

COMMONWEALTH OF MASSACHUSETT  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of \*  
\* Case No. MUP-21-8387  
CITY OF ATTLEBORO \*  
\*  
and \* Date Issue: October 24, 2022  
\*  
ATTLEBORO FIREFIGHTERS, \*  
LOCAL 848, I.A.F.F \*  
\*

\*\*\*\*\*

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

- Timothy Zessin, Esq. - Representing the City of Attleboro
- Patrick Bryant, Esq. - Representing the Attleboro Firefighters, Local 848

HEARING OFFICER'S DECISION

SUMMARY

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There are three issues in this case. The first two issues are whether the City of Attleboro (City) interfered with, restrained, or coerced its employees in violation of Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when Mayor Paul Heroux (Mayor Heroux or the Mayor) responded to critical Facebook comments by: 1) accusing the Union President of spreading lies; and 2) reminding the spouse of a firefighter that he, as mayor, could have fired her husband previously and stating “[b]efore you go on attacking me, try to remember everything.” The third issue is whether the City discriminated against Union President Paul Jacques (Jacques) by issuing him a written reprimand in violation of Section 10(a)(3), and

1 derivatively, Section 10(a)(1) of the Law. For the reasons explained below, I find that the City  
2 violated Section 10(a)(1) of the Law when Mayor Heroux made coercive comments but did not  
3 violate the Law when it took disciplinary action against Jacques.

4 STATEMENT OF THE CASE

5 The Union filed a charge of prohibited practice with the Department of Labor Relations  
6 (DLR) on January 4, 2021, alleging that the City had violated Sections 10(a)(1), 10(a)(3) and  
7 10(a)(5) of the Law. A DLR investigator investigated the charge and issued a Complaint of  
8 Prohibited Practice and Partial Dismissal (Complaint) on March 19, 2021.<sup>1</sup> The Complaint  
9 contained 3 counts; two alleging that the City independently violated Section 10(a)(1) of the Law  
10 and a third alleging that the City violated Section 10(a)(3) and, derivatively, 10(a)(1) by retaliating  
11 against the Union President for engaging in concerted protected activities. The City filed an  
12 Answer to the Complaint on November 1, 2021.

13 I conducted a hearing by WebEx video conference on December 1, 2021, at which both  
14 parties had the opportunity to be heard, to examine witnesses and to introduce evidence. On  
15 April 4, 2022, both parties filed timely post-hearing briefs. Based on the record, which includes  
16 witness testimony, my observation of the witnesses' demeanor, stipulations of fact, and  
17 documentary exhibits, and in consideration of the parties' arguments, I make the following  
18 findings of fact and render the following opinion.

19 STIPULATIONS OF FACT

- 20 1. The City is a public employer within the meaning of Section 1 of the Law.  
21 2. The Union is an employee organization within the meaning of Section 1 of the Law.

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<sup>1</sup> The Union withdrew the 10(a)(5) allegation and the investigator dismissed the independent 10(a)(1) allegation regarding Jacques' written reprimand.

- 1 3. The Union is the exclusive bargaining representative for all uniformed employees of the City's  
2 Fire Department, excluding the Assistant/Deputy Chief and the Fire Chief.
- 3 4. The City and the Union were parties to a collective bargaining agreement, that, by its terms,  
4 was in effect from July 1, 2017 through June 30, 2020 (2017-2020 CBA).
- 5 5. Paul Heroux (Mayor Heroux) is the City's mayor and the appointing authority for the Fire  
6 Department.
- 7 6. Paul Jacques (Jacques) is a firefighter and president of the Union referred to in paragraphs 2  
8 and 3.
- 9 7. Fire Lieutenant A<sup>2</sup> is a fire lieutenant and a member of the bargaining unit referred to in  
10 paragraph 3.
- 11 8. In mid-March, a firefighter was forced to quarantine for 10 days while awaiting the results of  
12 a COVID-19 test.
- 13 9. The City did not immediately place the firefighter referenced in paragraph 8 on injured on-duty  
14 (IOD) leave, initially contending that COVID-19 was not covered by the communicable disease  
15 language in Article 10, the IOD provision, of the 2017-2020 CBA.
- 16 10. Thereafter, the Union filed a grievance challenging the City's decision referenced in  
17 paragraph 9.  
18
- 19 11. In Spring 2020, Jacques was quoted in the Attleboro Sun Chronicle (Sun Chronicle)  
20 newspaper about the firefighters' need for personal protective equipment (PPE) due to the  
21 COVID-19 pandemic.
- 22 12. In mid-November 2020, the Union used its Facebook page, which included remarks from  
23 Jacques, to criticize Mayor Heroux's refusal to place certain firefighters on IOD when diagnosed  
24 with COVID-19 or when quarantining while awaiting COVID-19 test results.
- 25 13. In a November 20, 2020 article in the Sun Chronicle, Jacques criticized Mayor Heroux's  
26 decision not to place the firefighters referred to in paragraphs 9, 10, 11 and 12 on IOD.
- 27 14. On November 21, 2020, Fire Lieutenant A's Spouse (Spouse) posted a comment on the  
28 Union's Facebook page in support of Jacques' remarks referred to in paragraph 13.
- 29 15. A few minutes later, Mayor Heroux sent Spouse a message via Facebook stating in relevant  
30 part: "I am sorry that you believe the lies that the fire union president has been circulating."
- 31 16. Spouse did not respond to Mayor Heroux's statement referred to in paragraph 15.

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<sup>2</sup> The parties agreed to use pseudonyms for the Lieutenant and his spouse in order to protect their privacy.

- 1 17. Thirty to forty-five minutes later on November 21, 2020, Mayor Heroux sent another message  
2 via Facebook to Spouse in which Mayor Heroux reminded Spouse that when Fire Lieutenant A  
3 was arrested in January 2018, the Mayor had not fired Fire Lieutenant A and that the previous  
4 mayor would have done so.
- 5 18. A few minutes later, Spouse sent a message via Facebook to Mayor Heroux in which she  
6 stated that what happened to Fire Lieutenant A was none of the Mayor's concern and that the  
7 Mayor should not contact Spouse again.
- 8 19. Several minutes later, Mayor Heroux sent Spouse a message via Facebook in which he  
9 stated that he was the Mayor, that Fire Lieutenant was an employee under him, and that it was  
10 his business.
- 11 20. The Union's use of its Facebook page to express workplace concerns is activity protected  
12 by Section 2 of the Law.
- 13 21. On or about November 22, 2020, a representative from a private business in the City came  
14 to the Fire Station and presented gear bags containing PPE for the City's public safety personnel  
15 to Jacques, a City police sergeant, and another firefighter.
- 16 22. On November 22, 2020, the Sun Chronicle published a photograph and an article about the  
17 event referred to in paragraph 21.
- 18 23. On November 24, 2020, the Union held a demonstration at the City Hall Annex criticizing the  
19 City's refusal to place certain firefighters on IOD when they were diagnosed with COVID-19, or  
20 they were in quarantine from exposure to the virus, including the firefighters referred to in  
21 paragraphs 9, 10, 11, and 12.
- 22 24. On November 24, 2020, the Sun Chronicle published a photo of Jacques holding a sign  
23 critical of Mayor Heroux at the demonstration referred to in paragraph 23.
- 24 25. On December 11, 2020, the City issued a written reprimand to Jacques that pertained to the  
25 event referred to in paragraphs 21 and 22.
- 26 26. The activities referenced in paragraphs 10, 11, 13, 14, 23, and 24 constitute concerted,  
27 protected activities.  
28
- 29 27. The arbitration hearing on the grievance referred to in paragraph 10 of the stipulations (and  
30 JX-5) was scheduled for December 4, 2020. Prior to the hearing in December, the matter was  
31 canceled (to be rescheduled). On December 11, 2020, the hearing was rescheduled for January  
32 22, 2021, which the parties canceled by mutual agreement on January 21.
- 33 28. By settlement agreement dated January 22, 2021, the City and the Union agreed to resolve  
34 the Union's 111F grievance.  
35  
36

#### FINDINGS OF FACT

1 Background

2           There are approximately 100 firefighters of all ranks in the Attleboro Fire Department.  
3 The bargaining unit is composed of chief officers, captains, lieutenants, and firefighters. The City  
4 and the Union are parties to a July 1, 2017 through June 30, 2020 collective bargaining  
5 agreement (CBA). Article 10 covers personal injury sustained on duty (IOD), providing, in  
6 relevant part, as follows:

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

13  
14           Section 1. Determination of IOD Status. The determination of eligibility of IOD  
15 status in accordance with M.G.L. Chapter 41 Section 111 F shall be made by the  
16 Mayor or his designee. Such determination shall be made based on the  
17 examination of the employee by a City designated physician. The examination  
18 shall be limited to the subject area of the disability claimed. In addition, any  
19 incapacity for duty caused by contact with communicable diseases including  
20 meningitis, childhood communicable diseases, herpes virus, hepatitis a, hepatitis  
21 b, hepatitis non-a/b, or hepatitis c, human immunodeficiency virus, tuberculosis,  
22 shall be recognized as subject to presumptive injury leave. Also included are the  
23 presumptions contained in MGL Ch. 32, Sections 94, 94A, and 94B. However, the  
24 City may, subject by credible evidence on other non-job-related exposures, appeal  
25 this presumption pursuant to the process in Section 3 below.

26  
27           Heroux was first elected Mayor in November 2017. He was reelected in 2019<sup>3</sup> and 2021.

28           Mayor Heroux is the appointing authority for the City’s Fire Department. In this regard he signs  
29 off on who is hired and fired, working closely with the Fire Chief Scott Lachance (Fire Chief or

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<sup>3</sup> While running for Mayor the second time, Mayor Heroux appeared before the Attleboro Union Coalition. Jacques served as Chair. Jacques testified that when Mayor Heroux was asked how to improve relationships between the mayor and the Union, his response was for the Union to get a new president. Similarly, Mayor Heroux testified that he recalls saying that he only had a problem with one person. When asked how to repair that, Mayor Heroux said “[g]et a new president.”

1 Lachance). Lachance asked that he be allowed to handle discipline for the Fire Department.  
2 Mayor Heroux agreed and, as a result, Lachance has the authority to discipline anyone, at least  
3 up to a week suspension, without Mayor Heroux's approval.<sup>4</sup>

4 In early March 2020, Mayor Heroux began efforts to slow the spread of COVID-19 within  
5 the City's government. The City required any firefighter diagnosed with COVID-19, deemed a  
6 close contact with a COVID-19-positive person, or awaiting the results of a COVID-19 test, to  
7 quarantine. The City placed these firefighters on administrative leave so the firefighters would  
8 not need to use their own accumulated sick time. The Fire Department required protective  
9 equipment, such as N95 masks<sup>5</sup> to be worn for COVID-19-related calls.<sup>6</sup>

10 A dispute arose regarding whether COVID-19 should be considered a presumptive  
11 communicable disease per Article 10 of the CBA, even though it was not included in the list of  
12 communicable diseases which entitled employees to presumptive injury leave. When an

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<sup>4</sup> Mayor Heroux testified that although he could have the final word, he allows Lachance to handle all disciplinary matters. Mayor Heroux has occasionally informed Lachance when he sees something that he believes needs to be addressed as a potential disciplinary matter and asks Lachance to handle it as he sees fit. Lachance testified that his authority has limitations; he has the authority to suspend an employee for up to a week without permission from the Mayor. However, he would make a recommendation to Mayor Heroux if he believed a termination or a suspension of more than a week was warranted. Lachance also testified that "generally speaking," he abides by progressive discipline, issuing a counseling prior to a reprimand.

<sup>5</sup> Mayor Heroux reported to Lachance, about 10-20 times, that he observed firefighters who were not in compliance with the COVID-19 protocols. If they determined that a firefighter was not in compliance with the policy, a ranking officer might speak with that firefighter but no firefighter received a written reprimand for failing to wear protective equipment.

<sup>6</sup> On March 18, 2020, the Sun Chronicle, a local newspaper serving Attleboro and the surrounding communities, published an article about firefighters taking COVID-19-related health precautions, which quoted Jacques and featured his photograph. Mayor Heroux saw the article and notified Lachance, expecting him to respond. On March 26, 2020, Lachance issued Jacques a counseling letter, explaining that "employees are not allowed to speak to the media regarding operational matters without authorization. In future cases, please ensure that you obtain authorization from me prior to conducting an interview. Obviously, this does not include "union" issues."

1 employee has a disease considered presumptive, the employee does not need to prove that the  
2 disease was acquired while working for it to be treated as an IOD. Instead, it is presumed that  
3 the employee caught the disease at work. The City must prove that the person could not have  
4 caught the disease at work to deny IOD benefits.

5 The Union and Lachance believed that COVID-19 should be considered presumptive,  
6 even though it did not exist when the CBA was written, and therefore was not specifically listed  
7 in the CBA. When he initially wrote the policy regarding COVID-19 responses, Lachance noted  
8 that COVID-19 would be treated as an IOD. This designation provides benefits both for  
9 employees and the City. Firefighters receive tax-free medical coverage from the City, rather than  
10 having to use his or her health insurance and be responsible for copays and deductibles.  
11 Additionally, the family of any firefighter who died due to an IOD receives a large cash award.  
12 Lachance believed that considering COVID-19 a presumptive illness also benefited the City  
13 because it gave the Fire Chief certain input over the employees' medical treatments and enabled  
14 him to order employees to be tested for COVID-19. The mayor, though, needs to sign off on all  
15 the presumptive IODs and Mayor Heroux did not agree that COVID-19 was a presumptive  
16 disease.<sup>7</sup>

17 When a firefighter quarantined for ten days while awaiting the results of a COVID-19 test  
18 in mid-March, 2020, the City did not, at first, place him on IOD leave. On April 2, 2020, Jacques  
19 wrote to Mayor Heroux, explaining that, during his 25 years serving with the Fire Department,

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<sup>7</sup> Mayor Heroux testified that because the CBA states “including” before the list of presumptive diseases rather than “including but not limited to”, he believes that any disease that is not listed, such as COVID-19, is not automatically considered a presumptive illness. Accordingly, he believed that he had discretion to decide whether a firefighter caught COVID-19 on duty based on evidence of any exposure on the job. Lachance testified that it could take a little time to review all calls involving a particular firefighter to determine whether the firefighter could have been exposed at work.

1 article 10 provided complete coverage for our members. Some examples of such  
2 coverage have included hand foot and mouth disease, H1N1, to even the Anthrax  
3 scare. Our members put their life on the line everyday with the piece (sic) of mind  
4 that if something should ever happen to them, in the performance of their duties,  
5 presumptive language in the CBA would keep them protected and provide for their  
6 families. Let's do the right thing and not dishearten that sense of security.  
7

8 On May 5, 2020, the Union filed a grievance on this issue and requested that IOD status  
9 be approved and each member be made whole for out-of-pocket medical expenses and any lost  
10 pay and benefits.<sup>8</sup>

#### 11 Mayor Heroux's Facebook comments

12 A number of City Firefighters tested positive for COVID-19, including a few who were  
13 hospitalized. Lachance informed Jacques that Mayor Heroux had denied IOD status for one  
14 hospitalized firefighter.<sup>9</sup>

15 The Union orchestrated a media campaign to gain support for its position that all COVID-  
16 19 illnesses should be presumed to be IOD.<sup>10</sup> The Union sent out press releases and

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<sup>8</sup> After the City denied the grievance, the Union demanded to arbitrate. On January 22, 2021, the parties settled the grievance by expressly adding COVID-19 to the list of presumptive communicable diseases in Article 10 of the CBA. Any firefighter who had tested positive for COVID-19 prior to the execution of the agreement would be treated as IOD and would be made whole and paid for any out-of-pocket expenses incurred.

<sup>9</sup> There is a dispute about whether this firefighter was first approved for IOD before the ultimate denial. Jacques testified that the City "reversed its decision" regarding the firefighters IOD pay status. Lachance explained that the IOD was never approved. For payroll purposes, Lachance placed this firefighter in an IOD pay status while awaiting the Mayor's final determination. The firefighter was on an IOD pay status for about half of a week, until Lachance learned that Mayor Heroux did not approve this illness as IOD. Thereafter, the City rescinded the IOD pay status.

<sup>10</sup> Mayor Heroux described it as a "scorched-earth policy." Jacques made many critical statements about the Mayor. Another Union official, Lt. Mark Renker (Renker) also liked, shared, or said something positive about someone else's negative comment on social media regarding the Mayor's policy.



1 communicated on social media, including the Union’s Facebook page, to criticize Mayor  
2 Heroux’s decision not to consider the hospitalized firefighter as IOD.

3 On November 20, 2020, the Sun Chronicle reported on the dispute. Jacques relayed that  
4 a hospitalized firefighter with COVID-19 was being denied benefits even though the CBA states  
5 that communicable diseases are eligible for IOD benefits and medical coverage. The article  
6 quoted Jacques as saying that “Mayor Heroux’s arbitrary and capricious decision to deny  
7 benefits to our hospitalized member is unconscionable. At a time of such vulnerability for our  
8 firefighters to have medical coverage withdrawn and contractual obligations denied is  
9 unacceptable. Heroux really needs to look in the mirror and correct this injustice.”

10 On November 21, 2020, Mayor Heroux posted a comment on Facebook regarding the  
11 City’s policy on IOD status for firefighters.<sup>11</sup> The spouse of a Lieutenant with the Fire Department,  
12 hereinafter referred to as Lieutenant and Spouse, responded to the Mayor’s Facebook<sup>12</sup> post.<sup>13</sup>

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<sup>11</sup> Mayor Heroux testified that he posted his comment on his own Facebook account that he uses to communicate with the public, which has approximately 13,000 followers. Neither party offered Mayor Heroux’s original post into evidence.

<sup>12</sup> The parties stipulated that Spouse’s comment was posted on the Union’s Facebook page. However, testimony confirmed that the Mayor’s original comment and Spouse’s original comment were placed on the Mayor’s public Facebook page. 456 CMR 13.11 provides that “in making findings, the hearing officer need not be bound by a stipulation which is in contravention of law or erroneous on its face.” I find that the stipulation in paragraph 14 is erroneous and that the comments were placed on the Mayor’s Facebook page, not the Union’s Facebook page. The specific comments at issue in Counts I and II were sent via private Facebook messages. Because the parties’ stipulations in paragraphs 15, 17, 18 and 19 merely refer to comments made via Facebook, without specifying where on Facebook, I do not find those stipulations to be erroneous on their face.

<sup>13</sup> Neither party submitted a copy of the Spouse’s original Facebook post into evidence. Spouse testified that Mayor Heroux deleted her comment which Mayor Heroux denies. They have differing memories about the content of her original comment. Mayor Heroux testified that Spouse left “a really nasty, nasty, accusatory comment, a really disgusting comment.” He also described the comment as “one of the worst messages anybody’s ever leveled at me, and it was just accusatory. It was ‘you don’t care about firefighters. You’re a horrible, it was just, a disgusting

1 The Mayor responded, via a private message<sup>14</sup> to people<sup>15</sup> who left negative responses,  
2 including the Spouse, although at this time he was unaware that she was a City employee's  
3 spouse. Mayor Heroux wrote "Hi - I'm sorry that you believe the lies that the fire union president  
4 has been circulating."<sup>16</sup> He also included a copy of an email that he had sent to the City Council  
5 earlier in the day in which he had written that,

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message." He also testified, "it was something to the effect of, you know, the mayor, you know, hates firefighters. The mayor wants to see firefighters go down. He doesn't want to support. It was just an absolutely over the top comment. It was probably the worst one on the entire thread, but that's why I reached out and said, hold on a second. You probably don't know everything." Conversely, the Spouse testified that she wrote "you really should be looking out more for your civil servants," and "something along the lines of, especially the young man currently hospitalized with COVID [-19]. You really should be giving him his IOD benefits. You should be ashamed of yourself."

<sup>14</sup> Mayor Heroux explains that some of the commenters took "digs" at him, "[a]nd so, what I did was I copied and pasted, I typed up a response to those, you know, accusations, and ... I'd send people messages privately because I don't like to get into public back-and-forth displays on Facebook. It just doesn't go well. It doesn't look good, so I send it them privately."

<sup>15</sup> Mayor Heroux testified that he assumed the people commenting were constituents but admitted that he did not know because he did not know with whom he was communicating.

<sup>16</sup> The parties dispute what Jacques said, and whether it was a lie. Mayor Heroux claims that Jacques said in a televised news interview that there was a mountain of medical bills for the hospitalized firefighter. He felt this was a lie because "there was no mountain of medical bills. We never cut this person's healthcare." Although he admitted that the firefighter was responsible for copays or a deductible, he testified that "[a] \$500 copay is not a mount of medical bills." Mayor Heroux further testified that "none of what he was saying was actually true. I mean ... he's saying, Oh, you know, they took away his benefits. We didn't take away any benefits. The only benefit that was in dispute is whether or not COVID was presumptive or not..." In contrast, the Union maintains that Jacques did not lie. The Union asserts that an article on the local ABC affiliate's webpage described Jacques accurately saying that "this firefighter will not be eligible for injured-on-duty benefits... This means he and his family could be left with a mountain of bills." The City did not enter the video clip from the news station into evidence, and the Union did not enter the article from the local affiliate's webpage into evidence. Lachance's testimony was more nuanced. He felt Jacques' statement was "inflated," which he believes unions and politicians do when they speak with the media. Lachance stated that "I wouldn't necessarily say I called it a lie, but it certainly wasn't an accurate representation of the true facts." Ultimately, I do not need to determine whether Jacques lied while analyzing whether Mayor Heroux's comments violated the Law.

1 The fire union president is stating things that are just not true.

2  
3 Let me first state that any fire fighter who catches covid on the job  
4 and can show that he or she caught it on the job will be listed as  
5 injured on duty.

6  
7 What I am not going to do is list someone as injured on duty when  
8 they catch covid off duty.

9  
10 The union president said that the city and I am denying this fire fighter  
11 benefits. This is false.

12 This fire fighter continues to get his medical insurance paying for his  
13 hospital bills

14 This fire fighter continues to get his hazardous duty stipend

15 This fire fighter continues to get his first responder stipend

16 This fire fighter gets paid while he is out sick with covid not working  
17 - this is not in the contract

18 This fire fighter is not using any sick time as the city is paying for him  
19 while he is out with covid

20 - this is not in the contract

21  
22 This fire fighter is not listed as injured on duty because there has  
23 been no evidence that he caught covid while on the job. Over  
24 170,000 people are coming down with covid each day. Over 1 million  
25 per week. This virus is too widespread to presume that it can only be  
26 caught while on the job. In fact, I listed 13 of 14 fire fighters as injured  
27 on duty due to covid because they were able to demonstrate a  
28 minimal level of connection between getting covid and getting it on  
29 the job.

30  
31 I have instructed the health department to give the fire department a  
32 list of all of the covid positive residential addresses in the City. I have  
33 instructed the fire department to cross reference that list going back  
34 for 3 weeks to see if this fire fighter has come into contact with any  
35 of those residential addresses. Average incubation is between 2-12  
36 days. I am asking them to go back 21 days giving this fire fighter the  
37 benefit of the doubt that his incubation period was exceptionally long.  
38 If they can show that this fire fighter came into contact with someone  
39 who is covid positive at one of those residential addresses, then I will  
40 list this fire fighter is injured on duty. I need a nexus. Presumption is  
41 not reasonable when 170,000 people a day are coming down with  
42 this.

43  
44 Furthermore, the fire chief has received many many messages from  
45 me to enforce his staff wearing masks while on the job. I live by a fire  
46 house in South Attleboro. I have personally seen over and over again

1 fire fighters not wearing masks while on the job. I have gotten  
2 countless complaints about them not wearing masks while on the  
3 job...

4  
5 The state legislature has not passed legislation to make covid  
6 presumptive because this virus is too widespread to assume that it  
7 will be caught on the job at a higher rate than not on the job. In  
8 Attleboro 14 out of 100 fire fighters have come down with covid -this  
9 was passed around at the fire house after someone brought it into  
10 the station. That is 14%, but there is a base rate of people is about  
11 3% of the population in the US. It is statistically probable that 1 fire  
12 fighter out of 14 got this out of work. It actually defies logic and  
13 probably to presume that 100% of fire fighters are getting this only  
14 while at work when 3% of the population is coming down with covid.

15  
16 The bottom line is that no one is being denied benefits.

17  
18 Please see the contract and contact Personnel for more details.<sup>17</sup>

19  
20 Spouse did not respond to the Mayor's private message. Shortly after sending her the  
21 private message, Mayor Heroux clicked on her profile and discovered that she was a spouse of  
22 a City Fire Lieutenant. At that point, Mayor Heroux wrote to Spouse, via private message, as  
23 follows:

24 I also like to remind you that in January 2018 when your husband was arrested for  
25 domestic violence<sup>18</sup> I didn't fire him; Something the previous mayor would have  
26 done without question. I waited to see how things were going to unfold. Numerous  
27 firefighters have been arrested for drinking and driving. I also exercise discretion  
28 with those firefighters. I haven't insisted on any disciplinary action for any

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<sup>17</sup> Mayor Heroux testified that he felt that the Union "painted a picture that I'm not, you know, caring about firefighters, that I'm leaving the mountain of bills, that I'm you know, denying benefits. I meant, it was just all this hyperbole, and, you know, it was inflammatory, and a lot of people were upset, but they never actually heard the other side of the story about why the policy is the way it is. And so that's when I eventually came out and explained the policy being the way it is."

<sup>18</sup> The Lieutenant was charged with domestic violence by his ex-wife. At that time, he was placed on administrative leave with pay. He was ultimately found not guilty after a trial and returned to active duty.

1 firefighters that I have personally observed and reported to the fire chief are not  
2 wearing a mask. Before you go on attacking me, try to remember everything.<sup>19</sup>  
3

4 Spouse responded, writing:

5  
6 First of all sir, what happened to my husband in 2017 is ZERO of your concern  
7 since he was tried and found not guilty due to his ex wife's lies.  
8

9 Secondly, you seem awfully defensive for someone who isn't doing anything  
10 wrong.  
11

12 So before you go attacking my family perhaps you should take a moment and not  
13 reply out of emotion and be a professional. If you cannot take a small bit of criticism  
14 you are most certainly in the wrong field.  
15

16 Please do not contact me again.  
17

18 Mayor Heroux replied, "I am the mayor of the City and he was an employee under me. It  
19 absolutely was my business."<sup>20</sup> Spouse responded, writing "I asked kindly once prior to this.  
20 Please do not message me again. You're making me extremely uncomfortable."

21 The Lieutenant subsequently contacted Lachance to express his concerns about this  
22 exchange. Lachance explained that if he had a concern, he should file a complaint.<sup>21</sup> On  
23 November 23, 2020, Lieutenant wrote to Lachance, and copied Jacques and the Personnel  
24 Director, explaining that he was concerned and disturbed that the Mayor privately messaged his  
25 spouse about a comment she had made on a public forum and then, approximately 30 to 45  
26 minutes later, sent her a second private message. Lieutenant wrote that he found the comment

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<sup>19</sup> Mayor Heroux testified his intent was to "offer the other side of the story and also remind her that I am not sticking it to anybody in the Fire Department."

<sup>20</sup> Mayor Heroux testified that he wanted to correct Spouse "on her incorrect notion that it's, you know, if somebody gets arrested, an employee gets arrested, for domestic violence or drinking and driving, it's not the mayor's business. It absolutely is the mayor's business if that happens."

<sup>21</sup> Lachance testified that he told Lieutenant that it was inappropriate for the Mayor to have had this communication with Spouse.

1 “[b]efore you go on attacking me, try to remember everything” was especially concerning.  
2 Lieutenant perceived Mayor Heroux’s comments as “an abuse of power, hostile work  
3 environment, and possible t[h]reat.” More specifically, he wrote that “as Mayor Heroux is the  
4 appointing authority, this intrusion into my personal life and this behavior in general is  
5 unacceptable. This harassment has created a hostile work environment. Further action outside  
6 of normal workplace operation will be viewed as retaliation and harassment.”<sup>22</sup>

7         Thereafter, the Union continued protesting the Mayor’s COVID-19 policy. The Union  
8 participated in a rally/parade around the hospital to support the hospitalized employees. On  
9 November 24, 2020, the Sun Chronical published a story about firefighters demonstrating in  
10 front of City Hall Annex. The article quoted Jacques saying that COVID-19 is the first  
11 communicable disease that “hasn’t been upheld in the firefighter’s contract.” The article also  
12 presented Heroux’s position, that although COVID-19 is not covered in the CBA as a  
13 “presumptive injury,” the City will grant IOD status to any firefighter who can show he or she  
14 contracted COVID-19 on the job and in any case, firefighters are still covered by medial  
15 insurance that pays their hospital bills. The paper included a photograph of Jacques holding a  
16 sign that reads “even heros need a Heroux!”<sup>23</sup>

17         Jacques’ Written Reprimand

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<sup>22</sup> Lieutenant testified that he took Mayor Heroux’s comments as a reminder to him and his wife that Mayor Heroux has the power to discipline him, and he took the Mayor’s comments to mean “I’m the boss. I have this information. I can do more than I did. Back off.” Nevertheless, he also testified that he had made comments on Facebook critical of the Mayor’s positions and continues to do so.

<sup>23</sup> Jacques explained that while Mayor Heroux was doing his own media campaigning, Heroux was asked why the Union was pressing the issue, and the mayor had replied with words to the effect that every hero needs a villain. Based on that comment, the Union came up with the retort in the sign. Mayor Heroux testified that he saw the photograph of Jacques with the sign.

1 In April 2020, Mayor Heroux issued a policy limiting visitor access to department  
2 buildings, which provided:

3 Until further notice, no visitors are allowed inside any City government building.  
4 This means no family or friends visiting to drop off anything or stopping by to say  
5 hi. No hairdressers or barbers, no media, no food delivery.  
6

7 The exceptions are for emergency concerns from citizens coming into police or fire  
8 lobbies, city council meetings, a plumber or electrician called in to resolve an  
9 existing problem. All other reasons, please contact me on a case by case basis. I  
10 will then consult with the Health Dept.  
11

12 The City’s firefighters have traditionally supported the Southern Brotherhood Ride/New  
13 England Brotherhood Ride (Brotherhood Ride) during which firefighters bicycle across New  
14 England to support those who died from on-duty injuries, stopping at all fire stations which had  
15 members pass away. On August 7, 2020, Jacques emailed Lachance, among others, that there  
16 would be a presentation the next day in conjunction with the ride, along with food and drinks.  
17 Because in the past the Brotherhood Ride was held inside with a large number of people,  
18 Lachance objected to the fact that he had not received sufficient advance notice to set  
19 appropriate guidelines.<sup>24</sup> On August 7, 2020, he emailed the Union’s executive board, writing  
20 as follows:

21 This is an honorable cause and an important event. Last year it was very well  
22 received here.  
23

24 Unfortunately the event cannot be held on any City property with the current visitor  
25 restrictions and limitations of gatherings on City property. Mayor Heroux has made  
26 it very clear that because of the on-going pandemic, visitors are not allowed on

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<sup>24</sup> Lachance believed he was put in a difficult spot and testified that he believed this was “done intentionally so that if I say no, I can look like the villain. And I’m almost forced to say yes because it’s such an honorable event.” Nevertheless, Lachance testified that he had to say no to this event because “I’m the one that’s going to be held accountable for what goes on in the buildings. It’s totally inappropriate to schedule something without going through the chief first.... If it was going to happen, it was going to be based on the guidelines that I set, and I wasn’t given enough opportunity to make sure that that happened.”

1 City property. The pandemic is not over. It is imperative that we do not let our guard  
2 down.

3  
4 Use of City property requires authorization from the Chief or Assistant Chief.<sup>25</sup> This  
5 authorization should be requested with sufficient notice to ensure that we can  
6 consider the request in a timely manner. It is inappropriate to publicize events that  
7 will use City property prior to obtaining this authorization. It puts all of us in a difficult  
8 position. This can be easily avoided by following the normal chain-of-command as  
9 appropriate or by directly requesting authorization from the Chief or Assistant Chief  
10 with as much notice as possible. Last minute requests should be avoided.

11  
12 Because Local 848 did not make any request to use the Fire Station for this event,  
13 I have not been able to discuss options for use of the station with Mayor Heroux.  
14 Mayor Heroux was extremely supportive of our participation in the thin blue line  
15 flag tour and I am confident that he would be supportive of the Southern New  
16 England Brotherhood Ride. Had Local 848 requested the use of the station prior  
17 to scheduling the event, I am confident that Mayor Heroux and I could have  
18 reached an agreement that would have made it possible to proceed with the event  
19 as planned.

20  
21 Renker, the Union's Sergeant-at-Arms, organized the Brotherhood Ride. After receiving  
22 this message, Renker moved the location outside of the Fire Department.

23 A few months later, around November 22, 2020, New England Embroidery contacted  
24 Renker to discuss donating gear bags, containing first-responder items such as face masks and  
25 hand sanitizer, to the Union for public safety employees.<sup>26</sup> Renker contacted Jacques to inform  
26 him and asked if Jacques could be there for the donation.<sup>27</sup> Neither Jacques nor Renker notified  
27 the Fire Chief or Assistant Chief of the event.<sup>28</sup>

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<sup>25</sup> The parties used the titles Assistant Fire Chief and Deputy Fire Chief interchangeably.

<sup>26</sup> Jacques testified that this was a donation to the Union and that the Union frequently receives donations from the public and does not usually notify the Fire Chief about the donation.

<sup>27</sup> Jacques was out on IOD status for knee surgery but agreed to be present.

<sup>28</sup> The witnesses disputed who was responsible to obtain the Fire Chief's permission. Lachance testified that the Union President should obtain the required permission when the Union wished to hold an event on Fire Department property. Although another union official could have sought permission, Lachance testified that "the Union President is the spokesperson for the Union. So



1           On the day of the event, Renker spoke with on-duty Lieutenant Meier (Meier) to inform  
2 him that he would be out back of the fire station to receive a donation.

3           On November 22, 2020, the Sun Chronicle published a story about the donated gear bags  
4 for the City police and firefighters. The article was accompanied by a photograph of the general  
5 manager of the company, a police sergeant, Renker, and Jacques. Lachance saw the  
6 photograph in the newspaper and noticed that the photograph was taken in the apparatus bay.<sup>29</sup>

7           Believing that the picture showed that non-fire department personnel were inside the  
8 station, Lachance felt he had to address it so that others would not see the photograph and

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the Union President, unfortunately is the one who bears the responsibility when the Union doesn't follow the rules." He likened it to the fact that if members of his department did something wrong, then he, as Chief, would be accountable. Lachance further testified that he deals with Jacques for Union-related matters, and Jacques should deal with him when the Union needs permission for an event. Jacques, though, testified that this was Renker's event and he told Renker to "...make sure to take care of everything that needs to be done at the station." Renker denied that Jacques said that, and he further testified that he assumed Jacques had received permission for the event, because that is how information flowed, from the Union President to the Chief. I credit Renker's testimony that he assumed Jacques would make the necessary arrangements and therefore do not credit Jacques' testimony that he told Renker to do it. In this regard, Renker's testimony and Lachance's testimony are, for the most part, consistent on this point. Lachance's testimony that "[t]he first thing Renker said to me [Lachance] is that, 'I just assumed that President Jacques asked your permission,'" bolsters Renker's testimony on this matter.

I also do not credit Mayor Heroux's testimony that Lachance told him that Jacques had informed Renker that he (Jacques) had already made the necessary arrangements. Renker credibly denied making that assertion. Lachance's testimony was only that Renker stated that Jacques "made it *seem like* this was all set. That's what he (Renker) said." Mayor Heroux was not a party to either the conversation between Renker and Jacques or between Renker and Lachance and I do not credit this particular testimony.

<sup>29</sup> Lachance estimated that the picture was taken about 6 feet inside the station. He could see that they were "inside the bay doors. So they're inside. They're on cement they're not on asphalt, in front of the fire truck. Plus Mark told me that, too." Renker also testified that they were inside but estimated it was about a foot inside. Jacques testified that they were outside the fire station, in the parking lot. Jacques testified that "we opened up the bay doors of the mechanic's bay...Literally took a picture in front of that, and then – then I left." I credit Renker and Lachance's consistent testimony that they were inside the fire station. How far inside is not relevant.

1 believe it was acceptable to have people in the building while COVID-19 was so prevalent. He  
2 contacted the police chief to make him aware that a police sergeant was present in the picture.  
3 He then spoke with the Deputy Chief and ascertained that the Deputy Chief had not been aware  
4 of the event. Lachance spoke with the Lieutenant on duty at the time of the event, Meier. Meier  
5 indicated that he was aware of the event but had not realized that it had not been previously  
6 approved.<sup>30</sup>

7 Lachance did not speak with Jacques<sup>31</sup> about the circumstances surrounding the  
8 donation but did speak with Renker by phone.<sup>32</sup> After speaking with Renker, Lachance  
9 determined that he would not issue Renker a written reprimand, but that Jacques should receive  
10 discipline<sup>33</sup> because he was insubordinate when he failed to request permission for the donation

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<sup>30</sup> Both Lachance and the Deputy Chief spoke with Meier about this. Lachance did not give him a counseling letter because “he had some inexperience, so he made a mistake. And when we spoke to him about his mistake, he understood it was a mistake.” Lachance explained to Meier that this “is not how we do things. He will not do that again.”

<sup>31</sup> Lachance usually speaks with firefighters prior to disciplining them, but not always.

<sup>32</sup> Lachance testified that when he questioned Renker about the event, Renker was not happy and said that Jacques threw him under the bus. Lachance testified that Renker “said he (Jacques) made it seem like this was all set.” Renker testified that he did not remember saying that Jacques threw him under the bus. Other than that discrepancy, Renker’s account and Lachance’s account of the call were mostly consistent. Renker testified that Lachance was “pretty stern, pretty direct, and basically reviewing the protocol for having people in the station...” Both Renker and Lachance considered this conversation to be an informal counseling. The counseling was not documented in Renker’s personnel file. Lachance testified that Renker explained that he had assumed that Jacques had asked for permission. Lachance further testified “[s]o, my conversation with Mark ended because Mark looked at me and said this was never going to happen again. I’ll never do that again, Chief. I understand.” Although Lachance felt Renker was not the Union official responsible to ask for permission, “I did make that clear to him as a lieutenant that, you should have not allowed that to happen.”

<sup>33</sup> Lachance did not believe Renker’s actions warranted more than the informal counseling because he was “legitimately sorry that it happened. He was very concerned, and he made it very clear that he wouldn’t do it again. That’s the difference. Counseling letters are to document when the employer thinks the employee will continue to do the behavior. That way, you can

1 event at the fire station. Lachance spoke with the personnel department and the City's legal  
2 counsel. It took a few weeks before the City took any action. Although Lachance had some input,  
3 the City's attorney wrote the reprimand.<sup>34</sup>

4 On December 11, 2020, Lachance issued Jacques a written reprimand for allowing  
5 visitors into a City fire station in violation of COVID-19 protocols and his previous instructions.<sup>35</sup>

6 The reprimand states as follows:

7 You allowed a local business operator, a City police officer, and likely at least one  
8 person from the Sun Chronicle to enter the station unnecessarily. Regardless of  
9 the charitable intent behind the gathering, you allowed this violation to occur  
10 despite being warned in the past against such actions. You have been warned  
11 about using City property without authorization from the Assistant Chief or me.  
12 Further, you are well aware that having unauthorized personnel enter a City fire  
13 station is a violation of COVID-19 protocols. You increased the chance for COVID-  
14 19 transmission and exposed the City to potential liability.

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actually say at some point, see, I warned you. I don't feel that everybody needs to have that level of documentation based on my experiences as the chief." Lachance explained that some employees will stop, while others will continue to do the same thing unless its documented. He added "[t]hat's the difference in this case." He further explained that based on his years of interviewing people, he can tell when they are honest and legitimately sorry. I credit Lachance's testimony based on his demeanor, the fact that his testimony overall was substantially corroborated by other testimony and because of Lachance's even-handed testimony, sometimes finding fault with Mayor Heroux's actions, and sometimes finding fault with Jacques' actions.

<sup>34</sup> It is clear that Lachance, not Mayor Heroux, initiated this disciplinary action. Mayor Heroux testified that he was not involved. He testified that Lachance had informed him of the article and indicated that he was taking care of it. Mayor Heroux believes that he was told of the reprimand before it issued. He testified that he supported the reprimand being issued, and also would have supported it if no reprimand was issued, noting he would have supported the Chief either way. Lachance testified that he did not have a conversation with Mayor Heroux on this matter in advance. He consulted with the City's legal counsel but specifically did not discuss it with the Mayor because he did not want people to believe this was a retaliatory act. Lachance testified "[t]his was 100 percent from me. Nobody else was involved." Mayor Heroux was not aware of the matter until Lachance finished the letter. I credit Lachance' testimony that he did not consult with Mayor Heroux in advance, because he provided a rational explanation about why he chose to not involve the Mayor. Additionally, both Lachance and Mayor Heroux gave consistent testimony that Lachance alone decided to discipline Jacques, without input from the Mayor.

<sup>35</sup> Lachance explained he was less concerned about the actual COVID-19 risk than the fact that Jacques did not obtain permission. Lachance considered this to be "more of a chain-of-command insubordination."

1 This insubordination is unacceptable. I am confident that you will not repeat such  
2 behavior in the future. However, I must advise you that if you do, you will be subject  
3 to more severe disciplinary action.  
4

5 After Lachance issued the reprimand, it was placed in Jacques' personnel file and a copy  
6 was sent to the Mayor.

## 7 OPINION

### 8 Count I

9 The issue in Count I is whether the City interfered with, restrained, or coerced Jacques in  
10 the exercise of his protected rights when Mayor Heroux wrote "I am sorry that you believe the  
11 lies that the fire union president has been circulating" to Spouse and others who had posted  
12 comments supporting the Union in response to the Mayor's Facebook post regarding the IOD  
13 issue. I find that the City violated the Law as alleged.

14 A public employer violates Section 10(a)(1) of the Law when it engages in conduct that  
15 may reasonably be said to interfere with, restrain, or coerce employees in the exercise of their  
16 rights under Section 2 of the Law. Commonwealth of Massachusetts, 40 MLC 297, 299-300,  
17 SUP-12-1829 (April 2, 2014), modified on other grounds, 41 MLC 186 (Jan. 16, 2015) (citing  
18 Quincy School Committee, 27 MLC 83, 91, MUP-1986 (Dec. 29, 2000)). Pursuant to Section 2  
19 of the Law, employees have the right to "form, join, or assist any employee organization for the  
20 purpose of bargaining collectively through representatives of their own choosing on questions of  
21 wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted  
22 activities for the purpose of collective bargaining or other mutual aid or protection, free from  
23 interference, restraint, or coercion."

24 The focus of a Section 10(a)(1) inquiry is on the effect of the employer's conduct on a  
25 reasonable employee. Commonwealth of Massachusetts, 40 MLC at 299 (citing Town of

1 Winchester, 19 MLC 1591, 1596-97, MUP-7514 (Dec. 22, 1992)). The Commonwealth  
2 Employment Relations Board (CERB) does not analyze the motivation behind the conduct. Town  
3 of Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12, 1982), aff'd sub nom. Town of  
4 Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct. 1107 (1983). It is not pertinent  
5 whether the coercion succeeded or failed. Groton-Dunstable Regional School Committee, 15  
6 MLC 1551, 1556, MUP-6748 (March 20, 1989).

7         The Law prohibits any employer action that reasonably could have a chilling effect on the  
8 exercise of employee rights. Although an employer may articulate legitimate concerns about the  
9 manner in which concerted activity is conducted, the Law forbids the expression of employer  
10 anger, criticism, or ridicule directed to an employee's protected activity. Id. at 1557; see also  
11 Athol-Royalston Regional School District, 26 MLC 55, 56, MUP-1832 (November 2, 1999)(an  
12 employer's disparaging or critical comments about an employee's protected activity, even  
13 without direct threats of adverse consequences, are unlawful if the remarks tend to  
14 reasonably interfere with, restrain, or coerce employees in the exercise of their Section 2  
15 rights).

16         The parties have stipulated that Jacques' public activities protesting Mayor Heroux's IOD  
17 policy regarding COVID-19-related illnesses were concerted protected activity. During the  
18 course of that concerted protected activity, Jacques made a statement about the bills incurred  
19 by one hospitalized firefighter because of the Mayor's decision to deny him IOD status.

20         After Mayor Heroux posted comments on his public Facebook page regarding the City's  
21 policy, certain individuals responded with comments supporting the Union. Mayor Heroux did  
22 not know who these individuals were, but he responded by sending private messages in which  
23 he wrote, "Hi – I'm sorry that you believe the lies that the fire union president has been

1 circulating.” I find that by characterizing Jacques’ statements, which constituted concerted  
2 protected activity, as lies, Mayor Heroux unlawfully disparaged Jacques’ protected activity. In  
3 Groton-Dunstable Regional School Committee, 15 MLC 1551, the CERB found that a  
4 superintendent’s description of a union official as a hypocrite with callous disregard for other  
5 officers constituted an unlawful expression of anger, criticism or ridicule directed to an  
6 employee's protected activity. In Salem School Committee, 35 MLC 199, 217, MUP-04-4008  
7 (April 14, 2009), the superintendent told an employee that he was disappointed that the  
8 employee had posted on a website about a conversation the two had about a new work rule. He  
9 said that he was not calling the employee himself dishonorable, but that he believed the posting  
10 was a dishonorable act. The CERB found that the comment reflected the superintendent’s  
11 anger and criticism and therefore violated the Law. Similarly, I find that Mayor Heroux’s  
12 comment, indicating that he believed Jacques was a liar who was circulating lies regarding the  
13 Mayor’s IOD policy, reflects Mayor Heroux’s anger at Jacques and disparaged Jacques for his  
14 protected comments.

15         The City argues that Mayor Heroux’s comments did not violate the Law because Jacques  
16 “intentionally gave City residents the mistaken impression that Mayor Heroux was unilaterally  
17 revoking employer-sponsored insurance coverage for firefighters who contracted Covid-19,” and  
18 therefore, Mayor Heroux was left “with no choice but to forcefully and clearly refute these  
19 statements and educate the public about the nuances of the parties’ ongoing contractual  
20 dispute...” Mayor Heroux is free, of course, to provide the public with the details regarding his  
21 actions on this matter. Had he limited his comments to explaining his policy, or if he merely said  
22 that he was sorry that the commenter supported the Union’s position, he would not have run  
23 afoul of the Law. Although Mayor Heroux can state his policy and his beliefs, he is not free to

1 criticize and disparage protected activity as he did here. See Boston School Committee, 39 MLC  
2 366, 370 MUP-09-5543 (June 6, 2013).

3 The parties disagree about whether Jacques actually lied. First, they dispute whether  
4 Jacques said that there *was* a mountain of bills, or there *could be* a mountain of bills. Secondly,  
5 the parties dispute whether the comment was accurate. Although the hospitalized firefighter did  
6 not have his City-sponsored health insurance revoked, he was subjected to copays and/or  
7 deductible because he was denied IOD benefits. Mayor Heroux testified that a \$500 copay is  
8 not a “mountain of medical bills,” but that may be in the eye of the beholder. The CERB did not  
9 analyze whether the employee’s actions in Salem School Committee actually were dishonorable.  
10 Similarly, I do not need to determine whether Jacques’s comment regarding the “mountain of  
11 bills,” was in fact a lie.<sup>36</sup> Regardless of anyone’s interpretation of whether Jacques’ comment  
12 was a lie, it was legally protected<sup>37</sup> and as such his comment was “entitled to be free from  
13 employer interference, restraint and coercion.” Groton-Dunstable Regional School Committee  
14 15 MLC at 1557.

15 The City further argues that Mayor Heroux was only expressing his opinion and that there  
16 is no broad gag rule that prohibits employers from expressing their opinions about matters of  
17 public concern. City of Lowell, 29 MLC 30, 33, MUP-2423 (July 31, 2002). The City is correct;  
18 however, the ultimate test remains whether the employer’s statements would tend to chill a  
19 reasonable employee’s right to engage in activity protected by Section 2 of the Law. Id. The

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<sup>36</sup> I note that Mayor Heroux used the plural “lies” although during his testimony, he identified only the comment about the mountain of bills as Jacques’ purported lie.

<sup>37</sup> Certain profane and personally abusive remarks can lose their protection. See City of Boston, 6 MLC 1096, 1097, MUP-2878 (May 23, 1979)) (setting forth balancing test for determining when employee’s conduct loses protected status). Here, the City does not argue, and I do not find, that Jacques’ comments were such that they lost their protection.

1 CERB has found no violation where the employer's comments were an opinion and somewhat  
2 critical of the methods used by the union to publicize a dispute but were not expressions of anger  
3 in either tone or language and did not demean the union. See Town of Winchester, 19 MLC at  
4 1597. I reach the opposite conclusion here, finding that Mayor Heroux's comments conveyed  
5 his anger and were demeaning to Jacques and his protected activity.

6 The City further defends Mayor Heroux's statement by noting that he was unaware that  
7 Spouse was related to a member of the Fire Department bargaining unit. Mayor Heroux also  
8 sent the exact same message about Jacques "lies" to at least six individuals who had also  
9 commented on the Facebook post. The City alleges that because Mayor Heroux was simply  
10 communicating with the public, without knowing that one commentor was related to a member  
11 of the Fire Department, he could not have intended to have a chilling effect on her or her  
12 spouse's rights under the Law. However, Mayor Heroux's intent is not dispositive here because  
13 the test for unlawful interference, restraint, or coercion does not turn on employer's motive.  
14 Quincy School Committee 27 MLC at 91. Moreover, the CERB has addressed the issue of  
15 whether an indirect statement could violate Section 10(a)(1) of the Law in Salem School  
16 Committee, 35 MLC 199. In that case, certain teachers were distributing a "Vote No" letter in  
17 advance of a ratification vote for a proposed agreement. The Assistant Superintendent met  
18 with the Union President and Union's business agent and asked if they wanted the police called  
19 to remove the teachers who were distributing the flyers. The business agent later relayed this  
20 exchange to three bargaining unit members, explaining that he had intervened on their behalf  
21 because the Assistant Superintendent wanted to have them arrested if they did not stop  
22 distributing the "Vote No" letter. The CERB determined that by asking the Union officials if they  
23 wanted him to call the police to disperse the teachers, the Assistant Superintendent was



1 indirectly attempting to remove the teachers. The business agent reporting the statement to  
2 bargaining unit members further added to the chilling and coercive effect that the statement  
3 had on protected activity. The facts here are somewhat different, as the Mayor's comment was  
4 not knowingly uttered to any bargaining unit employee. However, because Mayor Heroux did  
5 not know who he was communicating with, he took the risk that he was addressing a bargaining  
6 unit employee or someone who would ensure the Union was aware of his comments. And his  
7 comments were ultimately relayed to bargaining unit employees as well as the Union. Based  
8 on the CERB's finding in Salem School Committee, I find that Mayor Heroux's indirect, critical,  
9 and disparaging comment about Jacques' protected activity would reasonably tend to interfere  
10 with, restrain or coerce employees in the exercise of their Section 2 rights. Moreover, the fact  
11 that Mayor Heroux referenced the Union President's "lies" to multiple people, not just one, is  
12 no defense. Increasing the number of people receiving this message merely increased the  
13 likelihood that Jacques and other firefighters would learn about the Mayor's disparaging  
14 comments about Jacques' protected activity.

15 I also find no merit in the City's suggestion that because these were sophisticated parties  
16 who were "willing to attack each other," the claim that Mayor Heroux's Facebook post  
17 "somehow chilled their collective ability to speak out against the Mayor is completely  
18 disingenuous." As previously noted, the test of interference, restraint, and coercion under  
19 Section 10(a)(1) does not turn on whether the coercion succeeded or failed. Groton-Dunstable  
20 Regional School Committee, 15 MLC at 1556.

1 For all the reasons discussed above, I find that Mayor Heroux’s comment in Count I  
2 violated the Law.<sup>38</sup>

3 Count II

4 The issue in Count II is whether the City independently interfered with, restrained, and  
5 coerced employees in the exercise of their Section 2 rights in violation of Section 10(a)(1) of the  
6 Law when Mayor Heroux’s reminded Spouse, who he now knew was married to a bargaining  
7 unit member, that he could have fired her husband and that “before you go attacking me, try to  
8 remember everything.” I find that it did.

9 After Spouse commented on Mayor Heroux’s Facebook page in support of the Union, he  
10 responded with the comment about the Union President’s lies at issue in Count I. Spouse did  
11 not respond. Mayor Heroux then checked her profile and discovered that she was married to  
12 Lieutenant. At that point, he again privately messaged Spouse, writing:

13 I also like to remind you that in January 2018 when your husband was arrested for  
14 domestic violence I didn’t fire him. Something the previous mayor would have done  
15 without question. I waited to see how things were going to unfold. Numerous  
16 firefighters have been arrested for drinking and driving. I also exercise discretion  
17 with those firefighters. I have not insisted on any disciplinary action for any  
18 firefighters that I personally observed and reported to the fire chief are not wearing  
19 a mask. Before you go attacking me, try to remember everything.

20  
21 When Spouse responded that this was not Mayor Heroux’s concern, Mayor Heroux replied that  
22 “I am the mayor of the city and he was an employee under me. It absolutely was my business.”  
23 Spouse asked him not to message her again because he was making her extremely

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<sup>38</sup> This conclusion is strengthened by my findings that his further comments to Spouse, at issue in Count II, violated the Law. See Commonwealth of Massachusetts, 42 MLC 73, SUP-12-2282/SUPL-12-2283 (August 24, 2015); Town of Winchester, 19 MLC at 1597, n.9 (examining statements as a whole when determining whether a Section 10(a)(1) violation occurred).

1 uncomfortable. In paragraph 26 of the parties' stipulation, the parties agreed that Spouse's  
2 original Facebook comments in support of Jacques constituted concerted protected activity.

3         The City argues that Mayor Heroux was not attempting to threaten or intimidate Spouse  
4 or her husband. But, as addressed earlier, his intent is not dispositive. The City admits that  
5 Spouse seemed alarmed by Mayor Heroux's private message to her. Lieutenant was so alarmed  
6 by the Mayor's comments that he brought them to the attention of the Fire Chief. In his  
7 subsequent letter of complaint, he wrote that the Mayor's comments in his exchange with Spouse  
8 were unacceptable and that his comment "[b]efore you go on attacking me, try to remember  
9 everything," was "especially concerning" and a possible threat. Lieutenant testified that he took  
10 Mayor's comments to mean "I'm the boss. I have this information. I can do more than I did. Back  
11 off." However, just as the Mayor's intent is not dispositive, neither is Spouse's and Lieutenant's  
12 subjective feelings about the comment. See Town of Winchester, 19 MLC at 1596 (an  
13 employee's subjective feelings "are not the yardstick against which the employer's conduct must  
14 be measured.")

15         The CERB only considers the impact of an alleged (a)(1) statement on a "reasonable  
16 employee under the circumstances." City of Lowell, 29 MLC at 32. The City argues that a  
17 reasonable employee, someone in Lieutenant's shoes, would not have been chilled in the  
18 exercise of their Section 2 rights and further noting that the Lieutenant acknowledge that he  
19 continues to criticize Mayor Heroux. As previously discussed, even if Lieutenant continued to  
20 criticize the Mayor, the CERB does not analyze whether the coercion succeeded or failed.  
21 Groton-Dunstable Regional School Committee 15 MLC at 1556. The issue is whether the  
22 Mayor's comments would tend to chill protected activity.

1 I find the comments, which reminded Spouse about the Mayor’s disciplinary authority over  
2 Lieutenant, would tend to chill protected activity. In City of Holyoke, 9 MLC 1876 (1983), MUP-  
3 4955 (May 27, 1983), the CERB determined that an employer’s threat to discipline an employee  
4 if he sent a proposed letter to third parties regarding working conditions violated Section 10(a)(1).  
5 Similarly, in City of Peabody, 25 MLC 191, 193, MUP-9861 (May 21, 1999), the CERB  
6 determined that a statement by an agent of the city that an employee would be suspended if he  
7 ever brought a union representative to his office again violated the Law. The CERB found that  
8 the threat of future discipline would likely deter a reasonable employee in exercising the  
9 employee’s right to union representation. Id. at 193. The City argues that Spouse’s alarm  
10 “clouded” her understanding of the Mayor’s comments, which actually explained that he had not  
11 previously disciplined her husband and had not disciplined others for rule infractions. Although  
12 Mayor Heroux’s comments were not as explicit as the two examples above, he, as the appointing  
13 authority, responded to Spouse’s critical comments by reminding her of his ability to discipline  
14 Lieutenant. In that context, Mayor Heroux’s next comment that Spouse should remember  
15 everything before attacking him could reasonably be construed as a threat. Although Mayor  
16 Heroux made the comment to Spouse, who is not an employee, I find that a threat to an  
17 employee’s spouse that concerns the employee would reasonably chill an employee from  
18 engaging in protected activity.<sup>39</sup> None of the City’s arguments persuade me otherwise. Thus,  
19 considering the totality of the circumstances, Mayor Heroux’s messages to Spouse violated  
20 Section 10(a)(1) of the Law.

21

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<sup>39</sup> Because of this conclusion, I do not further consider the Union’s other arguments that Mayor Heroux’s disclosure of Lieutenant’s domestic violence charges and his refusing Spouse’s request to be left alone “heightened the intimidation.”

1 Count III

2 Count III of the Complaint alleges that the City violated Section 10(a)(3), and derivatively  
3 Section 10(a)(1), of the Law when the City issued a written reprimand to Jacques in retaliation  
4 for his protected activity. A public employer that retaliates or discriminates against an employee  
5 for engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the Law.  
6 School Committee of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996). I  
7 find that the City did not violate the Law as alleged in Count III.

8 **Prima Facie Case**

9 To establish a prima facie case, a charging party must show that: (1) the employee  
10 engaged in activity protected by Section 2 of the Law; (2) the employer knew of the protected  
11 activity; (3) the employer took adverse action against the employee; and (4) the employer's  
12 conduct was motivated by a desire to penalize or discourage the protected activity. Town of  
13 Brookfield, 28 MLC 320, 327, MUP-2538 (May 1, 2002), aff'd sub nom. Town of Brookfield v.  
14 Labor Relations Commission, 443 Mass. 315 (2005); See also Town of Carver, 35 MLC 29, 47,  
15 MUP-03-3894 (June 30, 2008).

16 There is no dispute that Jacques engaged in protected activity, and the City was aware  
17 of that activity. The parties stipulated that Jacques engaged in concerted, protected activity when  
18 he filed the May 5, 2020 grievance regarding the City's policy of not presuming that COVID-19-  
19 related injuries entitled firefighters to be on IOD status; when he criticized Mayor's decision  
20 regarding this IOD policy in the Sun Chronicle; when he demonstrated at City Hall Annex; and  
21 when he was pictured in the Sun Chronicle holding a sign that was critical of the Mayor, among  
22 other activities. The City clearly was aware of the Union's grievance. Mayor Heroux's testimony  
23 makes clear that he was aware of Jacques' critical statements about him regarding the IOD

1 matter and the Sun Chronicle photograph of Jacques holding up the critical sign. Accordingly,  
2 the Union has satisfied the first two elements of a prima facie case.

3 The third element of the Union's prima facie case requires a showing of adverse action.  
4 The CERB has consistently defined adverse action as an adverse personnel action. City of  
5 Holyoke, 35 MLC 153, 156, MUP-05-4503 (Jan. 9, 2009) (citing Town of Dracut, 25 MLC 131,  
6 133, MUP-1397 (Feb. 17, 1999)). Here, the City issued Jacques a written reprimand on  
7 December 11, 2020. It is well-established that an employee reprimand constitutes an adverse  
8 employment action. See Athol-Royalston School Committee, 28 MLC 204, 214-15, MUP-2279  
9 (January, 14, 2002). Accordingly, the Union has satisfied the third element of a prima facie case.

10 The fourth element of a prima facie case requires the Union to show that the City's motive  
11 was to penalize or discourage Jacques' concerted, protected activity. A finding of unlawful  
12 motive may be predicated upon direct evidence linking the adverse action to the protected  
13 activity or by reasonable inferences from circumstantial evidence. Commonwealth of  
14 Massachusetts, 6 MLC 1397, 1400, SUP-2190 (August 27, 1979).

15 The Union first argues that direct evidence establishes that the City disciplined Jacques  
16 because of his concerted, protected activity as Union President. The Union asserts that  
17 Lachance admitted that he reprimanded Jacques because of his position as Union President as  
18 much, if not more, than his perceived violation of the no-visitors rule. Lachance established a  
19 rule that no visitors were allowed in Fire Department stations without permission. The Union  
20 argues that, because Lachance believed that the President was responsible when the Union  
21 failed to follow the rules, Lachance was admitting that the reprimand was motivated by Jacques'  
22 status as President "without regard to his personal involvement or responsibility for the violation."  
23 I disagree. Direct evidence is evidence that, "if believed, results in an inescapable, or at least a

1 highly probable inference that a forbidden bias was present in the workplace." Wynn & Wynn,  
2 P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (quoting  
3 Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)). Although Jacques' status  
4 as Union President does come into play, because Lachance believed that the Union President  
5 was personally responsible for obtaining permission for the Union's event, the discipline was not  
6 taken in retaliation for protected activity, but because Jacques failed to obtain the necessary  
7 permission for the Union to accept the donation in the fire station. Accordingly, I do not find that  
8 there is direct evidence of unlawful retaliation.

9 Absent direct evidence of unlawful motivation, the charging party may establish unlawful  
10 motivation through circumstantial evidence and reasonable inferences drawn from that  
11 evidence. City of Holyoke, 35 MLC at 156; Town of Carver, 35 MLC at 48. Several factors may  
12 suggest unlawful motivation, such as: the timing of the alleged discriminatory act in relation to  
13 the protected activity; the triviality of reasons given by the employer; shifting or inconsistent  
14 reasons given by the employer; disparate treatment; an employer's deviation from past practices;  
15 or expressions of animus or hostility towards a union or the protected activity. Id. (citing Melrose  
16 School Committee, 33 MLC 61, 69, MUP-02-3549 (Sept. 27, 2006)).

17 To support its claim that the City has expressed animus or hostility towards Jacques, the  
18 Union argues that Lachance issued the December 2020 written reprimand in name only. The  
19 Union maintains that Mayor Heroux was actually responsible for the decision to discipline  
20 Jacques, and that the evidence is clear that Mayor Heroux "loathes Jacques for his concerted  
21 protected activity, publicly criticizes him, seeks his ouster and regularly reports alleged  
22 infractions of Jacques to Chief Lachance." Although I agree that the evidence demonstrates  
23 Mayor Heroux's antipathy towards Jacques, the evidence does not support the Union's assertion

1 the Mayor Heroux, rather the Lachance, was responsible for Jacques' written reprimand. Both  
2 Mayor Heroux and Lachance credibly testified that Mayor Heroux was not involved at all in the  
3 decision to discipline Jacques. In general, Lachance handles all lower-level disciplinary matters.  
4 Additionally, the evidence demonstrates that Lachance saw the newspaper article with the  
5 photograph of Jacques with others in the fire station and decided on his own to commence an  
6 investigation. He specifically chose not to consult with Mayor Heroux to avoid any allegation that  
7 the discipline was retaliatory in nature.

8 The Union attempts to demonstrate that Lachance also had animosity towards Jacques  
9 and his protected activity by describing Lachance's "paranoid criticism of Jacques" because  
10 Lachance testified that Jacques deliberately did not seek permission for the Brotherhood Ride  
11 so that he (Lachance) would look like the villain. I find that this one comment, which does not  
12 directly reference any protected activity, is insufficient to establish that Lachance expressed  
13 animosity towards Jacques' concerted protected activity. Therefore, I find that the Union failed  
14 to establish that Lachance expressed hostility against Jacques' protected activity.

15 The Union presented other arguments to support a finding that the City's discipline of  
16 Jacques was unlawfully motivated. The discipline arose from the receipt of donated protective  
17 equipment, which is concerted, protected activity. This protected activity took place on the same  
18 week that Jacques engaged in concerted, protected activity by publicly criticizing the Mayor  
19 regarding IOD benefits. I do not find that the timing of these two events supports the Union's  
20 theory. There is no evidence to suggest that Lachance objected to the donation of the gear bags  
21 itself; he objected only to the location and the Union's failure to obtain permission to have  
22 outsiders in the fire station. Additionally, the Union failed to demonstrate that Lachance objected  
23 to the Union's criticism of the Mayor's IOD policy. The evidence reveals that Lachance agreed



1 with the Union that the Mayor’s stance on this issue was wrong. Therefore, I find that the Union  
2 was unable to demonstrate that Lachance’s discipline of Jacques was motivated by Jacques’  
3 protected activity or that the timing of the reprimand in relation to protected activity established  
4 an unlawful motivation.

5 The Union further argues that Jacques’ discipline was inconsistent with the established  
6 practice of progressive discipline and that the discipline was based upon trivial reasons.  
7 Although Lachance “generally speaking” follows progressive discipline by issuing a counseling  
8 for a first offense rather than a reprimand, the evidence does not demonstrate that Lachance  
9 always follows progressive discipline. Moreover, the evidence establishes that Jacques failed  
10 to follow the COVID-19-related policy and Lachance’s instructions in his August email. I do not  
11 find that Jacques’ failure to follow Lachance’s instructions, which Lachance characterized as a  
12 chain-of-command insubordination, is a trivial reason for discipline.

13 The Union next argues that the disparate treatment of Jacques supports a finding of  
14 unlawful motivation. There were four City employees involved in allowing visitors in the fire  
15 station, Jacques, Renker, Meier, and a police sergeant, but only Jacques received a written  
16 reprimand.<sup>40</sup> Moreover, Jacques’ reprimand references a violation of COVID-19 protocols, but  
17 no other firefighter who violated any COVID-19-related policies was disciplined. The Union  
18 further argues that Lachance’s disparate investigation also establishes an unlawful motive. In  
19 this case, Lachance spoke with the Deputy Chief, Meier, and Renker, but he did not speak with  
20 Jacques before issuing him the reprimand. At the prima facie stage of proceedings, a charging  
21 party need only present evidence that is sufficient to create a presumption that the employer’s  
22 decision was improperly motivated. See Department of Transportation, 44 MLC 1, SUP-14-3576,

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<sup>40</sup> Lachance has no authority over the police sergeant.

1 SUP-14-3640 (July 31, 2017) quoting Trustees of Forbes Library v. Labor Relations  
2 Commission, 384 Mass. 559, 566 (November 12, 1981). Here, the Union has established that  
3 Lachance treated Jacques in a disparate manner than others, both regarding the way he  
4 conducted the investigation and the fact that he only disciplined Jacques. After considering all  
5 the facts and the parties' arguments, I find that the Union has established a prima face case.

6 **Legitimate, Non-Discriminatory Reason for the Discipline**

7 Once a union establishes a prima facie case, an employer may rebut it by producing  
8 evidence that the action was motivated by a legitimate reason. Suffolk County Sheriff's  
9 Department, 27 MLC 155, 159, MUP-1498 (June 4, 2001); Higher Education Coordinating  
10 Council, 23 MLC 90, 93, SUP-4090 (September 17, 1996).

11 The evidence establishes that the Fire Department had a policy that use of City property  
12 requires authorization from the Chief or Assistant Chief, and the authorization must be requested  
13 in advance. Jacques was aware of the policy. Lachance had specifically notified him, and others,  
14 of the requirement on August 7, 2020. The City reprimanded Jacques for insubordination when  
15 he failed to obtain the necessary permission in violation of the policy and Lachance's previous  
16 instructions.

17 The Union provides a number of arguments to support its conclusion that the City failed  
18 to provide legitimate non-discriminatory reasons for Jacques' reprimand. The Union argues that  
19 Lachance failed to conduct a fair and objective investigation because Lachance failed to speak  
20 with Jacques before issuing the reprimand. However, Lachance had a photograph which clearly  
21 showed that Jacques and others were inside the station with non-fire department personnel. He  
22 knew that Jacques had not sought his or the Deputy Chief's permission. Lachance believed it  
23 was Jacques' responsibility to obtain permission for a Union event held inside a fire station, and

1 this belief was further buttressed by his conversation with Renker, who explained that he  
2 assumed Jacques had obtained the necessary permission. Given this information, Lachance did  
3 not believe it was necessary to speak with Jacques. Even if that may have been the better  
4 practice, I cannot conclude that Lachance's failure to speak with Jacques under these  
5 circumstances, where there was photographic evidence of what took place, undercuts his lawful  
6 justification for the reprimand.

7         The Union next disputes that Jacques violated any City policy. In this regard, the Union  
8 argues that Mayor Heroux's April 2020 visitor policy prohibited non-employees from being *inside*  
9 government buildings, while here there was just one outside individual "on the edge of the  
10 mechanics bay, for a few seconds, with the garage door wide open." Regardless, the  
11 photograph, and the testimony that I have credited, reveals that at least one civilian was inside  
12 the fire station, and possibly the photographer as well. That constitutes a violation of Mayor  
13 Heroux's policy. The Union next argues that only the Mayor could grant exemptions to the  
14 Mayor's policy, not Lachance. However, this ignores Lachance's previous instruction to Jacques,  
15 and others, that use of Fire Department property requires authorization from the Chief or  
16 Assistant Chief. The Union further argues that the August 2020 email pertained to the need for  
17 authorization before using City property for union events, not to being inside City buildings.  
18 However, the reprimand specifically notes that Jacques was being disciplined for allowing  
19 visitor(s) into the fire station, which is City property, after being warned against using City  
20 property without authorization. The purpose of the event was to donate gear bags to the Union,  
21 and thus it was a Union event. Accordingly, the August 2020 email pertains to the November  
22 2020 donation.

1           The Union further argues that Lachance was not uniformly enforcing the policy, because  
2 others at the event, including Renker, did not receive similar discipline. However, Lachance did  
3 not require everyone participating in an event to obtain permission. Only one person had to do  
4 so. The testimony I credited reveals that Lachance reprimanded Jacques because he  
5 determined that Jacques was the one who was required to obtain the necessary permission, not  
6 Renker or any of the other participants.

7           The Union further asserts that the reprimand included a false allegation. The reprimand  
8 references that by violating COVID-19 protocols, Jacques increased the chance for COVID-19  
9 transmission. Lachance testified that he personally did not believe there was a COVID-19 risk,  
10 or only a limited risk, from the encounter. Instead, the main impetus for the discipline was  
11 Jacques' insubordination. However, I do not find mentioning the COVID-19 transmission risk in  
12 the reprimand constitutes a false allegation, even if Lachance was not overly concerned about  
13 the risk in this instance. Mentioning the chance for COVID-19 transmission notes the significance  
14 of the infraction and does not undercut the legitimacy for disciplining Jacques for insubordination  
15 and failure to follow policy.

16           For all the above reasons, I have determined that the City has established a lawful  
17 justification for reprimanding Jacques.

18           **But for test**

19           If the employer provides lawful reasons for the alleged discriminatory conduct, the union  
20 must then prove that "but for" the protected activity, the employer would not have taken the  
21 adverse action. Trustees of Forbes Library, 384 Mass at 565-566 ("[t]he burden of persuasion  
22 remains with the employee, who must prove by a preponderance of evidence that the asserted  
23 lawful reason was not the real reason for the discharge.")

1           The Union maintains that but for Jacques' status as Union President and his persistent  
2 criticism of Mayor Heroux, he would not have received a written reprimand. I disagree. Jacques  
3 was aware that the Union needed to obtain permission from Lachance or the deputy chief to  
4 allow outsiders into the fire station for the donation. He failed to obtain that permission. The  
5 Union correctly notes that Renker was also aware of the need to obtain permission and he too  
6 failed to obtain that permission. But Lachance determined that Jacques was responsible for  
7 obtaining permission. His determination in this regard is supported by Renker's testimony that  
8 he assumed Jacques had obtained the necessary permission, because that was the way  
9 information flowed, from the Union President to the Fire Chief. I have credited Lachance's  
10 testimony that the difference in discipline was a result of his determination that Jacques was  
11 ultimately responsible for obtaining the necessary permission, and that an informal counseling  
12 was sufficient to ensure Renker would follow the policy in the future. Lachance's reasons for  
13 reprimanding Jacques but not Renker were unrelated to any desire to penalize or discourage  
14 protected activity. Moreover, if Lachance had wanted to penalize or discourage protected  
15 activity, he could have also disciplined Renker, who is also a union official.

16           The Union, though, argues that the real reason for the disparity of consequences was  
17 that neither Renker nor Meier were "engaged in the same sustained criticism of the Mayor as  
18 Jacques." However, as mentioned previously, Mayor Heroux had no role in issuing the discipline  
19 and Lachance agreed with the Union rather than the Mayor regarding whether COVID-19 related  
20 illness should be treated as a presumptive IOD. The Union has not otherwise provided evidence  
21 that Jacques' criticism of the Mayor played a role in Lachance's decision to issue the reprimand.

22           Consequently, I find that the City did not violate Section 10(a)(3), and derivatively Section  
23 10(a)(1), of the Law as alleged.

1 CONCLUSION

2 Based on the record and for the reasons stated above, I conclude that the City violated  
3 the Law as alleged in Counts I and II when the Mayor posted comments on Facebook which  
4 could reasonably be found to interfere with, restrain, or coerce employees in the exercise of their  
5 Section 2 rights. I find that the City did not violate the Law by issuing Jacques a reprimand, as  
6 alleged in Count III.

7 REMEDY

8 The Union requests that, in addition to the usual notice positing, the remedy include a  
9 requirement that Mayor Heroux send a copy of the notice to everyone he directly messaged  
10 about the Union “spreading lies,” including the City Council. I decline to do so because the record  
11 does not contain any information regarding the recipients of his message, other than Spouse,  
12 and because the underlying charge and the complaint did not allege that Mayor Heroux’s  
13 comments to the City Council or others violated the Law.

14 ORDER

15 WHEREFORE, based on the foregoing, I hereby order the City to:

- 16 1. Cease and desist from:  
17  
18 a) Making derogatory comments about Union officials’ protected activity or other  
19 statements that would tend to interfere with, restrain, or coercing employees in  
20 the exercise of their rights guaranteed under the Law.  
21  
22 b) In any like or similar manner interfering with, restraining, or coercing employees  
23 in the exercise of their rights guaranteed under Law.  
24  
25 2. Take the following affirmative action that is necessary to effectuate the purposes  
26 of the Law:  
27  
28 a) Immediately post signed copies of the attached Notice to Employees in all  
29 conspicuous places where members of the Union’s bargaining unit usually  
30 congregate, or where notices are usually posted, including electronically, if the  
31 City customarily communicates with these union members via intranet or email

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and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.

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

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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GAIL SOROKOFF, 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 Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations no 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 City of Attleboro violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by: 1) making comments to members of the public disparaging Union President Jacques' concerted, protected activity; and 2) a making coercive comments to an employee's spouse. The City 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 right 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.

1 Based on these rights, the City of Attleboro assures its employees that:

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

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

\_\_\_\_\_  
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 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).



