 Union as part of the team effort to support the Department as a whole.” However, I find
14 that Prisco did not make the statements attributed to him in Count II of the Complaint, or
15 words to that effect, and Stats did not make the statements referenced in Count IV, and
16 thus, the Town did not violate the Law with respect to those allegations.

17

STATEMENT OF THE CASE

18 The Union filed a charge of prohibited practice with the Department of Labor
19 Relations (DLR) on June 13, 2018, alleging that the Town had violated Sections
20 10(a)(3) and Section 10(a)(1) of the Law. A DLR investigator investigated the charge
21 and issued a Complaint of Prohibited Practice and Partial Dismissal (Complaint) on
22 October 25, 2018.¹ The Complaint contained four counts; each alleging that the Town

¹ The investigator dismissed the 10(a)(3) allegation.

1 independently violated Section 10(a)(1) of the Law. Count I alleged that the Town
2 violated the Law when Stats asked Carroll to meet with Prisco, Murphy and himself to
3 discuss comments that Carroll had allegedly made during a Union meeting. Counts II
4 and III alleged that the Town violated Law by telling Carroll during the meeting that
5 followed that “if Prisco’s name was mentioned negatively at future Union meetings, the
6 Town would get rid of the ambulance service, reduce staffing levels in the Fire
7 Department, and they would not get a new fire station,” or words to that effect (Count II);
8 and that it was wrong for the Union to interfere with the implementation of new policies
9 that were within the power of the Chief to implement (Count III). Count IV alleged that
10 Stats unlawfully told Carroll that he had been promoted to Captain because he had
11 attended the meeting with Prisco, Murphy and Stats, thereby telling Carroll that he had
12 been rewarded for discussing his protected, concerted activity with those individuals.
13 The Town filed an Answer to the Complaint on or November 2, 2018.

14 The parties participated in pre-hearing mediation but were unable to resolve the
15 dispute. I conducted a hearing on January 16 and January 17, 2020, at which both
16 parties had the opportunity to be heard, to examine witnesses and to introduce
17 evidence. Both parties filed post-hearing briefs on or about April 30, 2020, and the
18 Town filed a reply brief. Based on the record, which includes witness testimony, my
19 observation of the witnesses’ demeanor, stipulations of fact, and documentary exhibits,
20 and in consideration of the parties’ arguments, I make the following findings of fact and
21 render the following opinion.

22 STIPULATIONS OF FACT

23 1. The Respondent Town of North Reading (“Town”) and North Reading Firefighters,
24 IAFF Local 1857 (“Union”) are parties to a collective bargaining agreement.

- 1
2 2. In 2017, the Town and the Union were engaged in successor contract negotiations
3 concerning the contract that had expired on June 30, 2016. An agreement was signed
4 in or around December 2017.
5
- 6 3. During this period, then Firefighter Matt Carroll ("FF Carroll") served as President of
7 the Union and participated on the Union's negotiating team during the parties'
8 successor contract negotiations.
9
- 10 4. Former Fire Chief Bill Warnock retired in January 2018. On January 22, 2018, the
11 Town appointed Don Stats, Jr. ("Chief Stats") to the Provisional Fire Chief position. The
12 provisional fire chief was to have the same duties and perform the same functions as a
13 permanent chief, until such time as a permanent civil service list was established so that
14 a permanent appointment could be timely made after an appropriate civil service
15 appointment process was completed.
16
- 17 5. During the period relevant to the Union's Charge, Michael Prisco was an elected
18 member of the Town's Board of Selectmen (which was subsequently renamed the
19 "Select Board") and an agent of the Town.
20
- 21 6. Michael Murphy is the Police Chief and Public Safety Director for the Town, and an
22 agent of the Town.
23
- 24 7. On March 12, 2018, Chief Stats asked [firefighter (FF)] Carroll to attend a meeting
25 with Mr. Prisco and Chief Stats to discuss comments that had been made regarding Mr.
26 Prisco during a Union meeting that took place on March 7, 2018.
27
- 28 8. During this time period, FF Carroll was a candidate for promotion to Captain.
29
- 30 9. The meeting between FF Carroll, Chief Stats, Mr. Prisco, and Mr. Murphy took place
31 on March 15, 2018.
32
- 33 10. FF Carroll was promoted to Captain on or about April 2, 2018.
34
- 35 11. The North Reading Firefighters, IAFF, Local 1857's ("Union") and the Town of North
36 Reading ("Town") are currently parties to a Collective Bargaining Agreement ("CBA").
37 The Memorandum of Agreement implementing this agreement was signed on
38 November 28, 2017. This agreement came as the result of negotiations that took place
39 between approximately June of 2016 and November 28, 2017.
40
- 41 12. During the negotiations for the current CBA, the Town and the Union each had a
42 negotiating team.
43
- 44 13. The Town's negotiating team comprised Select Board members Michael Prisco and
45 Robert Mauceri, Retired Fire Chief Bill Warnock, HR Director Robert Collins, and Town
46 Administrator Michael Gilleberto. HR Director Collins joined the negotiating team in

1 early 2017 while Select Board Member Prisco joined the negotiating team in May of
2 2017 after there had been a change in the composition of the Select Board. Former
3 Select Board member Jeff Yull served on the negotiating team prior to Mr. Prisco.

4
5 14. The Union's negotiating team consisted of Matthew Carroll, Mike Tannian, and Tom
6 Harris.

7
8 15. The most significant subjects of contention during the CBA negotiations were wages
9 and related benefits, minimum levels of staffing of the apparatuses that are dispatched
10 for each call, and related overtime costs and issues.

11
12 16. Fire Chief Stats drafted and submitted a memorandum to the Union dated February
13 23, 2018 proposing four (4) changes (JX3). A second memorandum was later drafted
14 and issued by Chief Stats with the same date, since of the proposed changes was
15 withdrawn (JX4). The changes to "Time After Recall" and "Station Coverage" were
16 implemented on or around April 27, 2018. A change to Night Watch was implemented
17 on or around June 22, 2018.

18
19 17. Matthew Carroll signed his Notification of Employment (Promotion) on April 2, 2018
20 and was promoted to Captain on or around April 5, 2018. The promotional process that
21 he underwent consisted of administering a Civil Service written examination in order to
22 identify the top candidates for the promotion, and then interviewing the top candidates.
23 The Town Administrator makes the promotional appointment with feedback and a
24 recommendation from the Fire Chief. The 2018 promotional interviews were conducted
25 by Fire Chief Don Stats Jr. The interviews were also attended by Fire Chiefs from two
26 other towns and HR Director Robert Collins. The interviews were held on or around
27 March 7, 2018.

28
29 18. On or around April 2, 2018, a meeting occurred between Chief Don Stats Jr, HR
30 Director Robert Collins, and Fire Fighter Matt Carroll. Mr. Carroll was informed of and
31 congratulated on his promotion by both Chief Stats and Mr. Collins. Mr. Carroll accepted
32 the promotion. Before leaving, Chief Stats stated to Mr. Carroll that he was glad that he
33 attended the March 15th meeting and that he thought it helped clear the air.

34 FINDINGS OF FACT

35 **Carroll's Candidacy for the Fire Captain Position**

36 Carroll is a firefighter in the North Reading Fire Department, and in March of
37 2018, was the president of the Union. Carroll had applied for a promotion to the position
38 of fire captain, and, on or about March 7, 2018, sat for an interview with then Provisional

1 Fire Chief Stats,² HR Director Robert Collins (Collins), and two fire chiefs from other
2 towns. Town Administrator Michael Gilleberto (Gilleberto) is the Town's appointing
3 authority and makes promotional appointments with feedback and a recommendation
4 from Chief Stats.

5 **The March 7, 2018 Union Meeting**

6 On March 7, 2018, the Union held a regular monthly meeting. At the meeting,
7 the Union members discussed three policy changes that Chief Stats wanted to
8 implement.³ During the meeting, Carroll overheard fellow Union member and firefighter
9 Thomas Harris (Harris) tell the individual sitting next to Harris that he (Harris) was
10 against the changes and was not afraid to "fight the Chief" on these policy changes
11 because he wasn't a candidate for promotion. Carroll became upset when he heard
12 Harris' statement and told Harris, among other things, that Harris was the one hurting
13 the Union. Harris asked Carroll what he meant, and Carroll replied that he (Carroll) had
14 heard that Harris had shared the Union's negotiation position with Prisco in the middle
15 of contract negotiations.⁴ Harris responded by stating that Carroll's statements were not
16 true, and that he wanted to bring Prisco in to meet with Harris and Carroll to "get things
17 straightened out." Harris stated that he would call Prisco, and the meeting proceeded,
18 after a short recess, without further conversation between Harris and Carroll.

19 **Harris talks to Prisco**

² Stats was permanently appointed to the Fire Chief position in July of 2019.

³ Chief Stats briefly attended the beginning of the meeting to share his proposed policies.

⁴ Harris and Carroll had been on the Union's negotiations team for the successor contract negotiations that concluded in an agreement on or about November 28, 2017. Prisco was on the Town's negotiation team, and he and Harris were long term friends.

1 On March 9, 2018, Prisco attended a monthly Community Impact Meeting at the
2 Town's Police Department. Following the meeting, he had a conversation with Harris.⁵
3 In that conversation, Harris told Prisco that there was a Union meeting the previous
4 night at which Carroll had made false accusations about Prisco that involved Harris.⁶
5 Harris asked Prisco to meet with Carroll. Prisco replied that he did not want to meet,
6 and he asked Harris to follow the chain of command and contact Chief Stats.

7 At the time that Harris and Prisco were speaking, Stats, Murphy, Collins, and
8 Gilleberto were at a meeting at the Police Station. At the conclusion of his conversation
9 with Harris, Prisco contacted Gilleberto and told him what Harris had said. Prisco
10 contacted Gilleberto immediately because Prisco had previously heard and advised
11 Gilleberto that threats had been made against his family, and he had heard that
12 firefighters would not respond to his house if there was an emergency.

13 Gilleberto asked Prisco to come to the Police Department to meet with Stats,
14 Collins, Murphy, and himself, and Prisco did so right away. Prisco told them that he had
15 received information from Harris that Carroll had made false statements about Prisco in
16 a Union meeting. Prisco stated that he was concerned that this was a continuation of
17 what he and his family had previously heard regarding the Fire Department failing to
18 respond to his house to provide service in an emergency, and he was concerned for his

⁵ Harris testified that this conversation took place in person on March 8, 2018. I need not resolve this discrepancy.

⁶ Harris's testimony differs from Prisco's testimony on the issue of whether Harris told Prisco more specifically what Carroll had said regarding sharing information about negotiations. I need not resolve this discrepancy because it is not material to my decision.

1 family's safety. Prisco asked Gilleberto to address it⁷ and involve legal counsel. Prisco
2 asked for legal counsel to be involved because he did not want to "keep going through
3 this with my family."

4 Chef Stats responded by assuring Prisco that he would receive service from the
5 Fire Department if necessary and asking Prisco where he had heard such statements.
6 Prisco said that he had heard that Carroll had made false and disparaging statements
7 about Prisco around Town and on social media.⁸ Stats indicated that such statements
8 would be uncharacteristic of what he knew of Carroll's character and asked for a chance
9 to address it with Carroll.

10 **Stats Speaks to Carroll**

11 Later that day, Stats called Carroll, asked if he could meet with him, and went to
12 Carroll's home. Stats told Carroll that it had been alleged that he was making false and
13 defamatory statements about Prisco in public and on social media and had made an
14 untrue statement about Prisco at a Union meeting. They discussed the untrue statement
15 that Carroll had allegedly made at the meeting. Carroll stated that he had mentioned
16 Prisco's name in a Union meeting, but not in any type of "ill way," and had never made
17 any type of defamatory statements about Prisco. Stats asked Carroll if he had been
18 publicly disparaging Prisco, and Carroll said no. Stats responded by saying that he
19 didn't think it was something that Carroll would do. Stats was satisfied with Carroll's

⁷ The record does not make clear whether it was prior to or on March 9 that Prisco asked Gilleberto to involve legal counsel.

⁸ Prisco also generally accused other firefighters of making threats against him. When Stats questioned him, Prisco did not provide specific details or names.

1 answers and they alleviated his concerns.⁹ Stats called Carroll numerous times after
2 their March 9 meeting to ask if Carroll would meet with Prisco to “clear the air about
3 these issues.” Carroll agreed because he thought that his prospects for promotion could
4 be damaged by the allegations.¹⁰ Carroll did not ask Stats if he could bring a Union
5 representative with him to the meeting.

6 **Stats Schedules a Meeting**

7 Stats subsequently contacted Murphy and asked him to attend a meeting to
8 “clear the air.” Stats also reached out to Prisco and asked if he would be willing to meet
9 with “everybody to try to clear the air.” Prisco and Murphy were not aware at the time of
10 the meeting that Carroll was a candidate for a promotion.

11 **The March 15 Meeting**

12 The meeting to clear the air took place on March 15, 2019, at a restaurant in
13 Andover, Mass. Carroll, Stats, Prisco, and Murphy attended the meeting. Stats began
14 the meeting by addressing Prisco and Carroll and stating that he wanted to have the
15 meeting to “clear the air.” Carroll spoke next and said that he had brought Prisco’s
16 name up in a Union meeting.¹¹ Carroll told Prisco that he never disparaged him and only

⁹ Carroll testified that Stats stated that he found the timing of Harris’ claim “suspicious.” Stats did not recall making that statement. I need not resolve this issue because Harris’ conduct is not at issue in this case.

¹⁰ Stats and Carroll dispute whether Stats told Carroll that Murphy would attend the meeting. It is not necessary to resolve this dispute because it is not material to my decision. Notably, Stats did not testify that he told Carroll why Murphy would attend.

¹¹ Prisco denies knowing what Carroll specifically said about Prisco and Harris at the Union meeting. I do not credit Prisco’s denial. Since Carroll believed that his promotion could be on the line, it is likely that he would have explained the context in which he raised Prisco’s name to show that he didn’t say anything negative about Prisco. Also, Stats testified that Carroll made it clear during the March 15 meeting that he raised

1 brought up Prisco's name after he had got into a heated exchange with Harris regarding
2 sharing negotiations information with Prisco outside of the contract negotiations.¹²
3 Carroll apologized for mentioning Prisco's name and stated that he did not mention
4 Prisco in a defamatory way. There is no evidence that Prisco, Stats, or Murphy asked
5 Carroll any questions about statements he made during the Union meeting.

6 Prisco accepted Carroll's apology. Prisco had believed that the false statements
7 that Carroll had allegedly said about him were a continuation of what he thought were
8 threats against him and his family. Consequently, he explained that his wife and
9 daughters had heard that they would not receive service from the Fire Department in an
10 emergency, and they were worried and scared.¹³ When Prisco shared his concerns for
11 his family's distress, he became loud, emotional, animated, and in his words,
12 "ridiculous." Prisco stated that he had resources and would use "any means I had
13 possible to protect my family."

Prisco's name in the Union meeting when he accused Harris of giving Union information to Prisco.

¹² Carroll did not indicate to anyone at the meeting that he felt pressure to attend it or that he felt threatened or intimidated by being there.

¹³ Prisco, Murphy, and Stats testified that Prisco told Carroll at the meeting that he had received threats against his family, specifically, that the firefighters would not respond to his house in an emergency, and that he and his family were concerned for their safety. Carroll denied that Prisco made these statements, however, I do not credit his denial. As noted, all the Town's witnesses corroborated Prisco's statements. Additionally, Prisco's concern for his family's safety was the reason he contacted Gilleberto immediately after Harris told him about Carroll's statements. Consequently, it is not reasonable to believe that Prisco would not have raised his primary concern in the meeting with Carroll. Further, Fire Captain Joseph Marotta (Marotta) testified that he understood from Carroll's statements at the April 4 Union meeting, see infra, that the dispute at issue in the March 15 meeting was that Prisco had heard that firefighters would not go to his house to serve him. Such information likely came from Carroll, who heard Prisco say it at the March 15 meeting.

1 Prisco also said that he felt disrespected by the firefighters, and cited as an
2 example, a time when Marotta ignored Prisco's offer to help clear snow from a vehicle.¹⁴
3 Prisco described the ways that he had supported the Fire Department, how he
4 considered himself an advocate for the Department, and that he didn't understand why
5 he was being harassed or bullied by firefighters or why they would not provide service to
6 his house.¹⁵ At or around this point in the discussion, Stats believed that the meeting
7 had become "derailed" and that he needed to "rein Prisco back in." He told the group
8 that they needed to get back to "the point" which in his mind, was whether Carroll had
9 made defamatory statements regarding Prisco.

10 At some point during the meeting, the men discussed the Chief's policy initiatives
11 and proposed changes to Fire Department operations.¹⁶ Toward the end of the meeting,
12 Murphy sought to reassure Carroll that Chief Stats, rather than Murphy or the Board of
13 Selectmen, ran the Fire Department. Murphy raised this issue because he had heard
14 that the firefighters were apprehensive about his new role as Public Safety Director.
15 Murphy stated to Carroll that Chief Stats ran the Fire Department and that Stats

¹⁴ Prisco said that he was upset that his name was mentioned at the Union meeting, but no one testified that he prefaced any additional comments by stating that "if [his] name was mentioned at future Union meetings..." as is alleged in the Complaint.

¹⁵ Prisco was involved in the Town's decision to transition from providing basic ambulance service to advanced life support (ALS) for the community. He was also instrumental in securing a minimum staffing provision in the CBA and money for renovations for the fire station.

¹⁶ Stats acknowledged in his testimony that he considered these to be Union issues.

1 “needed to be supported by both the Town and the Union as part of the team effort to
2 support the Department as a whole.”¹⁷

3 The meeting lasted approximately between 60 and 90 minutes. When it was
4 over, the participants thanked each other, shook hands, and left. No one mentioned
5 Carroll’s candidacy for the captain position during the meeting.

6 Carroll testified that Prisco stated at the meeting that he “had a lot of money and
7 influence and he would use that money and influence to reduce staffing, take away the
8 ambulance service, and “you can forget about a new fire station.” For the following
9 reasons, I do not credit Carroll’s testimony on these points and find that neither Prisco
10 nor any other Town official threatened to reduce staffing levels within the Fire
11 Department or eliminate the ambulance service; or stated that the firefighters would not
12 get a new fire station, as is alleged in Count II the Complaint.

13 First, Prisco, Murphy, and Stats denied that Prisco made these statements, and I
14 found their testimony on this point to be credible.¹⁸ I credit Prisco’s testimony on this
15 point because of his demeanor while testifying, which showed an effort to accurately
16 recall his statements at the meeting, and because he admitted making statements that
17 portrayed him in a negative light. For example, he testified that he was loud and
18 “ridiculous” during the meeting and stated that he had resources and would use any

¹⁷ Stats testified that Murphy made this statement. Stats had included this statement in an affidavit that he had previously signed, and he read the statement and confirmed its accuracy during the hearing. No one, not even Carroll, testified that Murphy said: “it was wrong for the Union to interfere with the implementation of new policies that were within the power of the Chief to implement,” as is specifically alleged in Count III of the Complaint.

¹⁸ A hearing officer may believe parts of a witness's testimony and disbelieve other parts. Town of Weymouth, 19 MLC 1126, 1132, MUP-6839 (August 4, 1992).

1 means possible to protect his family. I also note that he and Murphy were sequestered
2 during the hearing.

3 Second, the disputed statements were included in the Charge and Complaint,
4 and the alleged comment about the ambulance service was in the minutes of the
5 Union's April 4 meeting. These alleged statements necessarily stemmed from Carroll.
6 Yet Carroll did not testify that Prisco made the statements attributed to him "*if his name*
7 *was mentioned at future union meetings*" as the Complaint alleges. Nor did he testify
8 that Prisco made the disputed statements "*if the Union did not take a more conciliatory*
9 *approach*", as is alleged in the Charge. Carroll also did not testify that Prisco threatened
10 to "*get other members against the Union*" as is stated in the minutes of the Union's April
11 4 meeting. These variations in the context in which Prisco allegedly made the disputed
12 statements persuade me that Carroll's memory of Prisco's statements is not completely
13 accurate.

14 Third, the Union alleged, prior to the hearing, that Stats told Carroll that his
15 willingness to attend the meeting had helped the promotion come through. This
16 allegation, which had to come from Carroll, was included in a letter that Union Attorney
17 Harold Lichten (Lichten) sent to the Town on or about May 22, 2018, the Charge, and it
18 is pleaded in Count IV in the Complaint. Yet Carroll testified at the hearing that Stats did
19 not make that statement. The retraction of this allegation casts further doubt on the
20 reliability of Carroll's memory and persuades me that his allegations regarding Prisco's
21 disputed statements are not credible.

22 Finally, Carroll testified that he called Union Vice President David Lee (Lee) and
23 Secretary Treasurer Jon Burt (Burt) immediately after the March 15 meeting to tell them

1 what happened, yet the Union did not call those men to testify to what Carroll told them
2 regarding Prisco's statements.

3 **Carroll Receives the Promotion**

4 At some undisclosed point between March 7 and April 2, 2018, the promotional
5 interview panel members had a discussion, gave their opinions, and agreed that Carroll
6 should receive the promotion. Stats recommended to Collins that Carroll be promoted,
7 and Collins informed Gilleberto.¹⁹

8 On April 2, 2018, Stats and Collins met with the firefighters who had applied for
9 the captain position. When they met with Carroll, Stats told Carroll that he had received
10 the promotion, and he and Collins congratulated Carroll. Stats believed that Carroll
11 showed character and integrity by attending the March 15 meeting, and consequently,
12 he thanked Carroll for agreeing to attend it. The parties stipulated that Stats stated to
13 Carroll that he [Stats] was glad that [Carroll] attended the meeting, and that he [Stats]
14 thought it helped clear the air. Stats did not tell Carroll that he received the promotion
15 *because* he attended the meeting.

16 **The Union's April 4, 2018 Meeting**

17 After Carroll was notified of the promotion, on April 4, 2018, the Union held a
18 monthly meeting with its members. Towards the end of the meeting, Carroll described
19 the meeting in Andover on March 15. Carroll explained that the meeting took place
20 because Prisco had heard that the firefighters would not go to his house to give him
21 service if something happened at his house, and it had been alleged that Carroll had

¹⁹ Stats, Collins and Gilleberto did not discuss Carroll's attendance at the March 15 meeting when they discussed Carroll's candidacy.

1 said inappropriate things about Prisco. Carroll also relayed statements that Prisco had
2 made about Prisco's interaction with Marotta during a snowstorm.²⁰ The minutes of the
3 Union meeting reference the discussion about the March 15 meeting as follows:

4 RE: Matt being approached by the Chief to have a meeting with Selectman
5 Prisco to discuss a personal issue while he was waiting for word about his
6 promotion. Selectman Prisco made threats to take away the ambulance and get
7 other members again the union. ("He has more money and influence than we
8 do".)
9

10 Contact the lawyer with concerns about phone call and meetings with union
11 member and also a union member leaking info from the union meeting to the
12 Board of Selectman chairman Mr. Prisco.

13 Deputy Fire Chief Barry Galvin (Galvin) did not attend the Union meeting, but
14 Galvin spoke to Stats about it on April 5, 2018.²¹ Stats told Galvin that Prisco had
15 gotten "a little out of hand" and that "we had to reel him back in." Marotta also spoke
16 with Stats about the March 15 meeting. Stats told Marrotta that he had been "looking
17 out for Matt's interest," "Prisco got "inappropriate," "a little out of hand;" and that Stats
18 had to "reel" him back in.

19 On May 22, 2018, Attorney Lichten forwarded a letter to Gilleberto that stated as
20 follows:

²⁰ Marotta attended the Union meeting and heard Carroll's description of the March 15 meeting. Marotta testified that Carroll told the meeting attendees that Prisco had threatened to "take our ambulance away." Although Carroll may have made that statement at the Union meeting, for the reasons previously discussed, I do not find that Prisco threatened to take away the ambulance. Significantly, Marrotta did not testify that Carroll stated that Prisco had threatened to reduce staffing in the Fire Department or implied that they would not get a new Fire Station.

²¹ Galvin spoke to Carroll about the March 15 meeting before the April 4 Union meeting, which Galvin did not attend. Galvin testified that Carroll told him that Prisco had threatened to reduce manning, eliminate the ambulance service, and not support funding a new fire station. Although I credit Galvin's testimony that Carroll made these

1 As you know, I represent the North Reading Firefighter's Union My purpose in
2 writing is to bring to your attention.... illegal conduct on behalf of Board of
3 Selectmen member Prisco and Public safety Director Michael Murphy. ...The
4 simple facts are as follows:
5

6 As of March of 2018, Matt Carroll was both the union president, having just
7 concluded contentious union negotiations for a new contract, and he was in the
8 process of discussing with the union its response to a series of new proposals
9 that the new Chief Stats was seeking to implement in the department.
10 Importantly, at the time Mr. Carroll was also a prime candidate for a promotion to
11 the position of Captain in the department.
12

13 At a union meeting in March, there [was] some contentious discussion regarding
14 new policies the Chief was seeking to implement and during those discussions
15 (in this private union meeting) Selectman Prisco's name came up in the context
16 of whether certain union information had been leaked to him through his close
17 relationship with one or more firefighters.
18

19 Shortly thereafter, Chief [S]tats approached union president Carroll and informed
20 him that allegations had been made that he had said some disrespectful things in
21 a union meeting regarding Selectman Prisco (in fact Mr. Carroll had not done so
22 but had brought up Mr. Prisco's name). A few days later, while his candidacy for
23 Fire Captain was still pending, Chief Stats informed Mr. Carroll that he was being
24 requested to attend a meeting outside of the fire department with Selectman
25 Prisco to discuss these issues. Reluctantly, and knowing that his promotion may
26 be at issue, Mr. Carroll agreed to the meeting which took place on March 15,
27 2018 in Andover, Massachusetts. Not only were Chief Stats and Mr. Prisco
28 present, but Public Safety Director Michael Murphy attended, although Mr.
29 Carroll had not been previously informed of that fact.
30

31 During the meeting both Selectman Prisco and Public Safety Director Murphy
32 made comments which are in violation of M.G.L. c.150E and potentially other
33 state and federal provisions.
34

35 Mr. Prisco stated that he had a "type A" personality and if someone were to come
36 after him[,] he would strike back. He then stated that he had "lots of money and
37 influence" and that if the union tried to come after him that he would strike back.
38 He specifically stated that he would use his money and influence to "get rid of the
39 ambulance service," "reduce staffing" and that they "could forget about a new fire
40 station." Mr. Carroll reiterated that neither he nor any member of the union had
41 spoken bad about him (sic) to his knowledge and that he did not where he was
42 receiving this information from.
43

statements to him outside of the Union meeting, for reasons previously stated, this does not change my view of what Prisco said or did not say in the March 15 meeting.

1 Toward the end of the meeting Public Safety Director Murphy stated that “Chief
2 Stats runs the fire department” and that Mr. Carroll “should be on board” with the
3 changes he seeks to make which he believed were for the good of the
4 department.

5
6 On April 2, 2018, Mr. Carroll was informed by Chief Stats that he was being
7 promoted to the position of Captain and Chief Stats stated that the meeting with
8 Prisco had helped to clear the air so that his promotion could go through.

9
10 As you are well aware, as union president Matt Carroll had the duty, obligation,
11 and responsibility to conduct union meetings, to take positions on matters
12 affecting the firefighter’s union and the department, and he has the right under
13 state and federal law to take those positions freely, and without threats or
14 retaliation. In addition, we are aware of other instances.....

15
16 Town Attorney Darren Klein responded to Attorney Lichten’s letter on June 1, 2018,
17 denying many of the statements contained in Lichten’s letter.

18 OPINION

19 A public employer violates Section 10(a)(1) of the Law when it engages in
20 conduct that may reasonably be said to interfere with, restrain or coerce employees in
21 the exercise of their rights under Section 2 of the Law. Quincy School Committee, 27
22 MLC 83, 91, MUP-1986 (December 29, 2000); Town of Athol, 25 MLC 208, 212, MUP-
23 1448 (June 6, 1999); Town of Winchester, 19 MLC 1591, 1595, MUP-7514 (December
24 22, 1992); Groton-Dunstable Regional School Committee, 15 MLC 1551, 1555, MUP-
25 6748 (March 20, 1989). The focus of a Section 10(a)(1) analysis is the effect of the
26 employer’s conduct on reasonable employees’ exercise of their Section 2 rights. Town
27 of Winchester, 19 MLC at 1596. The Commonwealth Employment Relations Board
28 (CERB) does not analyze either the motivation behind the conduct or whether the
29 coercion succeeded or failed. Groton-Dunstable Regional School Committee, 15 MLC
30 at 1555-1556. Rather, the CERB’s inquiry focuses on the objective impact that the
31 employer’s conduct would have on a reasonable employee under the circumstances.

1 Quincy School Committee, 27 MLC at 91. The subjective impact of the employer's
2 conduct is not determinative. City of Fitchburg, 22 MLC 1286, 1292, MUP-9843
3 (November 28, 1995).

4 An employer who coercively interrogates employees about their union activities
5 violates Section 10(a)(1) of the Law. Plymouth County House of Correction, 4 MLC
6 1555,1572, MUP-2234, 2429, (December 6, 1977); Lawrence School Committee, 33
7 MLC 90, 99, MUP-02-3631 (December 13, 2006). In considering whether an
8 interrogation was unlawful, the CERB considers a variety of factors, including: 1) the
9 background, including whether there was a history of employer hostility and
10 discrimination; 2) the nature of the information sought, including whether the
11 interrogator appeared to be seeking information on which to base taking action against
12 individual employees; 3) the identity of the questioners, including their position in the
13 employment hierarchy; 4) the place and method of the interrogation, including whether
14 the employee was called into the supervisor's office and whether there was an
15 atmosphere of unnatural formality; and 5) the truthfulness of the reply. Id. (citing Bourne
16 v. NLRB, 332 F. 2d 47, 50 (2nd Cir.1964)). No single factor is outcome determinative;
17 rather, the CERB looks at the totality of the circumstances. Id.

18 The issue in this case is whether the Town interfered with, restrained, or coerced
19 Carroll in the exercise of his protected rights when Stats asked Carroll to meet with
20 Prisco, Murphy and himself to discuss comments that Carroll had allegedly made
21 regarding Prisco during a Union meeting (Count I), and when Murphy told Carroll during
22 that meeting that it was wrong for the Union to interfere with the implementation of new

1 policies that were within the power of the Chief to implement, or words to that effect
2 (Count III).²²

3 The Union argues generally that the Town had no right to inquire into the
4 statements that Carroll made at the Union meeting, and that the Town unlawfully
5 interrogated him about those statements with the threat of losing a promotion hanging
6 over his head. Carroll made no statements that exceeded the Law's protection, and the
7 fact that Stats never explicitly connected Carroll's attendance at the meeting to the
8 promotion is immaterial. Prisco made various specific threats at the meeting, and
9 Murphy unlawfully pressured Carroll – as Union president - to accept the Chief's new
10 proposed policy changes.

11 Conversely, the Town argues that it could permissibly inquire about whether
12 Carroll had made false statements about a public official, and it was within its rights to
13 seek the truth regarding Prisco's allegations. It contends that it had a legitimate interest
14 in knowing whether Carroll was making untruthful statements about Prisco and whether
15 those statements could have been unlawful, disruptive, or indefensibly disloyal. Thus,
16 the Town did not violate the Law by undertaking a limited inquiry. Stats simply wanted to
17 "clear the air" by enabling Prisco to hear from Carroll first-hand, and the Town's choice
18 of venue shows that it merely sought a civil exchange to set Prisco's mind at ease. The
19 Town's conduct could not have been coercive since Stats did not mandate Carroll's
20 attendance, nor did he ask Carroll for context or details about his statements at the

²² I need not address the allegations in Counts II and IV of the Complaint. I have found that Prisco did not make the statements described in Count II of the Complaint, and that Stats did not make the statement at issue in Count IV.

1 Union meeting. The meeting succeeded in clearing the air, and there was no
2 subsequent discipline or negative repercussions.²³

3 **Count I: Stats Invites Carroll to the March 15 Meeting**

4 I find that the Town violated the Law when Stats pressured Carroll to meet with
5 him, Prisco and Murphy, for the express purpose of explaining statements that Carroll
6 had said about Prisco during the March 7 Union meeting. Any reasonable employee
7 who was seeking a promotion would have felt compelled to attend Stats' meeting and
8 answer any and all questions posed. Stats pressed Carroll to attend the meeting by
9 visiting Carroll at his house, discussing the meeting with him multiple times in the
10 following week, and scheduling it a few days later. The steps that Stats took to
11 encourage Carroll's attendance belie any argument that it was an optional invitation,
12 and the contention that Carroll was not "compelled" to attend ignores the reality of
13 workplace dynamics. Describing the meeting's purpose as an opportunity to "clear the
14 air" conveyed to any reasonably savvy employee that there was a problem in the air
15 with the statements that Carroll had made at the Union meeting, and that Carroll
16 needed to fix the problem by divulging exactly what he said and meant. The absence of
17 a clearer explanation for the purpose of the meeting could easily lead a reasonable
18 employee to connect the meeting with the upcoming promotional decision. Moreover,
19 the fact that Stats thanked Carroll for attending the air cleansing meeting, just minutes
20 after congratulating him on the promotion, strongly implies that Carroll's attendance

²³ The Town also argues that the weight of the evidence does not support the Union's version of events, and thus the Union cannot meet its burden of proof. I have addressed this issue in my findings of fact, and to the extent that I have found that Prisco did not make the statements attributed to him in Count II of the Complaint, I agree with the Town on this point.

1 somehow impacted his chances of receiving the promotion, notwithstanding the fact that
2 Stats did not tell Carrol that he received the promotion because he attended the
3 meeting.

4 **Count III: Statements made at the March 15 Meeting**

5 Although the Complaint does not allege, and the facts do not show, that Stats,
6 Murphy and Prisco questioned Carroll about the statements he made at the March 7
7 Union meeting, I nevertheless assess the Town's conduct at the March 15 meeting in
8 light of the CERB's standards for a coercive interrogation. I do so because Carroll did
9 not need to wait to be questioned about his statements at the Union meeting; the
10 express purpose of the meeting was to ascertain what he had said about Prisco and
11 thereby clear the air.²⁴ Once Stats opened the meeting, Carroll was expected to
12 describe his statements at the Union meeting and apologize for making them. The fact
13 that the Town managers stopped short of quizzing Carroll further on his statements at
14 the March 7 meeting does not compel a contrary finding.

15 Although the meeting took place in a restaurant rather than a Town office,
16 Murphy's attendance gave it an air of formality, since the Town never explained at the
17 meeting (or the hearing) why Murphy was there. And while Stats convened the meeting
18 to address Carroll's comment regarding Prisco at a Union meeting and Prisco's
19 concerns for his family's safety in light of negative statements that may have been
20 publicly made about him, the meeting devolved into an extended discussion of Stats'
21 policy initiatives, the Union's obligation to support Stats, and a recitation of Prisco's

²⁴ The Town does not dispute that Carroll's statement regarding Prisco at the Union meeting constitutes protected, concerted activity. Rather, the Town argues that if Carroll

1 frustrations with the firefighters. Although the attendees described the meeting as
2 “professional” and indicated that there was no “yelling,” it is undisputed that Prisco
3 became emotional, loud, and in his own words, “ridiculous.” Prisco let Carroll know that
4 he had resources and would use them, and any means possible, to protect his family.
5 The meeting derailed to a point where Stats admitted to bargaining unit members
6 Marotta and Galvin that he had to rein Prisco in to get it back on track. And although
7 Murphy may have simply wished to quell firefighters’ fears about his new role as public
8 safety director by telling Carroll that the Town and Union were obligated to support the
9 Chief, in a meeting called to address Carroll’s protected activity, with no explanation for
10 Murphy’s participation, and where Carroll could reasonably perceive that his promotion
11 was at stake, Murphy’s statement added to the coercive environment that the Town
12 managers created.

13 None of the Town’s arguments persuade me otherwise. First, there is no merit to
14 the Town’s contention that it conducted a lawful, limited inquiry into whether Carroll had
15 made untrue statements about Prisco that could have been disruptive or indefensibly
16 disloyal to the Town. Assuming, without deciding, that such an inquiry was permissible,
17 Stats learned on March 9, after questioning Carroll at his house, that Carroll had not
18 made false or defamatory statements about Prisco in public, on social media, or at a
19 Union meeting. Stats testified that Carroll’s answers satisfied Stats’ concerns. The
20 record contains no hint that that Stats disbelieved Carroll²⁵ or needed more information.

had made untrue statements about Prisco, they *could have been* unlawful, disruptive or
indefensibly disloyal to the Town.

²⁵ The Town’s brief states that Stats “believed” Carroll. While Stats did not use that
word in his testimony, the Town clearly does not contend that Stats needed to probe the
matter to further satisfy himself that what Prisco heard or feared was untrue.

1 Consequently, there was no lawful justification for the Town to proceed further and
2 convene a meeting for a deeper dive into Carroll's statements or to enable Prisco to
3 hear from Carroll firsthand.

4 I am similarly unpersuaded by Stats' desire to "clear the air." It is well-settled that
5 the motivation behind coercive and chilling conduct is inconsequential. Groton-
6 Dunstable Regional School Committee, supra. Consequently, whether Stats' convened
7 the meeting because he was looking out for Carroll's interests, as he told Marotta, or to
8 alleviate Prisco's fears about not receiving service in an emergency, or simply to
9 smooth the path for Carroll's promotion by quelling rumors that Carroll had made
10 damaging statements about a public official at an inopportune time, is immaterial. The
11 focus of the Law is the effect of the conduct on a reasonable employee, not the
12 employer's potentially benevolent motives.

13 Finally, the fact that none of the meeting participants mentioned Carroll's
14 potential promotion does not erase the otherwise chilling effects of the meeting.
15 Similarly, the fact that Carroll did not request a union representative or announce that
16 he felt coerced to attend or remain at the meeting, does not require a different result.
17 The Complaint does not allege that the meeting was an investigatory interview where
18 Weingarten rights and obligations attached. Nor does the Law compel Carroll to admit
19 feeling coerced to receive the Law's protection. The tone, content, and context of the
20 meeting interfered with, restrained and coerced Carroll in the exercise of his Section 2
21 rights because it forced him to disclose protected statements that he made at a Union
22 meeting and pressured him, the Union's president, and the Union to support the Chief at
23 a meeting that was implicitly connected to the promotion Carroll was seeking. The fact

1 that Carroll suffered no negative consequences shows only that he did whatever Stats
2 hoped he would do at the March 15 meeting. Thus, the totality of the circumstances
3 demonstrates that the Town violated Section 10(a)(1) of the Law.

4 CONCLUSION

5 Based on the record and for the reasons explained above, I conclude that the
6 Town violated the Law when Stats pressured Carroll to attend a meeting with himself,
7 Prisco and Murphy to explain statements that Carroll had made regarding Prisco at a
8 Union meeting (Count I), and when Murphy told Carroll during the meeting that Chief
9 Stats needed to be supported by both the Town and the Union as part of the team effort
10 to support the Department (Count III). I find that the Town did not violate the Law as
11 alleged in the Counts II and IV of the Complaint.

12 ORDER

13 WHEREFORE, based on the foregoing, I hereby order the Town of North
14 Reading to:

- 15 1. Cease and desist from interfering with, restraining, or coercing employees
16 in the exercise of their rights guaranteed under the Law by pressuring
17 Union officials to attend meetings with Town representatives and answer
18 questions about statements made at Union meetings.
19
- 20 2. Take the following affirmative action that is necessary to effectuate the
21 purposes of the Law:
22
 - 23 a) Immediately post signed copies of the attached Notice to Employees in
24 conspicuous places where notices to bargaining unit employees are
25 customarily posted, including electronic postings, if the Town
26 customarily communicates to members via intranet or email. The
27 Notice to Employees shall be signed by a responsible Town
28 representative and shall be maintained for at least thirty consecutive
29 days thereafter. The Town shall take reasonable steps to ensure that
30 the Notice is not altered, defaced, or covered by any other material.
31

1
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b) Notify the DLR within 10 days of the steps taken to comply with this order.

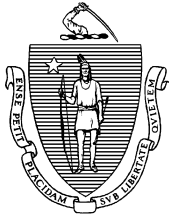
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



SUSAN L. ATWATER, ESQ.
HEARING OFFICER

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 CERB 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 the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

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

A hearing officer of the Massachusetts Department of Labor Relations has held that the Town of North Reading violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by: 1) pressuring North Reading Firefighters Local 1857 Union President Matthew Carroll (Carroll) to attend a meeting to address statements that Carroll had previously made at a Union meeting; and, 2) a statement that a Town representative made during the meeting. The Town posts this Notice to Employees in compliance with the hearing officer's order.

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

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

WE WILL NOT interfere with, restrain or coerce Matthew Carroll or any other employee in the exercise of their Section 2 rights.

Town of North Reading

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).