

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

GREATER LOWELL REGIONAL
VOCATIONAL TECHNICAL SCHOOL
DISTRICT

and

GREATER LOWELL REGIONAL
TEACHERS ORGANIZATION

Case No. MUP-21-8535

Issued: September 7, 2023

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Rachel L. Millette, Esq. - Representing the Greater Lowell
Regional Vocational Technical School
District

Ryan Dunn, Esq. - Representing the Greater Lowell
Regional Teachers Organization

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Greater Lowell Regional Vocational and
2 Technical School District (District or Employer) violated Section 10(a)(3) and, derivatively,
3 Section 10(a)(1) of G.L. c. 150E (the Law) (1) by retaliating against Robert Jones (Jones)
4 for engaging in concerted activity protected by Section 2 of the Law when it declined to
5 offer him the position of golf head coach in September of 2020. For the reasons explained
6 below, I find that the District did not violate the Law.

1 The CBA

2 The District and the Union were parties to a collective bargaining agreement (CBA)
3 that was effective from July 1, 2018, until June 30, 2021. Article III, Section L of the CBA
4 pertained to Teacher Employment and stated, in full:

5 No teacher will be disciplined, reprimanded, reduced in rank or
6 compensation, not reappointed or deprived of any professional
7 advantage without just cause. This is not to be construed to mean
8 that appointments held on a year to year basis such as class
9 advisors, coaches, non-professional status teachers, etc., cannot be
10 changed by administrative recommendation. Changes in these
11 assignments are properly an administrative function and
12 responsibility and changes do not imply disciplinary action. Any
13 disciplinary action taken against a teacher shall be appropriate to the
14 behavior which precipitates said action. If it is determined that action
15 has been taken against a teacher in violation of this Agreement, the
16 teacher shall be restored to no less than the position and
17 circumstances which existed prior to the action having been taken.

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19 Article X, Section D of the CBA pertained to Vacancies and Promotions and stated,
20 in full: "All vacancies shall be filled on the basis of experience, competency, qualifications
21 of the applicant, length of service in the school system, and other relevant criteria."

22 The District's Athletic Programs

23 The District has about 26 athletic programs with 100 teams at the freshmen, junior
24 varsity, and varsity levels. The District employs over 100 coaches on those teams and
25 requires all coaches to reapply for their positions each season. Approximately 10-12
26 weeks prior to the start of a season, the District publishes a vacancy posting for each
27 coaching position. After receiving applications, Director of Human Resources Kathryn
28 Tierney (Tierney) forwards them to District Athletic Director and Physical Education and
29 Health Cluster Chair Mark White (White) for further review and interviews, if necessary.

1 When White only receives one application for a particular position, and that applicant is
2 the incumbent coach, he usually³ sends a memorandum to the Superintendent⁴
3 recommending their employment without conducting an interview. When White receives
4 multiple applications for a particular position, he convenes a hiring committee to interview
5 those applicants, makes notes during the interviews, determines the best candidate, and
6 forwards his final recommendation along with any notes to the Superintendent. The
7 factors on which White relies when recommending coaches include demonstrated
8 qualifications, abilities and credentials in the particular sport, and knowledge of the unique
9 demands of a vocational school and the District's students.

10 **The Softball Grievances**

11 **1. Jones' Coaching Background**

³ At all relevant times, the District has established a practice of preferring internal candidates who are currently employed by the District as an incumbent coach, over external candidates who are not currently employed by the District. White testified about an exceptional instance involving varsity baseball head coach Dave MacLaughlin (MacLaughlin). Specifically, in 2019, the District posted a notice of vacancy for the varsity baseball head coach position. Although MacLaughlin had recently retired as a teacher, he reapplied for that position, along with two other external candidates. Despite those multiple applications, the District did not conduct any interviews prior to offering the position to MacLaughlin. This was because he was the incumbent coach, and also because all of the other candidates had applied "in manner not recognized" by the District. The District explained further in its February 25, 2020 response to Jones' Massachusetts Commission Against Discrimination (MCAD) complaint that although MacLaughlin "was no longer employed full-time with the [District], he was employed by the [District] as its equipment manager." Thus, the District reasoned that because MacLaughlin "was present at the [District] for reasons other than coaching," it considered him as an internal candidate for purposes of appointing him to the head baseball coach position.

⁴ At all relevant times prior to 2020, Joe Mastrocola (Mastrocola) was District Superintendent. In or about 2020, Jill Davis (Davis) succeeded Mastrocola as Superintendent.

1 At various points between 1988 and 2001, the District employed Jones as a
2 volunteer assistant softball coach and a paid assistant softball coach. In 2002, the District
3 employed Jones as the junior varsity softball coach and, in 2013, promoted him to
4 assistant varsity softball coach. In or about 2016, the District posted a notice of vacancy
5 for the varsity softball head coach position. Because Jones was the only applicant and an
6 internal candidate, the District offered him the position without an interview which he
7 accepted. Similarly, the District posted notices of vacancy for the varsity softball head
8 coach position during the 2017 and 2018 seasons. Again, because Jones was the only
9 applicant, White bypassed the interview process and recommended that then-
10 Superintendent Mastrocola offer the position to Jones as the incumbent coach, which he
11 accepted.

12 **1. The 2018 Grievance**

13 On May 24, 2018, an incident occurred at a softball game which Jones had
14 coached. On May 25, 2018, the District placed Jones on administrative leave pending
15 investigation. In June of 2018, the District reprimanded Jones for his involvement in the
16 incident and, in response, the Union filed a grievance. White responded to the grievance
17 at Level 1, and then-Assistant Superintendent Principal Davis responded at Level 2, both
18 of whom denied the grievance.

19 Later, Union Representative John Taylor (Taylor) met with Superintendent
20 Mastrocola to resolve the grievance. After multiple meetings, the parties agreed that the
21 District would remove the reprimand from Jones' personnel file, and would neither

1 consider, reference, nor rely on the reprimand if Jones decided to reapply for the varsity
2 softball head coach position for the 2019 season.

3 **2. The 2019 Grievance**

4 In or about February of 2019, the District posted a notice of vacancy for the position
5 of varsity softball head coach. Although Jones had reapplied for the position, other
6 candidates had also submitted applications. Thus, White convened a hiring committee
7 that included Health Instructor and Athletic Trainer Angie Gonzalez (Gonzalez), Staff
8 Member Lisa Silva (Silva), and District Faculty Manager Henry Yaffa (Yaffa) who
9 interviewed Jones and the other candidates.

10 During Jones' interview, the hiring committee discussed the May 24, 2018 incident
11 and the May 25, 2018 reprimand related to that incident.⁵ At the end of the interview
12 process, White recommended another candidate and the District declined to offer Jones
13 the position of varsity softball head coach. In response, the Union filed a Level 1 grievance
14 on or about April 10, 2019, challenging the District's decision not to rehire Jones as the
15 varsity softball head coach. Soon after, White issued a response, denying the grievance

⁵ Jones testified that the District, via the hiring committee, relied on both the May 24, 2018 incident and his May 25, 2018 reprimand when it decided not to hire him as the varsity softball head coach in 2019. Conversely, White testified that the incident and the reprimand were not part of Jones' interview in 2019. However, White later conceded that while Jones did voluntarily raise those issues during his interview, neither Jones nor the hiring committee discussed the grievance, the reprimand, or the parties' settlement agreement. Moreover, the District filed a February 25, 2020 response to Jones' MCAD complaint which stated affirmatively that the hiring committee "discussed the events of May 24, 2018." For all these reasons, I find that the District discussed, considered, and relied on the May 24, 2018 incident and the May 25, 2018 reprimand when it decided not to hire Jones as the varsity softball head coach in 2019.

1 at Level 1. In her capacity as Assistant Superintendent/Principal, Davis issued her
2 response at Level 2 on April 26, 2019, which also denied the grievance and stated, in
3 pertinent part:

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6 I have reviewed the grievance and the facts surrounding the hiring
7 process and decision for the head varsity softball coach position.
8 Based on the below reasons, I deny the grievance.

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As I understand it, Mr. Jones was considered for the annual appointment to the head varsity softball coaching position along with other candidates. As part of the application process, Mr. Jones was considered with other candidates and was interviewed. The interviewed panel was the same for all candidates. No members were biased against Mr. Jones. The hiring decision was made based upon objective criteria[,] and the most qualified candidate was awarded the position.

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It is unclear from the grievance how the cited Articles were violated. Absent additional information, I am unable to make a finding that, based on the information provided in the grievance document, the cited contract provisions were violated. Further, Article III [Section L] of the [CBA] states the following, in part:

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It seems clear that, based on this provision, the decision to change the assignment for a year to year position, such as a coach, is within the authority of the administration and is not to be deemed disciplinary or a violation of the contract.

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Accordingly, for the reasons stated above, the grievance is denied.

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On or about April 26, 2019, the Union filed the grievance with Superintendent Mastrocola at Level 3. By letter dated May 10, 2019, Mastrocola denied the grievance at Level 3, stating, in pertinent part:

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I have reviewed the grievance and the facts surrounding the hiring process and decision for the head varsity softball coach position. I have also conducted my own independent review of the hiring process, including meeting with the [U]nion vice president to understand the basis for the grievance. I also reviewed the interview protocols with the individuals on the interview team. Based on the below reasons, I deny the grievance.

As I understand it, Mr. Jones was considered for the annual appointment to the head varsity softball coaching position along with other candidates. As part of the application process, Mr. Jones was considered with other candidates and was interviewed. The interviewed panel was the same for all candidates. No members were biased against Mr. Jones. The hiring decision was made based upon objective criteria.

It is unclear from the grievance how the cited Articles were violated. Absent additional information, I am unable to make a finding that, based on the information provided in the grievance document, the cited contract provisions were violated. Further, Article III [Section L] of the [CBA] states the following, in part:

....

It seems clear that, based on this provision, the decision to change the assignment for a year to year position, such as a coach, is within the authority of the administration and is not to be deemed disciplinary or a violation of the contract.

Accordingly, for the reasons stated above, the grievance is denied.

On May 17, 2019, the Union processed the grievance to Level 4. By letter dated November 12, 2019, the District denied the grievance at Level 4. On January 16, 2020, the Union filed a demand for arbitration.⁶ At some point between January 16 and February 25, 2020, the Union also filed an MCAD complaint, alleging that the District had

⁶ At all relevant times, the 2019 grievance has remained pending.

1 discriminated against Jones by failing to rehire him as the varsity softball coach for the
2 2019 season. By letter dated February 25, 2020, the District filed a response to the MCAD
3 complaint, stating, in pertinent part:

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6 Interviews for the head coaching position for varsity softball took
7 place between February 11 and February 15, 2019. There were five
8 candidates for the head coaching position.... Each of the five
9 candidates was interviewed by a panel of individuals from the Athletic
10 Department.... Each interview began with time for the candidate to
11 address the panel. The candidates were then asked the same nine
12 questions, including questions on such topics as the individual's
13 coaching philosophy, their method of communication, their plans for
14 addressing classroom success, etc.

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16 Mr. Jones' interview proceeded in just this fashion. When first given
17 the opportunity to address the panel, Mr. Jones voluntarily raised the
18 issue of his conduct following the game held on May 24, 2018. Mr.
19 Jones admitted that he had lost his composure and continued to
20 deny that he had used some of the language in the allegations. Mr.
21 Jones was then asked the same questions as the other candidates
22 and provided his responses to the panel.

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24 Following the interviews, the panel met to discuss who they would
25 recommend to the Superintendent for the head coaching position for
26 varsity softball. The panel was looking for a candidate who was
27 accountable, ensured the safety and wellbeing of the students, could
28 timely and efficiently handle logistical requirements of the position,
29 and would improve the players' skills and success in competition.
30 The panel's decision was based on the interviewee's responses,
31 knowledge of the candidates, and any additional materials that any
32 candidate provided (e.g., letters of recommendation, newspaper
33 articles, etc.).

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36 The panel also considered and discussed Mr. Jones' fit for the
37 position. They discussed the ongoing difficulties between Mr. Jones
38 and Ms. Tellier during the prior two seasons, particularly with regards
39 to the communication between the two coaches. The panel also
40 discussed the events of May 24, 2018, and tension between the team

1 (many of whom were still students at the School) and Mr. Jones. The
2 panel further discussed how the team was not progressing in skills
3 and competitiveness under Mr. Jones' past three years of coaching.
4 As a result, the panel determined that it would be better for the
5 softball program to move forward with a new coach. Neither Mr.
6 Jones' gender nor his age was considered by the panel during its
7 deliberation process.

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10 **The Golf Grievance**

11 At all relevant times, the District employed Stephen Alborghetti (Alborghetti) as a
12 science instructor and tennis coach. At all relevant times prior to June of 2019, the District
13 employed Pat Moriarty (Moriarty) as a physical education instructor and as the assistant
14 girls' basketball coach. Moriarty was also a golfer who had established relationships with
15 the owners of local golf courses. In or about 2017, the District approved the creation of a
16 golf team and hired Moriarty as its golf head coach. The District does not have a golf
17 course and relies on local courses to provide students with tee times and practice space.
18 At some point around June of 2019, Moriarty retired from the District.

19 On or about August 28, 2020, the District posted a notice of vacancy for the
20 position of golf head coach. Subsequently, the District received three applications—two
21 of which came from internal candidates Jones and Alborghetti, and one which came from
22 external candidate Moriarty. The District forwarded those applications to White who
23 convened a hiring committee comprising himself and physical education instructor Daniel
24 "Joe" Kane (Kane).⁷ Once convened, White scheduled remote interviews for each

⁷ At all relevant times, beginning with the 2003-2004 school year, the District has employed Kane as a full-time physical education instructor. At various points from 2003

1 applicant and drafted four interview questions: (1) what motivates you as a coach; (2)
2 how would playing on your team help enhance the educational experience of your
3 athletes; (3) what do you feel are qualities you as a head coach can bring to the position
4 that you would want your athletes to emulate; and, (4) as golf requires the use of
5 outside/off campus facilities, do you have any contacts at local golf courses/ranges to
6 host the program? White provided the questions to Kane prior to the interviews and,
7 during those interviews, both he and Kane asked these same four questions of all the
8 applicants.

9 Alborghetti's interview occurred on or about September 15, 2020, during which
10 White and Kane asked if he had any connections to local golf courses. Alborghetti
11 answered "no" but that he could "look into it." During the interview, White noted that
12 Alborghetti was "very enthusiastic" and "seemed excited" about the position. He also
13 noted that Alborghetti had done a "nice job" as the tennis coach, and that the tennis team
14 had "really grown under his guidance." However, both White and Kane concluded that
15 Alborghetti lacked the experience necessary for the position.⁸

16 White and Kane also interviewed Jones on or about September 15, 2020, during
17 which they asked if he had any connections to local golf courses. Jones answered that

to present, Kane had also coached the following teams: boys varsity soccer, boys varsity
basketball, boys junior varsity volleyball, and tennis.

⁸ Kane gave un rebutted testimony that during the interview, Alborghetti had confused the
Kings Road Country Club golf course with the Vesper Country Club course and had
mistakenly believed that one of those courses was opened even though it was actually
closed.

1 while he did not have any connections to local golf courses, he was familiar with at least
2 one local driving range, the World Cup Golf Center. Jones also stated his willingness to
3 find a “home course” for the District—which is what he did as softball coach by securing
4 a substitute practice facility at Breakaway Sports in Dracut, Mass. Further, Jones
5 volunteered information about golf simulators that students could use when local courses
6 were unavailable. However, Jones did inform White and Kane that he had not reviewed
7 the COVID-19 golf protocols that were modified by Commonwealth.⁹

8 Moriarty’s interview occurred on or about September 15, 2020, during which White
9 and Kane discussed his prior experience as the District’s golf coach, his role in creating
10 the District’s golf program in 2017, and his ability to formulate tee time schedules. They
11 also asked Moriarty about his experience as a local, accomplished golfer, his access to
12 local golf courses/ranges and off-campus facilities, and his familiarity with the COVID-19
13 golf protocols¹⁰ modified by the Commonwealth.

14 At the end of all three interviews, Kane and White discussed each candidate and
15 both agreed that Moriarty was their preferred candidate and would be recommended to

⁹ White testified that prior to the interviews, the Massachusetts Interscholastic Athletics Association’s (MIAA) had posted golf modifications on its website which were accessible and available to the public. He also testified that the COVID-19 modifications were both fairly extensive and comprehensive because they involved how to share and use golf balls, how to flag pins, the use of face coverings, and sanitizing equipment.

¹⁰ White gave un rebutted testimony that Moriarty’s knowledge of the COVID-19 modifications was information that Moriarty had offered voluntarily during his interview and was not provided in response to any of White’s prepared questions. Kane also testified that while Moriarty demonstrated his familiarity with MIAA regulations and COVID-19 modifications.

1 the District for hire as the golf head coach. Later that day, White sent a memorandum to
2 Superintendent Davis, along with the interview questions and notes, recommending that
3 the District hire Moriarty as the golf head coach. After reviewing that information, Davis
4 endorsed White's recommendation and offered the position to Moriarty, which he
5 accepted.

6 DECISION

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8 A public employer that retaliates or discriminates against an employee for
9 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the
10 Law. Southern Worcester Regional Vocational School District v. Labor Relations
11 Commission, 386 Mass. 414 (1982); School Committee of Boston v. Labor Relations
12 Commission, 40 Mass. App. Ct. 327 (1996). To establish a prima facie case of retaliation
13 or discrimination, the charging party must show that: (1) the employee engaged in
14 concerted activity protected by Section 2 of the Law; (2) the employer knew of the
15 concerted, protected activity; (3) the employer took adverse action against the employee;
16 and (4) the employer's action was motivated by a desire to penalize or discourage the
17 protected activity. City of Holyoke, 35 MLC 153, 156, MUP-04-4503 (Jan. 9, 2009); Town
18 of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008); City of Boston, 35 MLC 289,
19 291, MUP-04-4077 (May 20, 2009); Town of Clinton, 12 MLC 1361, 1365, MUP-5659
20 (Nov. 9, 1985).

21 **Adverse Action**

22 The CERB has consistently defined adverse action as an adverse personnel
23 action, such as a suspension, discharge, involuntary transfer or reduction in supervisory

1 activity. City of Holyoke, 35 MLC 153, 156 (2009) (citing Town of Dracut, 25 MLC 131,
2 133 (1999)). Many management decisions, though possibly inconvenient or even
3 undesirable, do not constitute adverse employment actions unless the charging party is
4 materially disadvantaged in some way. See, City of Boston, 35 MLC 289, 291 (2009)
5 (citing MacCormack v. Boston Edison Co., 423 Mass. 652, 662 (1996)).

6 The parties do not dispute that Jones was engaged in concerted activity protected
7 by Section 2 of the Law when he filed the 2018 and 2019 grievances. Nor do the parties
8 dispute that the District knew of Jones' concerted, protected activities in 2018 and 2019.
9 However, the District disputes that it took adverse action against Jones by failing to offer
10 him the position of golf head coach in September of 2020. Rather, it points to Article III,
11 Section L of the CBA which provides that changes to coaching appointments are held on
12 a year-to-year basis and are not disciplinary but "are properly an administrative function
13 and responsibility." Thus, the District contends that its decision to not hire Jones as the
14 golf head coach was not adverse because there was no disciplinary action.

15 Despite the District's contention, I find that the decision to not hire Jones as golf
16 head coach constituted an adverse action because it materially disadvantaged his ability
17 to receive increased compensation via a stipend in the amount of approximately
18 \$4,500.00. See, generally, Town of Andover, 14 MLC 1571, 1582, MUP-6443 (H.O.
19 March 3, 1988), aff'd 17 MLC 1475, 1482, MUP-6443 (Feb. 6, 1991) (denial of an
20 employment opportunity, such as a promotion, constitutes adverse because a promotion
21 carries an increase in rank and/or compensation). I also find that the decision was adverse
22 because it affected Jones' future prospects to reapply for the golf head coach position as

1 a possible incumbent coach based on the District's established practice of preferring
2 incumbent, internal candidates over external candidates. See, generally, City of Boston,
3 35 MLC 289, 291, MUP-04-4077 (May 20, 2009) (citing Sallis v. Univ. of Minnesota, 408
4 F.3d 470, 476 (8th Cir. 2005) (termination, reduction in pay or benefit, and changes in
5 employment that significantly affect an employee's future career prospects constitute
6 material employment disadvantage but minor changes that merely inconvenience an
7 employee or alter work responsibilities do not)).

8 **Unlawful Motivation**

9 Absent direct evidence of unlawful motivation, a charging party may establish
10 unlawful motivation through circumstantial evidence and reasonable inferences drawn
11 from that evidence. City of Holyoke, 35 MLC at 156. Several factors may suggest unlawful
12 motivation, including the timing of the alleged discriminatory act in relation to the protected
13 activity, triviality of reasons given by the employer, disparate treatment, an employer's
14 deviation from past practices, or expressions of animus or hostility towards a union or the
15 protected activity. Id. at 157. Timing alone is insufficient to support a finding of illegal
16 employer motivation. Id.

17 Here, the District disputes that it acted with unlawful motivation when it declined to
18 hire Jones as the golf head coach in September of 2020. First, it points to the lack of
19 evidence to show that the decision not to hire Jones was based on his participation in the
20 grievance-arbitration processes in 2018 and 2019. It also points to White, Kane, and
21 Davis who all testified that they did not rely on Jones' prior involvement in those processes
22 when they decided to not offer him the golf head coach position in 2020.

1 Conversely, the Union argues that the District's decision was based on unlawful
2 motivation because White, Kane, and Davis all relied impermissibly on Jones' May 2018
3 reprimand and grievance, and on his 2019 grievance when it declined to offer him the golf
4 head coach position in September of 2020. It also argues that the District's motives were
5 unlawful because it deviated from the established practice of preferring internal
6 candidates over external candidates. Finally, the Union argues that the District treated
7 Jones disparately during the interview process because it asked him questions that were
8 different from those asked of the other applicants. Specifically, it asserts that White and
9 Kane asked questions that "were mostly broad and directed at overall athletics coaching
10 philosophy" and "consisted of very short discussions that avoided detail on the game of
11 golf itself."

12 I am unpersuaded by the Union's arguments that the District's decision not to hire
13 Jones as the golf head coach in September of 2020 was based on anti-union animus.
14 This is because the Union has failed to demonstrate that White, Kane, or Davis relied on
15 Jones' 2018 and 2019 grievances when they declined to offer him the disputed position
16 in 2020. The Union is able to show that the District relied on the 2018 grievance in its
17 February 25, 2020 response to Jones' MCAD complaint. It also points to White's
18 admission that Jones voluntarily raised that information during his 2019 softball interview.
19 However, the record is void of evidence showing that the District relied on the 2018 and
20 2019 grievances during Jones' golf interview on September 15, 2020.

21 Additionally, I am not persuaded by the Union's argument that the District deviated
22 from its established practice of preferring incumbent coaches/internal candidates over

1 external candidates when it offered the position of golf coach to Moriarity. Although
2 Moriarity was an external candidate when he applied for the position, and while Jones
3 was an internal candidate when he applied for that same position, neither Moriarity nor
4 Jones possessed the dual status of incumbent coach/internal candidate at the time of
5 their applications. Thus, I find that the District did not deviate from its established practice
6 because there was no incumbent/internal candidate who applied for the position of golf
7 coach in September of 2020.

8 Finally, the record is void of evidence that the District treated Jones disparately
9 during the interview process. White and Kane asked all three candidates the same four
10 questions; they both took notes of each candidate's answer; and they allowed each
11 candidate to speak freely and to volunteer additional information. Despite this parity,
12 Jones gave answers that differed from Moriarity's answers, in that Jones had not
13 established relationships with the owners of local golf courses and was not aware of the
14 COVID-19 modifications at the time of his interview. Moreover, there is no evidence that
15 Jones had volunteered any additional information during his interview that would have
16 persuaded White and Kane to recommend him over Moriarity.

17 Based on this evidence, the Union cannot establish that the District acted with
18 unlawful motivation when it declined to offer Jones the position of golf head coach in

1 September of 2020. Consequently, the Union has failed to establish a prima facie case
2 of discrimination.¹¹

3 CONCLUSION

4 For the reasons stated above, I conclude that the District did not violate
5 Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by retaliating against Jones
6 for engaging in concerted activity protected by Section 2 of the Law, when it declined to
7 offer him the position of golf head coach in September of 2020.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KENDRAH DAVIS, ESQ.
HEARING OFFICER

¹¹ Assuming, *arguendo*, that the Union is able to satisfy its prima facie case, the District was able to show that it had legitimate, non-discriminatory reasons for offering the golf head coach position to Moriarity but not to Jones. School Committee of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327, 335 (1996) (citing Trustees of Forbes Library, 384 Mass. 559, 565-66 (1981)). Specifically, the District demonstrated that Moriarity had extensive experience as an accomplished golfer; helped to create the golf program; developed a specific familiarity with the program, the students, and the school; had the ability to obtain tee times with local golf courses through his connections with the golf community; and had knowledge about the COVID-19 modifications. The District also determined that because Jones did not demonstrate any of these attributes during his interview, it had declined to offer the position to him. This evidence shows that District had a lawful, non-discriminatory reason for its decision. Trustees of Forbes Library, 384 Mass. at 565-66. Moreover, the Union cannot show that "but for" Jones' protected activity, the District would not have taken the adverse action because there is no evidence that the District ever considered the 2018 reprimand and grievance or the 2019 grievance when it made the decision in September of 2020. Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11, 1999).

APPEAL RIGHTS

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