

In the Matter of:

CITY OF ATTLEBORO

and

ATTLEBORO FIREFIGHTERS, LOCAL 848,
I.A.F.F.

Date issued: November 4, 2025

Lan T. Kantany, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

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Patrick Bryant, Esq. - Representing the Attleboro Firefighters, Local 848, I.A.F.F.

1 SUMMARY

2 The issue before the Commonwealth Employment Relations Board (Board or
3 CERB) is whether the City of Attleboro (Respondent or City) discriminated against the
4 President of Attleboro Firefighters, Local 848, I.A.F.F. (Union), Paul Jacques (Jacques),
5 in violation of Section 10(a)(3) and, derivatively, Section 10(a)(1) of M.G.L. c. 150E (the
6 Law) when the City issued him a written reprimand. Further, where the Hearing Officer
7 held that the City violated Section 10(a)(1) of the Law by making disparaging and coercive
8 comments, whether the scope of the remedy ordered was sufficient.

1 For the reasons explained below, we reverse the Hearing Officer on the first issue
2 and find that the City discriminated against Jacques in violation of Sections 10(a)(3) and,
3 derivatively, 10(a)(1) of the Law when it issued a written reprimand to him. For the second
4 issue, we affirm the Hearing Officer's decision and find that the scope of the remedy was
5 appropriate.

6 STATEMENT OF THE CASE

7 The Union filed a charge of prohibited practice with the Department of Labor
8 Relations (DLR) on January 4, 2021, alleging that the City had violated Sections 10(a)(1),
9 (10)(a)(3) and 10(a)(5) of the Law. After an investigation, a DLR Investigator issued a
10 Complaint of Prohibited Practice and Partial Dismissal (Complaint) on March 19, 2021.¹
11 The Complaint contained three counts; Counts I and II alleged that the City independently
12 violated Section 10(a)(1) of the Law when the City's mayor made two statements to a
13 bargaining unit member's wife – that he was sorry she believed the Union's "lies" and that
14 he could have terminated the bargaining unit member based on an incident years ago;
15 Count III alleged that the City violated Sections 10(a)(3) and, derivatively, 10(a)(1) by
16 retaliating against the Union President by issuing him a written reprimand for engaging in
17 concerted protected activities. The City filed an Answer to the Complaint on November 1,
18 2021.

19 On December 1, 2021, a DLR Hearing Officer held a hearing on the Complaint, at
20 which both parties had the opportunity to be heard, to examine witnesses and to introduce
21 evidence. On April 4, 2022, both parties filed timely post-hearing briefs. On October 24,

¹ The Union withdrew the 10(a)(5) allegation, and the Investigator dismissed the independent 10(a)(1) allegation regarding Jacques' written reprimand.

1 2022, the Hearing Officer issued a decision and found that the City violated Counts I and
2 II of the Complaint, as alleged.² To remedy these violations of the Law, in addition to
3 cease and desist orders, the Hearing Officer ordered the City to take affirmative action by
4 posting a Notice to Employees where members of the Union's bargaining unit usually
5 congregate, or where notices are usually posted. The Hearing Officer declined the
6 Union's request to require the City's mayor to send a copy of the notice to everyone he
7 messaged about the Union "spreading lies," including the City Council, on the basis that
8 the record does not contain any information regarding the recipients of his message and
9 because the underlying charge and complaint did not allege that the Mayor's comments
10 to the City Council or others violated the Law. With respect to Count III, the Hearing Officer
11 found the City did not violate the Law as alleged, holding that the Union was unable to
12 demonstrate either direct or indirect evidence that the City held an unlawful motive when
13 it issued the written reprimand to Jacques.

14 On November 3, 2022, the Union filed a request for review of the Hearing Officer's
15 decision, asking the CERB to reverse the Hearing Officer's decision with respect to Count
16 III of the Complaint, and to amend the scope of the remedy with respect to Counts I and
17 II. On the same day, the City filed a request for review of the Hearing Officer's decision
18 with respect to Counts I and II of the Complaint but subsequently withdrew the appeal on
19 January 18, 2023. The City did not file a response to the Union's request for review.

² The Hearing Officer's decision can be found at 49 MLC 132.

1 BACKGROUND³

2 The Parties

3
4 There are approximately 100 firefighters in all ranks in the Attleboro Fire
5 Department. The bargaining unit represented by the Union is comprised of chief officers,
6 captains, lieutenants, and firefighters. The City and the Union were parties to a collective
7 bargaining agreement that was in effect from July 1, 2017 through July 30, 2020 (CBA).
8 Jacques is a firefighter, a member of the bargaining unit, and the Union President. As of
9 December 2021, Jacques had been the Union President for approximately three years.
10 He had served as Union President previously, as well as in other roles on the Union's
11 executive board.

12 Paul Heroux (Mayor Heroux) was first elected as the City's mayor in November
13 2017 and was reelected in 2019 and 2021. Mayor Heroux is the appointing authority for
14 the City's Fire Department. In this capacity, he has final approval authority on hiring and
15 firing Fire Department personnel and works closely with Fire Chief Scott Lachance (Chief
16 or Lachance). Mayor Heroux had delegated to Lachance the authority to discipline
17 anyone, up to a week suspension, without Mayor Heroux's approval. Generally, Lachance
18 abides by the principles of progressive discipline in managing fire department personnel,
19 issuing counseling prior to a reprimand.

³ The parties stipulated to certain facts and the Hearing Officer made additional findings of fact based on the testimony and documents received during the hearing held in this matter. Our findings stated herein are based on the Hearing Officer's uncontested findings of facts, stipulated facts, the transcript, and the documents and exhibits in the record.

1 COVID-19 and Dispute Over IOD Status

2
3 In early March 2020, Mayor Heroux began efforts to slow the spread of COVID-19
4 within the City's government. The City required any firefighter who was diagnosed with
5 COVID-19, deemed a close contact with a COVID-19-positive person, or was awaiting
6 the results of a COVID-19 test, to quarantine. The City placed firefighters on
7 administrative leave so that the firefighters would not need to use their accumulated sick
8 time. The Fire Department required protective equipment such as N95 masks to be worn
9 for COVID-19 related calls. In Spring of 2020, Jacques was quoted in the newspaper
10 about the firefighters' need for personal protective equipment (PPE) due to the COVID-
11 19 pandemic.⁴

12 Article 10 of the CBA covers personal injuries sustained on duty and provides in
13 pertinent part:

14 When a Fire Fighter is incapacitated for duty because of injury or illness
15 sustained in the performance of duty (including paid detail duty) without fault
16 of his/her own, he/she shall be granted leave without loss of pay in
17 accordance with M.G.L. Chapter 41 Section 111F and will be indemnified
18 for reasonable and customary expenses in accordance with M.G.L. Chapter
19 41 Section 100, subject to the provisions outlined below and pursuant to the
20 Injury on Duty Policy.

21
22 Section 1. Determination of IOD Status. The determination of eligibility of
23 IOD status in accordance with M.G.L. Chapter 41 Section 111 F shall be
24 made by the Mayor or his designee. Such determination shall be made
25 based on the examination of the employee by a City designated physician.
26 The examination shall be limited to the subject area of the disability claimed.
27 In addition, any incapacity for duty caused by contact with communicable
28 diseases including meningitis, childhood communicable diseases, herpes
29 virus, hepatitis a, hepatitis b, hepatitis non-a/b, or hepatitis c, human
30 immunodeficiency virus, tuberculosis, shall be recognized as subject to
31 presumptive injury leave. Also included are the presumptions contained in
32 MGL Ch. 32, Sections 94, 94A, and 94B. However, the City may, subject by

⁴ The parties stipulated that this was concerted, protected activity.

1 credible evidence on other non-job-related exposures, appeal this
2 presumption pursuant to the process in Section 3 below.

3 A dispute arose between the Mayor and the Union regarding whether COVID-19
4 should be considered a presumptive communicable disease pursuant to the language in
5 Article 10 of the CBA, even though it was not included in the list of communicable
6 diseases that entitled employees to presumptive injury leave. When an employee has a
7 disease considered presumptive, the employee does not need to prove that the disease
8 was acquired while working for it to be treated as an injury-on-duty (IOD). Instead, it is
9 presumed that the employee caught the disease at work. To rebut the presumption and
10 deny IOD benefits, the City must prove that the person could not have caught the disease
11 at work. The Union and Lachance believed that COVID-19 should be considered
12 presumptive. Mayor Heroux did not agree that COVID-19 was a presumptive disease.

13 When a firefighter was quarantined for 10 days while awaiting the results of a
14 COVID-19 test in mid-March of 2020, the City did not, at first, place him on IOD leave. In
15 addition, a number of City firefighters tested positive for COVID-19, including a few who
16 were hospitalized. Lachance informed Jacques that Mayor Heroux had denied IOD status
17 for one hospitalized firefighter. In response, the Union orchestrated a media campaign to
18 gain support for its position that all COVID-19 illnesses should be presumed to be an IOD.
19 The Union sent out press releases and communicated on social media, including the
20 Union's Facebook page, to criticize Mayor Heroux's decision not to consider the
21 hospitalized firefighter as IOD. Specifically, in mid-November of 2020, the Union on its
22 Facebook page, which included remarks from Jacques, criticized Mayor Heroux's refusal
23 to place certain firefighters on IOD when diagnosed with COVID-19 or when quarantining

1 while awaiting COVID-19 test results.⁵ Another Union official, Lieutenant Mark Renker
2 (Renker) also liked, shared, or said something positive about someone else's negative
3 comment on social media regarding the Mayor's policy. In a newspaper article published
4 on November 20, 2020, Jacques criticized Mayor Heroux's decision not to place certain
5 firefighters on IOD status. On November 24, 2020, Jacques demonstrated at City Hall
6 Annex, criticizing the City's position on COVID-19 and IOD status. He was pictured in the
7 newspaper on November 24, 2020, holding a sign at the demonstration that was critical
8 of the Mayor.⁶

9 On November 21, 2020, Mayor Heroux posted a comment on his own public
10 Facebook account regarding the City's policy on IOD status for firefighters. The spouse
11 of a Lieutenant with the Fire Department (hereinafter referred to as Lieutenant and
12 Spouse), responded to the Mayor's Facebook post on his public Facebook page. Mayor
13 Heroux responded, via a private message to people who left negative responses,
14 including the Spouse, although at this time, he was unaware that she was a City
15 employee's spouse. The record does not contain any other information regarding the
16 recipients of his message or what specifically he said to individuals other than Spouse.
17 To Spouse, Mayor Heroux wrote "Hi – I'm sorry that you believe the lies that the fire union
18 president has been circulating." Mayor Heroux then learned, upon clicking on Spouse's
19 profile, that she was married to a Lieutenant in the City's Fire Department, and he sent
20 her additional messages including one reminding Spouse that he, as mayor, could have

⁵ The parties stipulated that the Union's use of its Facebook page to express workplace concerns is activity protected by Section 2 of the Law.

⁶ The parties stipulated that these actions on November 20, 2020 and November 24, 2020 were concerted, protected activity.

1 fired Lieutenant previously, and that “[b]efore you go on attacking me, try to remember
2 everything.” The Hearing Officer found that the comments that Mayor Heroux sent to
3 Spouse independently violated Section 10(a)(1) of the Law. The Lieutenant later learned
4 about Mayor Heroux’s messages to Spouse and complained to Jacques and the City’s
5 Personnel Director.

6 In his first message to Spouse, Heroux also included a copy of an email that he
7 had sent to the City Council earlier in the day in which he had written, among other things,
8 that “[t]he fire union president is stating things that are just not true....The union president
9 said that the city and I [are] denying this firefighter benefits. This is false.” This email to
10 the City Council was not the subject of any count in the Complaint, nor was it the subject
11 of the Union’s charge of prohibited practice.

12 After the Union filed a grievance on this IOD presumption and COVID-19 issue,
13 the parties settled the grievance on January 22, 2021, by expressly adding COVID-19 to
14 the list of presumptive communicable diseases in Article 10 of the CBA. Any firefighter
15 who had tested positive for COVID-19 prior to the execution of the agreement would be
16 treated as IOD and would be made whole and paid for any out-of-pocket expenses
17 incurred.

18 Events Preceding Jacques’ Written Reprimand

19
20 In April 2020, Mayor Heroux issued a policy limiting visitor access to department
21 buildings, which provided:

22 Until further notice, no visitors are allowed inside any City government
23 building. This means no family or friends visiting to drop off anything or
24 stopping by to say hi. No hairdressers or barbers, no media, no food
25 delivery.
26

1 The exceptions are for emergency concerns from citizens coming into police
2 or fire lobbies, city council meetings, a plumber or electrician called in to
3 resolve an existing problem. All other reasons, please contact me on a case
4 by case basis. I will then consult the Health Dept.

5
6 The City's firefighters have traditionally supported the Southern Brotherhood
7 Ride/New England Brotherhood Ride (Brotherhood Ride) during which firefighters bicycle
8 across New England to support firefighters who died from on-duty injuries, stopping at all
9 fire stations which had members pass away. Renker, the Union's Sergeant-at-arms,
10 organized the event on behalf of the Union. On August 7, 2020, Jacques emailed
11 Lachance and others that there would be a presentation the next day in conjunction with
12 the ride, along with food and drinks. Because in the past the Brotherhood Ride was held
13 inside with a large number of people, Lachance objected to the fact that he had not
14 received sufficient advance notice to set appropriate guidelines. He believed he was put
15 in a difficult spot "intentionally so that if I say no, I can look like the villain." In an email to
16 Jacques the same day, and others on the Union executive board including Renker,
17 Lachance wrote:

18 This is an honorable cause and an important event. Last year it was very
19 well received here.

20
21 Unfortunately the event cannot be held on any City property with the current
22 visitor restrictions and limitations of gatherings on City property. Mayor
23 Heroux has made it very clear that because of the on-going pandemic,
24 visitors are not allowed on City property. The pandemic is not over. It is
25 imperative that we do not let our guard down.

26
27 Use of City property requires authorization from the Chief or Assistant Chief.
28 This authorization should be requested with sufficient notice to ensure that
29 we can consider the request in a timely manner. It is inappropriate to
30 publicize events that will use City property prior to obtaining this
31 authorization. It puts all of us in a difficult position. This can be easily
32 avoided by following the normal chain-of-command as appropriate or by
33 directly requesting authorization from the Chief or Assistant Chief with as
34 much notice as possible. Last minute requests should be avoided.

1
2 Because Local 848 did not make any request to use the Fire Station for this
3 event, I have not been able to discuss options for use of the station with
4 Mayor Heroux. Mayor Heroux was extremely supportive of our participation
5 in the thin blue line flag tour and I am confident that he would be supportive
6 of the [Brotherhood Ride]. Had Local 848 requested the use of the station
7 prior to scheduling the event, I am confident that Mayor Heroux and I could
8 have reached an agreement that would have made it possible to proceed
9 with the event as planned.

10
11 After receiving the email, Renker moved the location away from the Fire
12 Department.

13 Jacques' Written Reprimand

14
15 Around November 22, 2020, a local business contacted Renker to discuss
16 donating gear bags for public safety employees to the Union that contained first-
17 responder items such as face masks and hand sanitizer. Jacques was out on IOD status,
18 but Renker contacted Jacques to inform him of the donation and asked Jacques if he
19 could be there for the donation. Jacques agreed to be present. Renker described this
20 event as impromptu. On the day of the event, Renker spoke with on-duty Lieutenant Adam
21 Meier (Meier) to inform him that he would be out in the back of the fire station to receive
22 a donation. Neither Jacques nor Renker notified the Chief or Assistant Chief⁷ of the event.
23 Lachance learned about the event because a photograph was taken of Jacques, Renker,
24 and a City police officer, with the manager of the local business in the apparatus bay of
25 the fire station and published in the newspaper on November 22, 2020. Upon seeing the
26 photograph, Lachance was concerned that Jacques was "doing things that are clearly
27 intended to force [his] hand" and "taken specifically because members see that picture."

⁷ The parties use the title Assistant Chief and Deputy Chief interchangeably. Lachance spoke to the Deputy Chief and confirmed that the Deputy Chief was not aware of the event.

1 In describing what he believed was Jacques' intent in taking the photograph, Lachance
2 testified at the hearing that "[i]t's like the analogy of a child, honestly, that just keeps
3 pushing the limits to see what they're going to get away with." Lachance felt that he
4 needed to address the photograph so that others would not see the photograph and
5 believe it was acceptable to have visitors in the building while COVID-19 was still
6 prevalent.

7 Lachance testified that the Union President should obtain the required permission
8 when the Union wishes to hold an event on the Fire Department's property. Lachance
9 stated that "the Union President is the spokesperson for the Union. So the Union
10 President, unfortunately is the one who bears the responsibility when the Union doesn't
11 follow the rules." Lachance stated that other union presidents had asked for his
12 permission to use the fire station in the past. When questioned, however, Lachance could
13 not recall who had asked him for permission to use the fire station for the previous year's
14 Brotherhood Ride. Lachance acknowledged that Renker could have requested
15 permission on behalf of the Union. Lachance further acknowledged that he does not
16 require that it be the Union President who requests permission.

17 Lachance spoke to Renker by phone after seeing the photograph, and Renker told
18 Lachance that he assumed that Jacques had asked Lachance for permission.

19 On December 11, 2020, Lachance issued a written reprimand to Jacques stating:

20
21 This letter constitutes a written reprimand for your recent misconduct.
22 Specifically, you were responsible for allowing visitor(s) into a City fire
23 station, in violation of the Department's COVID-19 protocols and my
24 previous instructions to you.

25
26 You allowed a local business operation, a City police officer, and likely at
27 least one person from the Sun Chronicle to enter the station unnecessarily.
28 Regardless of the charitable intent behind the gathering, you allowed this

1 violation to occur despite being warned in the past against such actions.
2 You have been warned about using City property without authorization from
3 the Assistant Chief or me....This insubordination is unacceptable.
4

5 Lachance did not interview Jacques about the event prior to issuing Jacques this
6 reprimand.

7 Lachance did not discipline Renker for the same incident. Lachance explained that
8 even though Renker was the ranking officer, he did not discipline Renker because Renker
9 was also a union officer acting in that capacity, and Renker assumed that once he planned
10 everything, it was Jacques' responsibility as the Union President to let Lachance know.
11 Lachance also explained that during their conversation, Renker appeared to be
12 "legitimately sorry that it happened" and that based on his years of experience
13 interviewing people, he could tell when someone was honestly and legitimately sorry,
14 such that they did not need formal documentation. He also spoke to Meier who indicated
15 he was aware of the event but had not realized it had not been previously approved.
16 Lachance decided not to discipline Meier because "he had some inexperience, so he
17 made a mistake. And when we spoke to him about his mistake, he understood it was a
18 mistake." Lachance further stated at the hearing that he did not speak with Jacques before
19 issuing the written reprimand, in part, because he had come to the conclusion that
20 Jacques was provoking him, and because Jacques' "response is not as important as the
21 actions" and Jacques had received Lachance's email regarding the Brotherhood Ride
22 that made it "clear that they needed permission."

23 Mayor Heroux was not involved in this disciplinary action. Lachance purposely
24 excluded him from the process so that it would not appear to be a retaliatory action, as it
25 was common knowledge in the City that Mayor Heroux did not like Jacques.

1 Prior to this written reprimand, Lachance had disciplined Jacques on one other
2 instance, in March 2020. On or about March 18, 2020, the local newspaper published an
3 article quoting Jacques and featuring his photograph, which was about firefighters taking
4 COVID-19-related health precautions when responding to scenes. Mayor Heroux saw the
5 article and notified Lachance, expecting him to respond. On March 26, 2020, Lachance
6 issued Jacques a counseling letter related to the article, explaining that “employees are
7 not allowed to speak to the media regarding operational matters without authorization. In
8 future cases, please ensure that you obtain authorization from me prior to conducting an
9 interview. Obviously, this does not include ‘union’ issues.” Prior to this counseling session,
10 Lachance had not issued any discipline to Jacques. Lachance testified when questioned
11 whether he had ever written up Lachance prior to March 2020, that “I had never written
12 him up because prior to being the Union president, he wasn’t doing any of the things he’s
13 doing now, so there was nothing to write him up for.”

14 OPINION⁸

15 Written Reprimand

16 The first issue before us is whether the Hearing Officer correctly found that the City
17 did not violate Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law when it
18 issued a written reprimand to Jacques. The Union argues that the Hearing Officer’s
19 decision should be reversed because the Union established both direct and indirect or
20 circumstantial evidence of unlawful animus in this case.

⁸ Neither party contests the CERB’s jurisdiction in this matter.

1 Prima Facie Case

2 A public employer that retaliates or discriminates against an employee for
3 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the
4 Law. M.G.L. c. 150E, §10(a)(3). To establish a prima facie case of discrimination, a
5 charging party must produce evidence to support each of the following elements: 1) the
6 employee engaged in concerted activity protected by Section 2 of the Law; 2) the
7 employer knew of the concerted, protected activity; 3) the employer took adverse action
8 against the employee; and 4) the employer's conduct was motivated by a desire to
9 penalize or discourage the protected activity. Town of Carver, 35 MLC 29, 48, MUP-03-
10 3384 (June 30, 2008); City of Newton v. Commonwealth Employment Relations Board,
11 496 Mass. 82, 91 (2025).

12 Turning to the first element of the prima facie case, there is no dispute that Jacques
13 engaged in concerted, protected activity. We further note that serving as a union officer
14 constitutes concerted activity protected by Section 2 of the Law. South Middlesex
15 Regional Vocational Technical School District, 26 MLC 51, 53, MUP-1468 (October 27,
16 1999); City of Peabody, 28 MLC 281, 284, MUP-2162 (March 6, 2002). As to the second
17 element of the prima facie case, the record establishes, as the Hearing Officer found, that
18 the City knew of Jacques' concerted, protected activities. It is also evident from the record
19 that Mayor Heroux and Chief Lachance knew of Jacques' status as Union President and
20 other concerted, protected activities. Next, it is well established that issuing a written
21 reprimand constitutes an adverse action, thereby satisfying the third requirement of the
22 prima facie case. Athol-Royalston School Committee, 28 MLC 204, 214-15, MUP-2279
23 (January 14, 2002).

1 Having found that the Union satisfied the first three elements of the prima facie
2 case for discrimination, the only element remaining is whether the Union established
3 unlawful motivation.

4 Direct Evidence of Unlawful Motivation

5 As the Hearing Officer found, the City established a rule that no visitors were
6 allowed in the City's fire stations without permission due to the COVID-19 pandemic.
7 There is no dispute that the Union, along with other City employees, permitted visitors
8 into the fire station without obtaining prior approval from the Chief or Assistant Chief, in
9 violation of the City's rule. The Hearing Officer concluded that because Chief Lachance
10 believed that the Union President was personally responsible for obtaining permission for
11 the Union's event, the discipline was not taken in retaliation for protected activity, but
12 because Jacques failed to obtain the necessary permission for the Union to accept the
13 donation at the fire station. Upon closely examining Lachance's rationale for his belief,
14 we disagree with the Hearing Officer's conclusion that Lachance's belief was not
15 discriminatorily based upon Jacques' protected activity.

16 Specifically, Lachance testified that other union members could have requested
17 permission but "[t]he union president is the spokesperson for the union. So the union
18 president, unfortunately, is the one who bears the responsibility when the union doesn't
19 follow the rules." Where Lachance admitted that he issued the written reprimand to
20 Jacques because he held Jacques uniquely responsible because he is the Union
21 President, that is evidence that "results in an inescapable, or at least a highly probable
22 inference that a forbidden bias was present in the workplace." Wynn & Wynn, P.C. v.
23 Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (Wynn &

1 Wynn); Andover School Committee, 40 MLC 1, MUP-12-2294 (July 2, 2013). We reach
2 this conclusion because, based on Lachance's rationale, if Jacques held any other union
3 title, or no union title at all, he would not have received the written reprimand. See Bristol
4 County Sheriff's Department, 31 MLC 6, 20, MUP-2872 (July 15, 2004) (finding that a
5 policy that was selectively enforced against union activity was direct evidence of unlawful
6 motivation).

7 Our conclusion is supported by the following facts. The Chief did not clearly state
8 a rule requiring the Union President to ask for permission. Indeed, the Chief had an
9 opportunity to clarify this expectation in a similar circumstance where Renker planned the
10 Brotherhood Ride without first obtaining permission from the Chief to hold it at the fire
11 station. Following an email Jacques sent about the event the day prior to it taking place,
12 the Chief sent an email to the Union, including Renker and the remaining members of the
13 Union's executive board, stating that the Union needed to obtain prior approval from him
14 or the Assistant Chief for Union events on the City's property. Notably, the Chief's email
15 did not state that he expected Jacques, as the Union President, to obtain permission on
16 behalf of the Union or that Jacques would be held responsible for the Union's failure to
17 obtain permission. Similarly, Jacques was not the union member organizing the gear bag
18 donation event – in fact, he was not even working during this time because he was on
19 leave due to an injury – such that there would be a reasonable expectation that he would
20 be the person obtaining permission for the event. Indeed, Lachance acknowledged that
21 he does not require that it be the Union President who requests permission. Finally, there
22 is no established past practice of the Union President being the only person who obtained
23 permission from the Chief on behalf of the Union. Ultimately, while, as the Hearing Officer

1 found, Lachance believed Jacques should be responsible for obtaining permission, that
2 belief was solely based on his title as Union President. It was not because of any clear or
3 reasonable expectations surrounding Jacques' involvement in planning the event.
4 Because Jacques' position as the Union President is concerted protected activity, we find
5 that this establishes direct evidence that the Chief's decision to issue the written
6 reprimand was unlawfully motivated.

7 Circumstantial Evidence of Unlawful Motivation

8 While we have found that the Union established that there is direct evidence of
9 unlawful motivation, we also address the Union's argument that it met its burden of
10 establishing a prima facie case based on indirect or circumstantial evidence that the City
11 harbored an unlawful motive when it issued a written reprimand to Jacques. Several
12 factors may suggest unlawful motivation, such as: the timing of the alleged discriminatory
13 act in relation to the protected activity; the triviality of reasons given by the employer;
14 shifting or inconsistent reasons given by the employer; disparate treatment; an employer's
15 deviation from past practices; or expressions of animus or hostility towards a union or the
16 protected activity. City of Holyoke, 35 MLC 153, 156, MUP-05-4503 (Jan. 9, 2009) (citing
17 Town of Dracut, 25 MLC 131, 133, MUP-1397 (Feb. 17, 1999)); Town of Carver, 35 MLC
18 at 48.

19 We find that the Union has also established circumstantial evidence of unlawful
20 motivation for the following reasons. First, we agree with the Hearing Officer that
21 Lachance's disparate treatment of Jacques is evidence of unlawful motive. City of
22 Westfield, 49 MLC 178, 183, MUP-20-7800 (November 18, 2022) ("unlawful motivation
23 may be inferred from evidence that the employer treated the [charging party] differently

1 than it treated other similarly-situated employees"). Namely, besides Jacques, there were
2 two other fire department employees involved in allowing visitors into the fire station,
3 Renker and Meier. Lachance spoke to both of them and offered them an opportunity to
4 explain their actions and express remorse, and excused them from discipline based on
5 their responses, but did not speak to Jacques or provide him with the same opportunity
6 before issuing him a written reprimand.

7 This returns us to the fact that Lachance ultimately held Jacques exclusively
8 responsible for the Union's failure to obtain permission merely because of his role as the
9 Union President, which is protected, concerted activity, without regard to any possible
10 extenuating circumstances that he extended to Renker and Meier. There were
11 extenuating circumstances that Lachance could have considered that indicate Jacques
12 did not plan for the Union to contradict Lachance's instructions not to allow visitors inside
13 without permission. For instance, Renker had planned the Brotherhood Ride on behalf of
14 the Union, received the same email from the Chief following his planning of the event as
15 Jacques did, and Lachance's emailed instructions following the Brotherhood Ride did not
16 direct Jacques specifically to obtain permission on behalf of the Union. Renker then
17 planned the gear bag donation and asked Jacques to come to the fire station solely for
18 the event while Jacques was out on IOD status. Such facts indicate that Jacques could
19 have understood that Renker would obtain any necessary permission for the gear bag
20 donation as directed to by the Chief.⁹ Further, Renker described the event as impromptu

⁹ In pointing this out, we do not determine whether or not Jacques actually believed that Renker would obtain the necessary permission, nor do we determine whether or not Jacques understood that Lachance expected him to request permission. Because Lachance admitted he disciplined Jacques predominantly due to Jacques' status as Union President, and not due to Jacques' understanding, or lack of understanding, of

1 such that the choice to take the photograph inside may have also been impromptu. To
2 that extent, we agree with the Union that the discipline was based upon inconsistent and
3 trivial reasons. We recognize the City's need to have and enforce certain policies,
4 particularly in the context of the COVID-19 pandemic, and therefore we agree with the
5 Hearing Officer that the Union's failure to follow the Mayor's policy is not a trivial reason
6 for discipline. However, where Lachance excused the other fire department employees'
7 conduct after speaking to them and accepting their explanations, while holding Jacques
8 uniquely responsible in these circumstances, we find that the City's reasons for the
9 discipline are inconsistent and trivial.

10 We also find, in divergence from the Hearing Officer, that there was evidence that
11 Lachance held unlawful animus or hostility towards Jacques and his protected, concerted
12 activity. Lachance testified that he perceived that Jacques had planned the Brotherhood
13 Ride without asking him for permission to make him look like a "villain" and took the picture
14 in the fire station for the gear bag donation event to "force [his] hand" and "provoke" him.
15 While there was ample evidence in record that the Mayor held antipathy towards Jacques
16 because of Jacques' critique of the Mayor, there was no evidence of a non-discriminatory
17 reason why Lachance perceived that Jacques planned these Union events to intentionally
18 provoke Lachance or force his hand. Lachance did not testify that there was a history of
19 animosity between them. Our logical conclusion in considering all the evidence is that
20 Lachance's perception was based on Jacques' contemporaneous contentious advocacy

Lachance's expectations of his responsibilities as a Union President, it is unnecessary to make this determination. We note that the Hearing Officer did not make this determination either. Rather, the Hearing Officer made a credibility determination that Renker *assumed* Jacques would obtain permission and, in doing so, rejected Jacques' testimony that he told Renker to "make sure to take care of everything that needs to be done at the station."

1 as the Union President related to COVID-19 and IOD status.¹⁰ Town of Natick, 7 MLC
2 1048, 1059, MUP-2883 (May 30, 1980) (finding that in the absence of evidence as to the
3 cause for the chief's new hostility towards an employee, the Labor Relations
4 Commission¹¹ inferred that the employee's substantial protected activities caused the
5 chief's hostility), *aff'd. sub. nom.* Board of Selectmen of Natick v. Labor Relations
6 Commission, 16 Mass. App. Ct. 972 (1983).

7 While Lachance agreed with the Union's positions, as the Hearing Officer pointed
8 out, it appears as though, based on his testimony, that he disagreed with Jacques'
9 methods as the Union President.¹² This is not a lawful reason to discipline Jacques. Id.
10 (finding evidence of unlawful motive where the chief sought to have union officers elected

¹⁰ We note that the publication about the gear bag donation was on or about November 22, 2020, at or about the same time Jacques was engaged in the following protected activity: quoted in a November 20, 2020 article in the Sun Chronicle criticizing Mayor Heroux's decision not to place certain firefighters on IOD status; demonstrated at City Hall Annex on November 24, 2020 criticizing the City's position on COVID-19 and IOD status; and was pictured in the newspaper on November 24, 2020 holding a sign that was critical of the Mayor. As such, the timing of the written reprimand with these protected activities also suggests an unlawful motive. Town of Carver, 35 MLC at 48-49.

¹¹ The Labor Relations Commission is the predecessor agency to the DLR and CERB and any references to the CERB encompass the Labor Relations Commission. Board of Higher Educ. v. Commonwealth Employment Relations Board, 483 Mass. 310, 310 n. 1 (2019).

¹² To the extent the City might argue that disagreeing with the Union's *methods* is not unlawful animus, we find that where a charging party is engaging in concerted protected activity, the City cannot cloak its decision to penalize that activity in the guise of disagreeing with the charging party's methods, unless the charging party's concerted protected activity lost its protection by being violent, in breach of contract, indefensibly disloyal to the City, or disruptive to the City's business. City of Haverhill, 8 MLC 1690, 1694-1695, MUP-4204 (December 16, 1981); Town of Bolton, 32 MLC 13, 18, MUP-01-3255 (June 27, 2005); City of Somerville, 47 MLC 59, 60-61, MUP-17-5980 (October 2, 2020); City of Westfield, 47 MLC at 180. The City did not argue, and we do not find, that Jacques' concerted activity lost its protection.

1 who did not have a “confrontative style” and singled out an employee for termination who
2 was elected as a union officer and was known as being particularly outspoken in contrast
3 to the other union officers). See also Town of Carver, 35 MLC 47-51 (finding that the
4 employer favored one faction of the union and unlawfully singled out another faction of
5 the union for discipline because the latter faction challenged the employer in a seniority
6 dispute). This is buttressed by Lachance’s response during the hearing to the question of
7 whether Lachance had “written [Jacques] up prior to March 2020.” Lachance testified that
8 “I had never written him up because prior to being the Union President, he wasn’t doing
9 any of the things that he’s doing now, so there was nothing to write him up for.” This
10 comment demonstrates that there is a nexus between Lachance’s negative perception of
11 Jacques and Jacques’ actions as the Union President upon the onset of the COVID-19
12 pandemic in March 2020 – actions which the parties do not dispute were protected
13 activity.

14 Burden Shifting Analysis

15 In discrimination cases where the charging party has proffered direct evidence of
16 discrimination, the CERB applies the two-step analysis articulated in Wynn & Wynn, 431
17 Mass. at 655; Town of Brookfield, 28 MLC 320, MUP-2538 (May 1, 2002), *aff’d* Town of
18 Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005); Town of Dennis, 29
19 MLC 79, 83, MUP-01-2976 (October 10, 2002). Under Wynn & Wynn, the charging party
20 must first prove by a preponderance of the evidence that a proscribed factor played a
21 motivating part in the challenged employment decision. The burden of persuasion then
22 shifts to the employer who may prevail by proving that it would have made the same
23 decision even without the illegitimate motive. Id. at 669 - 670.

1 Where the charging party has proffered indirect or circumstantial evidence of
2 discrimination, the CERB applies a three-step burden shifting analysis. City of Newton,
3 496 Mass. at 90-91. If the charging party meets the elements required to establish a prima
4 facie case of discrimination under Section 10(a)(3) of the Law, the burden then shifts to
5 the employer to produce lawful reasons for its actions and produce evidence that the
6 reason actually motivated the adverse action. Id. If the employer meets this burden of
7 production, the burden shifts back to the charging party who must then prove that “but
8 for” the protected activity, the employer would not have taken the adverse action. Id.

9 Having determined that the Union met its burden of establishing a prima facie case
10 of discrimination and established that a proscribed factor played a motivating factor in the
11 City’s decision to issue a written reprimand to Jacques, we next examine whether the City
12 produced a legitimate nondiscriminatory reason for its action. The employer’s burden at
13 this stage is more than simply stating nondiscriminatory reasons. School Committee of
14 Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327, 335 (1996). It must
15 produce supporting facts indicating that the proffered reason was actually a motive in the
16 decision. Id. We find that the City produced a legitimate nondiscriminatory reason for
17 disciplining Jacques. That is, the City had a legitimate reason for requiring the Union to
18 obtain permission from the Fire Chief or Assistant Chief before inviting visitors into the
19 fire station during the COVID-19 pandemic, and the Union failed to follow this rule.

20 Weighing the Legitimate Nondiscriminatory Against the Evidence of Unlawful
21 Discrimination
22

23 Having found that the City established a legitimate nondiscriminatory reason for
24 the discipline, the final prongs of both analyses under the direct and circumstantial
25 evidence tests require us to weigh the City’s legitimate nondiscriminatory reason against

1 the evidence of unlawful discrimination. Under the circumstantial evidence test, we
2 determine that the Union met its burden of demonstrating that but-for Jacques' role as the
3 Union President and his concerted, protected activity related to COVID-19 and IOD
4 status, Lachance would not have issued him a written reprimand. Id. For the same
5 reasons, we determine that the City did not meet its burden under the direct evidence test
6 in Wynn & Wynn, of proving that its legitimate reasons, standing alone, would have
7 induced it to discipline Jacques. Wynn & Wynn, 431 Mass. at 667; Town of Carver, 35
8 MLC at 51; City of Westfield, 49 MLC at 183.

9 Specifically, Lachance provided Renker and Meier, who were similarly culpable,
10 an opportunity to apologize and express their remorse, but did not provide that same
11 opportunity to Jacques, explaining that Jacques' role as the Union President made him
12 responsible for the Union's failure to obtain permission. While the Hearing Officer
13 reasoned that Lachance's motive to discipline Jacques was unrelated to any desire to
14 penalize or discourage protected activity because Lachance believed Jacques was
15 responsible for obtaining the necessary permission, not Renker or Meier, Lachance did,
16 in fact, penalize and unlawfully discriminate against Jacques because Lachance's belief
17 that Jacques was responsible was predominantly based on his status as the Union
18 President.

19 Further, the only other reason Lachance provided for his disparate treatment of
20 Jacques was that Jacques engaged in conduct intended to force his hand or provoke him,
21 which ties back only to Jacques' contentious, contemporaneous, concerted, protected
22 activity related to COVID-19 and IOD status, rather than a legitimate nondiscriminatory
23 reason. Lachance's determination that Jacques was insubordinate was not because of

1 the actual circumstances or Jacques' understanding, or lack of understanding, of
2 Lachance's expectations of his responsibilities as a Union President. Rather, it was based
3 on his preconceived, negative impressions of Jacques which were formed due to
4 Jacques' protected, concerted activity. In that regard, the facts in this case are similar to
5 the facts in Trustees of Forbes Library v. Labor Relations Commission, 384 Mass. 559,
6 571 (1981). In that case, the Court held that the Labor Relations Commission properly
7 rejected the lawful reasons asserted by the employer as the motive for its adverse action.
8 The employer asserted that the employee had "authority" problems. However, the
9 evidence demonstrated that the tension between the employee and the employee's
10 supervisors was triggered by the employee's protected activities and increased as the
11 employee's protected activities increased. The Court held that the Labor Relations
12 Commission "could reasonably conclude that the 'authority' reasons were
13 indistinguishable from the supervisors' retaliatory sentiments." Id. Similarly, Lachance's
14 rationale that Jacques was "insubordinate" was tied directly to Jacques' protected
15 concerted activity. Thus, we find that but-for Jacques' concerted, protected activity related
16 to COVID-19 and IOD status, and role as Union President, Lachance would not have
17 issued him the written reprimand. We also do not find that legitimate reasons, standing
18 alone, would have induced the City to discipline Jacques.

19 For all of the foregoing reasons, we conclude that the City discriminated against
20 Jacques for engaging in activity protected by Section 2 of the Law thereby violating
21 Section 10(a)(3) of the Law.

1 Remedy for 10(a)(1) Violations

2 With respect to the Union's appeal of the remedy the Hearing Officer ordered for
3 the violations of Section 10(a)(1) that she found in her decision, we affirm the Hearing
4 Officer's imposition of a remedy that required the City to cease and desist and post a
5 Notice to Employees. In imposing this remedy, the Hearing Officer rejected the Union's
6 request to require the Mayor to send a copy of the notice to everyone he directly
7 messaged about the Union "spreading lies." After determining that the record did not
8 contain any information regarding the recipients of the Mayor's message, and because
9 the underlying charge and complaint did not allege that the Mayor's comments to the City
10 Council or others violated the Law, the Hearing Officer denied the Union's request. We
11 find no error in the Hearing Officer's decision. See Salem School Committee, 35 MLC
12 199, 220 n. 116, MUP-04-4008 (April 14, 2009) (declining to order the employer to cease
13 and desist from making statements about other individuals because those statements
14 were not the subject of a complaint or fully litigated).

15 Further, we note that the traditional remedy for chilling conduct consisting of
16 disparaging or coercive statements regarding unions or union-related activity in violation
17 of Section 10(a)(1) of the Law is a cease and desist order and a notice and posting to
18 bargaining unit employees. Id. at 219; Commonwealth of Massachusetts, 41 MLC 186,
19 188, SUP-12-1829 (January 16, 2015). We decline to extend the notice and posting
20 requirement to unknown individuals where the purpose of the remedy is to cure the chilling
21 or coercive effect on bargaining unit members that Section 10(a)(1) of the Law is intended
22 to protect against, and there is no evidence that extending the notice and posting

1 requirements to unknown individuals would fulfill this objective beyond the traditional
2 remedy.

3 CONCLUSION

4 For all of the foregoing reasons, we affirm the Hearing Officer's remedy for the
5 City's violations of Section 10(a)(1) of the Law, but reverse the Hearing Officer's decision
6 on Count III and hold that the City discriminated against Jacques based on concerted
7 protected activity in violation of Section 10(a)(3) and, derivatively, Section 10(a)(1) of the
8 Law. Based on these findings, we issue the following Order.

9 ORDER

10 WHEREFORE, based on the foregoing, it is hereby ordered that the City shall:
11

12 1. Cease and desist from:

- 13
- 14 a. Retaliating against Union President Paul Jacques for engaging in concerted
15 protected activities;
 - 16
 - 17 b. Making derogatory comments about Union officials' protected activity or other
18 statements that would tend to interfere with, restrain, or coerce employees in
19 the exercise of their rights guaranteed under the Law;
 - 20
 - 21 c. In any like manner, interfering, restraining and coercing its employees in any
22 right guaranteed by Law.
 - 23

24 2. Take the following affirmative action that will effectuate the purpose of the Law:

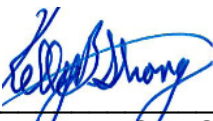
- 25
- 26 a. Immediately rescind the written reprimand issued to Jacques and remove any
27 references to it from his personnel file;
 - 28
 - 29 b. Post immediately in all conspicuous places where members of the Union's
30 bargaining unit usually congregate, or where notices are usually posted,
31 including electronically, if the City customarily communicates with these unit
32 members via intranet or email and display for a period of thirty (30) days
33 thereafter, signed copies of the attached Notice to Employees;
 - 34
 - 35 c. Notify the DLR in writing of the steps taken to comply with this order within thirty
36 (30) days of receipt of this decision.

SO ORDERED.

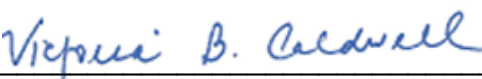
COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



LAN T. KANTANY, CHAIR



KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To obtain such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

In Case No. MUP-21-8387, the Commonwealth Employment Relations Board has determined that the City of Attleboro (City) violated Sections 10(a)(3) and, derivatively 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by retaliating against Union President Paul Jacques for engaging in concerted, protected activities. In addition, a hearing officer of the Massachusetts Department of Labor Relations has held that the City violated Section 10(a)(1) of the Law by: 1) making comments to members of the public disparaging Union President Paul Jacques' concerted, protected activity; and 2) making coercive comments to an employee's spouse. The City posts this Notice to Employees in compliance with the Commonwealth Employment Relations Board's and the hearing officer's orders.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

WE WILL NOT retaliate against Union President Paul Jacques for engaging in concerted, protected activities.

WE WILL immediately rescind the written reprimand issued to Jacques and remove any references to it from his personnel file.

WE WILL NOT make coercive or disparaging comments about Union officials' concerted, protected activity.

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

For the City of Attleboro

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 the 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, Lafayette City Center, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617) 626-7132).