

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

CITY OF MEDFORD

and

TEAMSTERS LOCAL 25

Case Numbers: MUP-22-9027
MUP-22-9189

Date Issued: October 30, 2025

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Jared Collins, Esq. - Representing City of Medford

Nicholas Balatsos, Esq. - Representing Teamsters Local 25

HEARING OFFICER'S DECISION

SUMMARY

1 There are two issues in this case: whether the City of Medford (City or Employer)
2 violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of Massachusetts General
3 Laws, Chapter 150E (the Law) by terminating Michael Ferretti (Ferretti) in retaliation for
4 engaging in concerted, protected activity; and Section 10(a)(5) and, derivatively, Section
5 10(a)(1) of the Law by transferring the duties of the IT Director to non-bargaining unit
6 personnel without giving the Teamsters, Local 25 (Union) prior notice and an opportunity
7 to bargain to resolution or impasse. Based on the record, and for the reasons explained
8 below, I find that the City did not violate the Law.

STATEMENT OF CASE

On January 6, 2022, and March 23, 2022, the Union filed separate charges of prohibited practice (Charges) with the Department of Labor Relations (DLR), which the DLR consolidated for investigation. On September 26, 2022, a DLR investigator investigated the Charges. On October 28, 2022, the investigator issued a Consolidated Complaint of Prohibited Practice (Complaint), alleging that the City violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by terminating Ferretti in retaliation for engaging in concerted, protected activity, and Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by transferring the duties of the IT Director to non-bargaining unit personnel without giving the Union prior notice and an opportunity to bargain to resolution or impasse. On October 31, 2022, the City filed its Answer to the Complaint. On May 1, 2024, I conducted an in-person hearing, during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence. On August 9, 2024, the parties filed post-hearing briefs. Based on the record, I make the following findings of fact and render the following opinion.

STIPULATIONS OF FACT

1. The City is a public employer within the meaning of Section 1 of the Law.
2. Local 25 is an employee organization within the meaning of Section 1 of the Law.
3. The City terminated IT Director Michael Ferretti on January 7, 2022.
4. On or about January 24, 2022, the Union filed a Petition for Certification by Written Majority Authorization for the positions of Treasurer/Collector, Assistant Treasurer/Collector, Co-Directors of the Consumer Advisory Commission, Building Commissioner, Director of Traffic and Transportation, IT Director, Network Administrator, City Clerk, Assistant City Clerk, Chief Assessor, Assistant Assessor, City Engineer, Assistant City Engineer, Election

1 Coordinator, Senior Sanitarian, Assistant Finance Director and Veterans
2 Services Director employed by the City.¹

- 3
4 5. On February 14, 2022, the DLR certified the Union as the exclusive bargaining
5 representative for the above-described bargaining unit.
6

7 FINDINGS OF FACT

8 General Background

9 Breanna Lungo-Koehn (Lungo-Koehn) was elected as the City's Mayor in
10 November 2019, and she took office in January 2020. As of the date of the hearing,
11 Lungo-Koehn was in her third term as Mayor. Prior to becoming Mayor, Lungo-Koehn
12 was a city councilor from 2001 – 2018. David Rodrigues (Rodrigues) was Lungo-Koehn's
13 Chief of Staff until September 13, 2021, when Nina Nazarian (Nazarian) replaced
14 Rodrigues as Chief of Staff. Prior to becoming Chief of Staff, Nazarian worked in a
15 temporary capacity for the City, supporting its Procurement Office and working on special
16 projects for the Mayor's office.

17 Ferretti, the City's Director of Information Technology (IT Director), began working
18 for the City in 1998. As the IT Director, Ferretti had responsibility for overseeing the
19 planning and implementation of computer technology throughout the City. His job duties
20 included, among other things, upgrading servers, administering usernames and email
21 accounts, and maintaining software and connectivity for City Hall and other City buildings.
22 Ferretti's office was in City Hall, where he regularly performed his duties throughout the
23 building, but his position also required him to work in other City buildings, such as schools

¹ The correct date is January 21, 2022.

1 and public safety departments. During the period giving rise to this matter, Salim Atiyat
2 (Atiyat) was the Network Administrator for the IT Department and Ferretti's subordinate.

3 Approximately 100 employees work in City Hall, with over 80 employees working
4 in City Hall on any given day. The City has 26 department heads and more than 400
5 employees.

6 Lungo-Koehn Reorganizes City Departments

7 After being elected but before being sworn in, Lungo-Koehn established a
8 transition team to evaluate how City Hall was operating. In consultation with Lungo-
9 Koehn, the transition team held public meetings and met with every department head
10 before issuing a transition report that recommended certain changes to the City's
11 executive functions, including whether to establish certain new offices and whether to
12 merge other preexisting offices. For example, based upon the report, Lungo-Koehn
13 merged the Energy and Environment Office with the Office of Community Development,
14 and removed the Director of the Office of Community Development. Lungo-Koehn also
15 created a Human Resources Department, which did not previously exist within the City.²
16 Lungo-Koehn also replaced the Treasury Collector in the Law Department.

17 Lungo-Koehn also identified the Department of Public Works and IT Department
18 as needing additional oversight and changes in personnel. Lungo-Koehn, however,
19 decided to postpone further changes for the time being because she did not want to
20 disrupt the DPW during the winter, and she felt that changes in four departments were

²Lungo-Koehn testified that the lack of a human resources department created accountability issues for employees because there were "really no files within City Hall." She "merged DEI into human resources, knowing full well that we needed to have a separate...human resources department...in the long run."

1 enough at the time. She decided to start with oversight rather than personnel changes in
2 these departments.³

3 Ferretti Counseled on Job Performance

4 By letter dated February 18, 2021, Ferretti received a Documented Counseling
5 Memorandum from Neil Osborne (Osborne), Director of Diversity and Human Resources.
6 It states, in relevant part, that:

7 This memorandum is to review with you the Information Technology Department's
8 staffing and availability to meet the needs of City Hall staff. Of high priority is that
9 the IT Department is staffed at 8:30 AM every morning to be available to timely
10 address periodic system outages of our computer or phone systems. Last month
11 on two separate occasions when our computer systems were down Mayor Lungo-
12 Koehn could not locate anyone in IT to address the problem.⁴

13
14 In the future when you and your staff must leave the office unattended you will be
15 expected to leave notice on your door as to how you can be reached and an
16 estimated time of your return. Additionally, it remains your responsibility to ensure
17 that calls to the IT department are answered or returned in a timely manner.

18
19 Last week, the Mayor's Executive Assistant, Daria Tejera, and the director of
20 Community Affairs, Lisa Colaianni, needed direct assistance from the IT
21 department as they worked to setup the DPW with new laptops for the relaunching
22 of SeeClickFix program. This was a time sensitive matter. Daria and Lisa
23 expressed a level of frustration in not being able to locate you or Salim Atiyat in
24 the office and having emails and calls returned in a timely manner. Mayor Lungo-
25 Koehn intervene[d] on Friday February 12th sending an email to you and Salim that
26 she required your presence in City Hall for the short week of February 16-19th. You
27 were made aware that Room 207 is available if you needed separate space to
28 prepare the new laptops for DPW use. On February 16, 2021 Salim was not at
29 work in City Hall and your whereabouts were also un-known. On February 17, 2021
30 at the start of the workday your office was dark and the door was locked. Daria

³ Lungo-Koehn testified that she wanted to give Ferretti and the DPW Director "a chance to prove themselves." Lungo-Koehn also testified that she knew from her experience as a City Counselor that she needed to "keep an eye" on IT.

⁴ Lungo-Koehn corroborated this assertion in her testimony: "[T]wice I had to go around the building to try to find – either one of them." She could not "find them, at least until a little after 9:00 and City Hall opens at 8:30." Nazarian also testified that before she became Chief of Staff, she experienced issues with Ferretti not promptly responding to requests for IT assistance.

1 spent the better part of February 17th trying to contact you and at 4:15 PM the IT
2 office door again was locked and the office dark.⁵
3

4 Going forward you will need to post a sign on your door during regular business
5 hours if both you and Salim are elsewhere in the building and an estimated time of
6 your return. Regardless of staffing during business hours it is imperative that you
7 take and return calls to IT department in a timely manner. Lastly, promptly at 8:30
8 AM every morning your office needs to be open and available to staff starting the
9 workday as your department plays a critical role ensuring City Hall operations run
10 smoothly.
11

12 Ferretti Receives Written Warning

13 By memorandum dated March 3, 2021, Osborne issued Ferretti a written warning
14 regarding "Violation of Smoking Protocol." In relevant part, this written warning states that:

15 With the onset of COVID-19, how the City conducts business with the public
16 drastically changed.... Among other common sense safety restrictions put in place
17 was prohibiting employees from gathering in close proximity of each other outside
18 of City Hall to smoke.... On February 5, 2021 you were observed by Chief of Staff
19 David Rodrigues outside City Hall smoking in close proximity of another employee
20 Network Administrator, Salim Atiyat, in direct contradiction of established
21 protocols.
22

23 The Written Warning further stated that "on three separate occasions Chief of Staff, David
24 Rodrigues, sent notice to department heads for communication with staff that smoking
25 together outside City Hall is prohibited." The Written Warning referenced a December 15,
26 2020 directive to employees who smoke outside to "do so no closer than 25' from any
27 entrance, and by yourself. There should be no congregate smoke breaks among
28 employees." It further referenced a December 22, 2020 "**Final Reminder about this**
29 **point** (emphasis in original)." Finally, the Written Warning referenced a January 19, 2021

⁵ Ferretti did not deny this allegation when testifying, saying: "This is when I was doing work for the mayor, trying to put that SeeClickFix in down the city yard, I was working down there. And it says someone couldn't get in touch with me."

1 notice that, “This will be the final one [i.e., notice] before discipline is issued for
2 infractions.”⁶

3 TOSS IT Assessment and Remediation Contract

4 At some point in the first quarter of 2021, the City engaged the TOSS Corporation
5 (TOSS) to perform a “comprehensive Cybersecurity and IT assessment” to “help gauge
6 the city’s current standing in the area of Cybersecurity, Information Technology,
7 Networking and overall technical capabilities within the city’s IT department.”⁷ TOSS was
8 critical of the “technical capabilities of the IT team working with TOSS.” TOSS issued a
9 full report, identifying 152 vulnerabilities, and an April 9, 2021 two-page summary of its
10 report.⁸

11 Upon receiving this report, the City contracted with TOSS to have TOSS perform
12 “Cybersecurity Remediation, Network Cleanup and IT Remediation, and Cybersecurity
13 Mitigation” from July 19, 2021 – July 18, 2022. TOSS’ work would require the cooperation

⁶ Lungo-Koehn testified that she did not become “frustrated” with people smoking until employees exhibited “complete defiance.” There is no indication in the record that Ferretti, a department head, was unaware of the COVID-related smoking protocol, which required employees to smoke 25 feet away from City Hall and alone. Contrary to Ferretti’s testimony that he was disciplined for smoking “without a mask on during COVID,” he was disciplined for failing to observe social distancing protocols while outside smoking. He did not deny this allegation and testified that: “My coworker and I were out both having a cigarette.”

⁷ Lungo-Koehn testified that around this time, the City had experienced a data security breach at one of its schools that resulted in an individual stealing information.

⁸ Due to the sensitive nature of the information at issue, I admitted a heavily redacted version of the April 9, 2021 summary into the record, despite the Union’s objection. The record contains no evidence to dispute Lungo-Koehn’s testimony that TOSS identified an “alarming” number – 152 – of IT vulnerabilities, and that the City relied on this report.

1 of the IT Department staff. TOSS experienced difficulties working successfully with the IT
2 Department and Ferretti.⁹

3 Laptop Replacements
4

5 By email on August 9, 2021, regarding “Laptop Replacements,” Rodrigues wrote
6 to Ferretti, Atiyat, and others, in relevant part, that:

7 Mike, et. al – With the end of CARES funding coming up and the risk of future
8 prolong[ed] periods of working from home, can you please put together a plan to
9 replace all the aging desktops on our systems with laptops? As part of that can
10 you please send along an inventory of previously ordered laptops?¹⁰
11

12 By email on August 27, 2021, Rodrigues again wrote to Ferretti, Atiyat, and others
13 regarding Laptop Replacements that, “We are quickly approaching the end of the
14 eligibility period for CARES funding. Please submit the plan for these replacements by
15 the end of business on Wednesday, September 1.”

16 By email on August 30, 2021, Ferretti responded to Rodrigues. Ferretti provided a
17 list of desktops, organized by PC model, year of manufacture, and the number in use. For
18 example: Model 780, year 2011, and 1 in use; Model 7010, year 2014, 14 in use. Ferretti
19 then provided a list of current laptops in use that also included the model, year of
20 manufacture, and number in use. For example: Latitude E7470, year 2016, 2 in use; HP
21 Pavilion 15-cw2, year 2019, 1 in use. Ferretti’s email continues:

22 We have started phasing out the model 780, 9010, 9020 and 7010, we have
23 already replaced 4 of the 7010 machines with newer machines that have 16GB
24 memory and a 500 GB solid-state drive, these machines are fast. We are
25 scheduled to replace 2 more 7010’s and the 780 this week. The 780 is only used

⁹ Lungo-Koehn testified that she had personal knowledge that “it was very difficult... for TOSS to get information and responses from our IT director.” Her Chief of Staff would try to set up meetings with TOSS and “it was just very difficult to get a response either in writing or get our IT director to a – to a meeting.”

¹⁰ CARES funding was COVID-19-related funding from the Federal Government.

1 as a outside connection for the collectors office, we will replace this because it is
2 a windows 7 machine. We have talked with Neil Osborn about his machine, the
3 Precision 3620, we are replacing his machine and Candice Smally 5080 with
4 laptops. The machines that need replacement is [sic] the 7010, 9020, 9010 and
5 780, the 7020 can be rebuilt by upgrading the memory to 16GB and replacing the
6 500gb SATA drive with a 500GB Solid-State drive for a total cost of under 232.00
7 (drive 120 and memory 112). The 5040's can be rebuilt by adding 8GB of memory
8 and replacing the 500GB SATA drive with a 500GB Solid-state drive, total cost of
9 \$232.00 (drive 120.00 and 112.00 memory). 21 machines need these upgrades
10 (13 7020 and 8 5040) for a total of 4,872. A new Dell Latitude 5420 BTX Base will
11 cost 1479.01.

12
13 Not sure which way you want to go. The remaining 3 7010's and the 9020 are used
14 by people who already have laptops, the 9010, we are in the process of replacing
15 for Neil and the 780 is only used for an outside vendor working with the collectors
16 office. [sic]

17
18 By email on September 1, 2021, Rodrigues responded to Ferretti that, "In lieu of
19 upgrading aging desktops, we should proceed with replacing them with laptop/dock
20 systems that will allow for remote work if needed. This is an eligible CARES expenditure
21 that will expire at the end of October. Our goal should be to move everything over to a
22 laptop to utilize those available funds." On September 2, 2021, Rodrigues forwarded his
23 September 1, 2021 email to Nazarian.

24 Nazarian Replaces Rodrigues

25 When Nazarian replaced Rodrigues as Chief of Staff, on September 13, 2021,
26 Ferretti still had not developed a laptop replacement plan. By email on September 23,
27 2021, Ferretti wrote to Nazarian regarding a scheduled Monday, September 27, 2021
28 meeting on "Potential Laptop Purchases," that:

29 Loren new laptop installed this week. The personnel office's laptops are in my
30 office now, but we are waiting for docking stations (original order). 5 more laptops
31 are on order now, 2 for Penny F (Bruce) 1 for Kim Scanlon, 1 for Adam Hurtabe
32 and 1 extra which we were thinking Todd Blake in Engineering. Brian mentioned 3
33 for parking, Penny was saying she possible needed 5 or 6 more, I was thinking of
34 getting at least 10 more. [sic]

1 That day, September 23, Nazarian thanked Ferretti for “this cursory overview. I look
2 forward to discussing a more detailed version in the form of a list or spreadsheet on
3 Monday. If I am missing your point, please do not hesitate to let me know or call me.”
4 Nazarian was unclear what Ferretti was attempting to communicate.

5 On September 27, 2021, Ferretti met with Nazarian. Nazarian considered Ferretti
6 unprepared for the meeting because he did not arrive with any written information, so she
7 rescheduled the meeting for September 30, 2021. Nazarian considered this to be a failed
8 meeting.¹¹ The undated scheduling email for the September 30, 2021 meeting states, in
9 relevant part:

10 Please come to this meeting with a comprehensive **[written]** (emphasis in original)
11 inventory of workstations, so that we can discuss a plan to replace all the aging
12 desktops in our systems with laptops. Thinking of the specific information I need
13 your help with to have a fruitful discussion before the time runs out on the CARES
14 funds (end of October), at a minimum, the inventory should include the age of the
15 machine, whether it is a desktop or laptop, and any recommendations you have
16 regarding the machine and/or the current status.

17
18

19
20 This is a follow up on Dave Rodrigues’ requests for a plan to replace all the aging
21 desktops on our systems with laptops. Since I do not believe a comprehensive
22 plan was provided and the timing on these funds coming to a quick close, I wanted
23 to ensure that we were on the same page with what is needed. If there is
24 information you provided to Dave that I do not have, please forward and if there is
25 information I received and am not recalling, please resend too.

26
27 On September 30, 2021, Ferretti met with Nazarian. Ferretti again did not bring a
28 written inventory of workstations in City Hall as Nazarian had instructed him to do.
29 Nazarian then scheduled a third meeting with Ferretti for October 1, 2021. In addition to

¹¹ Nazarian testified to this fact.

1 repeating the instructions to Ferretti for the September 30 meeting, Nazarian wrote to
2 Ferretti that:

3 As discussed at our 10 AM meeting today, the following is your No. 1 priority
4 between today and our meeting tomorrow morning. **All emergencies should be**
5 **routed to Salim so that you have the time to create a comprehensive written**
6 **inventory of all workstations managed by your department** (emphasis in
7 original) (computers and laptops only, I do not need tablet information at this time).
8 I appreciate that you acknowledged and apologized, noting that you should have
9 read my emails on this topic, so I am hoping that I can rely on you to prepare a
10 complete listing for our meeting tomorrow morning. Frankly, and I feel I would be
11 remiss in saying that your office should already maintain an inventory of all
12 workstations and continually be updating it (sic). Time is very quickly running out
13 for use of CARE funds. If there are any workstations you do not have information
14 on, please track down the information with any means available. If you have no
15 way to get the information, please note on the spreadsheet what it is you think you
16 are missing.

17
18 Ferretti and Nazarian met on October 1, 2021. Nazarian sought a comprehensive
19 list of computers so that they could develop a laptop replacement plan. Nazarian
20 understood that Ferretti had issued laptops to certain employees as secondary devices,
21 rather than replacements for desktops. Nazarian was concerned because she did not
22 think that Ferretti was adequately managing the City's existing inventory of computers.
23 Due to the expiring nature of the CARES funding, the City implemented a backup plan
24 and was unable to use the funding to fully implement a laptop replacement plan.¹² The
25 City did not discipline Ferretti for his performance related to the laptop replacement issue
26 at the time it occurred.¹³

¹² Nazarian testified that by the time she received "actionable" information from Ferretti, "it was too late because we had to implement plan B to make sure that the... funding was spent. So we're ultimately unable to use Care Act funding to make the level of substantial laptop replacements that we should have been able to make at the time." Ferretti testified that his work during these meetings may not have "always been right."

¹³ Nazarian testified that she did not "directly recall discipline" over the laptop replacement issue, but that a supervisor telling Ferretti that a "deadline has come to a close" should

1 Ferretti Receives Final Written Warning

2 By letter dated October 5, 2021, Nazarian issued Ferretti a "Final Written Warning."

3 In relevant part, this Final Written Warning states that:

4 On September 17, 2021, at my suggestion, the City's 3rd party information
5 technology contractor, Toss Corporation circulated an email proposing a meeting
6 Thursday, September 23, 2021 at 10 AM, to include the City's IT team (yourself
7 and Salim), the contractor's personnel, and the Mayor and I. The email specifically
8 included a date and time for the meeting. Shortly after the email, Toss circulated a
9 calendar invitation which incorrectly showed an "all-day" meeting. The same day,
10 this calendar invitation was corrected to correct the meeting time to 10 AM. I did
11 not receive any communications from you or your department seeking clarification
12 on the meeting date or time. On the date of the meeting, you failed to attend the
13 meeting. I called you to alert you of the meeting, which you joined moments after
14 my call to you. Of note, during this meeting, Toss Corporation noted that
15 communication was lacking between the City's IT Department and their staff. They
16 mentioned a number of emails had not been responded to and certain time
17 sensitive security actions that needed to be taken by both the City's IT Department
18 and Toss Corporation to improve the City's IT security systems.

19
20 During the September 23rd meeting, while you were present, the group agreed to
21 set up a weekly recurring meeting on Wednesdays at 10 AM, with the first recurring
22 meeting to begin on September 29, 2021 at 10 AM. On September 29th, you again
23 did not show up to the meeting. I text messaged you a few minutes past 10 AM,
24 then I emailed both you and Salim, and ultimately concluded the meeting with Toss
25 Corporation, since neither of you joined the call, nor responded to me. I followed
26 up with an email to both of you expressing my concern and noting that the lack of
27 notification was unacceptable. You responded to my email that Salim was not in,
28 and that you had an urgent request to move an employee workstation. You further
29 notified me when we spoke briefly about the issue, that you did not have your cell
30 phone with you at the time you were moving the employee's workstation. While I
31 understand that things come up, my overall concern is that communication and
32 prioritization appears to be lacking from you as the Department Head. When Salim
33 notified you that he would not be in, you should have notified me, so that I was
34 aware that he would not be attending the meeting. You also are responsible to
35 ensure that if you are not able to attend a meeting, are confused by the date and
36 time of a meeting, etc. that you communicate those issues in advance.¹⁴

have been a "wake up call to a department head...that they haven't performed the functions of their job."

¹⁴ Nazarian testified that Ferretti was tardy to the first meeting and failed to appear for the second. Ferretti testified that if he heard about a meeting, he "usually" went. Ferretti also testified that he missed a meeting because he was setting up computers on a

1
2 This letter is a written warning about your lack of proper communication and
3 timeliness as a Department Head, further recurrences may result in further
4 disciplinary action, up to and including termination. I will note that this letter is a
5 "final warning letter", and further drops in communication, with either the City or
6 the City's 3rd party contractor, recurrences of other warnings documented in your
7 file, or other material issues with your work, the City's disciplinary action may
8 include suspension without pay, given the other warning letters in your file on other
9 matters. [sic]

10
11 Cybersecurity Grant Application

12 By email on November 8, 2021, Nazarian wrote to Ferretti that:

13 As you may have seen, the state is offering a program which Medford can apply
14 for to get further assistance and training on cybersecurity through "end-user
15 training, evaluation and threat simulation." This fits nicely with the questions and
16 comments I was asking about in our last meeting with Toss.

17
18 Could you please review, plan out, and draft the application responses for this
19 grant program by the end of the week? Time is of the essence since the application
20 states that it "...will remain open until all seats are filled or December 17, 2021,
21 which ever occurs first." I have attached the questions in a MS Word format for you
22 to complete and send to me. I will be off on Friday, and of course Thursday is a
23 holiday, but I don't see the process taking more than a couple hours of your time.

24
25 On November 15, 2021, Nazarian wrote to Ferretti that she was following up on
26 her November 8 email, "as I do not believe I received a response. Please advise on the
27 status of the draft application responses." Ferretti did not respond, so Nazarian contacted
28 Atiyat, who completed the application.¹⁵

29 Ferretti Organizes Department Heads

Wednesday, but that "everyone had my cell phone, they could find me anytime they wanted to." Ferretti's testimony did not include dates, but I take administrative notice that September 29, 2021, was a Wednesday. Regardless, I find that Ferretti missed the September 29, 2021 meeting.

¹⁵ Ferretti testified equivocally about whether he communicated with Nazarian about the grant application. Nazarian testified specifically that Ferretti did not respond to her, so she assigned the task to Atiyat. I credit Nazarian's testimony over Ferretti's.

1 In late 2021, Ferretti decided to organize the various department heads and
2 assistant department heads into a bargaining unit. On November 29, 2021, Ferretti
3 contacted Steve South (South), the Union's Secretary/Treasurer, about organizing a
4 bargaining unit.¹⁶ On or around December 14, 2021, Ferretti, with assistance from Atiyat,
5 Mike Durham (Durham), the Veteran's Director, and Alison Conboy (Conboy), the Board
6 of Health Director, began collecting union authorization cards from various department
7 heads. By text message on December 29, 2021, Ferretti wrote to South that:

8 I have 9 filled out cards. You already have mine and Mike [D]urham mailed his in.
9

10 I also got 1 person saying they need to think about it, 1 person who said I need to
11 talk to my wife, 1 person who said won't we get in trouble and 1 person who said I
12 hate unions.
13

14 I talked to everyone who I am comfortable knowing they wouldn't go the mayor.
15

16 To collect authorization cards, Ferretti spoke to various department heads
17 wherever he saw them. Some he spoke to in his office, some in their offices within City
18 Hall, some in the hallways of City Hall, and some he spoke to as they were leaving or
19 outside City Hall. He did not, however, speak to every department head. Ferretti did not
20 go to the formerly named Office of Community Development because he did not trust that
21 office's department head. He also did not go to offices where employees could not
22 unionize, such as the Law Department and the Mayor's office.¹⁷

¹⁶ As of the date of the hearing, the Union represented seven bargaining units of City employees.

¹⁷ Ferretti testified that he tried to organize the department heads without Lungo-Koehn becoming aware of his activity, but he was unsuccessful. He testified that the offices in City Hall are very small, with two or three people often sharing an office. For example, Ferretti and Atiyat shared an office. He further testified that he was not quiet, other people heard him, and people talk. His testimony that Lungo-Koehn was aware of his activity, however, was entirely speculative, especially where he was attempting to prevent the

1 Some of the employees Ferretti spoke to had already heard about his organizing
2 campaign, and two of them – Ted Costigan and Sandy Gale – approached Ferretti to sign
3 authorization cards. After Ferretti had collected a group of authorization cards, he
4 delivered nine of them to South on or around January 5, 2022. The Union received
5 additional cards on or around January 11, 2022; January 13, 2022; and March 9, 2022,
6 after the bargaining unit was certified.

7 January 2, 2022 Solidarity Rally

8 On the morning of Sunday, January 2, 2022, the Union held a solidarity rally in
9 front of City Hall in support of the City employees that the Union represents. South
10 attended the rally from across the street because a court had barred him from City Hall
11 property. Ferretti attended the rally.¹⁸

12 Ferretti's January 6, 2022 Meeting with Nazarian

13 On the morning of January 6, 2022, Nazarian summoned Ferretti to her office.
14 When Ferretti arrived, Osborne was present. Nazarian told Ferretti that that day was his
15 last day as a City employee, and that he could resign or be discharged. Ferretti asked for
16 ten minutes to consider, which Nazarian denied.¹⁹ Ferretti resigned. Osborne then

Mayor from becoming aware of his activity. Both Lungo-Koehn and Nazarian denied any knowledge of Ferretti's organizing activities.

¹⁸ The Union did not produce evidence regarding what specifically was discussed at this rally, including whether the department head campaign was a topic. It also did not produce evidence regarding Ferretti's role in the rally, such as whether he was a visible speaker or attendee in the crowd.

¹⁹ Ferretti testified to this fact, which I credit. I note that South testified that he asked Ferretti why Ferretti did not call him before resigning, and Ferretti answered that he did not have time.

1 escorted Ferretti to his office to retrieve his personal belongings before escorting him from
2 the building.

3 Immediately after this meeting, Ferretti contacted South to explain what had
4 happened. South and the Union advised Ferretti to rescind his resignation, especially
5 since he had no opportunity to consider the options that Nazarian gave him.²⁰ Ferretti
6 rescinded his resignation later that evening or the next morning, January 7, 2022.

7 Discharge of Ferretti

8 By letter dated January 7, 2022, Lungo-KoeHN discharged Ferretti, effective that
9 day, pursuant to Part 1, Section 52 of the City's Charter. The letter provides that the basis
10 for Ferretti's removal includes, but is not limited to:

- 11 1. About a year ago, there were several concerns outlined with the
12 availability/presence of the IT Department staff and proper procedures to
13 ensure that time sensitive matters of the organization were being addressed in
14 a timely fashion.
15
- 16 2. Approximately 9 months ago, the Mayor's Office completed a comprehensive
17 cybersecurity and IT assessment. Among others, the conclusion of the
18 assessment was that the City "was at a high level of vulnerability at the edge
19 of the network, endpoints and servers." The determination from the assessment
20 was "that the root cause of the majority of issues stems from a culture in the IT
21 department at City of Medford that lacks capability, planning, proactive action,
22 and the knowledge and understanding necessary to keep the city's systems
23 safe and functional without disruption."²¹ Since that time, the Mayor's Office
24 initiated corrective action on the vulnerabilities identified. During that process,
25 the Mayor's Office staff faced considerable difficulty working with yourself,
26 including but not limited to, getting you to attend meetings which you had
27 previously agreed to and getting you to communicate with our 3rd party vendor,
28 TOSS Corporation.

²⁰ South testified that it was common practice in Lungo-KoeHN's administration to demand an answer on the spot. I note that Nazarian testified that she had "no reason" to believe that Ferretti needed to speak with a Union representative or that the City had an obligation to invite one to the meeting.

²¹ These citations do not appear in the redacted summary that the City offered at the hearing.

- 1
2 3. Beginning on at least August 9, 2021, the former Chief of Staff Rodrigues asked
3 you to prepare a plan to replace all the aging desktops on our system with
4 laptops. Based on a lack of response, Rodrigues followed up on August 27,
5 2021 that the plan be submitted by September 1st. On September 23rd, Chief
6 of Staff Nina Nazarian coordinated a meeting to occur with you on September
7 27th with clear instructions directing you to come to the meeting with a
8 comprehensive inventory of workstations, so that a plan to replace all the aging
9 desktops in our systems with laptops could be discussed. On the day of the
10 meeting, you did not come prepared with any listings, despite Nazarian's clearly
11 written instructions to you. On the 27th, Nazarian directed you to review the
12 email she had sent for the information that was needed and then followed up
13 on September 28th emphasizing the directive to bring a comprehensive
14 inventory of workstations. On September 30th when you and Nazarian were
15 scheduled to meet again, you provided a list for only laptop orders already
16 placed. Again, Nazarian rescheduled the meeting with you for October 6th,
17 further clarifying the instructions she had previously provided by emphasizing
18 the requirements of her directive. By this time, 2 months had passed since the
19 Mayor's Office had written to you about developing a plan and/or guiding you
20 to develop a plan. Emails to vendors from yourself finally went out requesting
21 quotes on laptops on October 7th. By the time that vendors responded, the
22 City's access to CARES funds had become constrained due to a couple factors
23 and therefore Nazarian notified you that the order could not be placed.
24
- 25 4. Despite a written warning and several emails to all City Hall Staff, you have
26 been observed to continue to smoke directly outside City Hall when the written
27 directive to all employees is that they must be 25 feet from the building while
28 smoking. The current chief of staff has observed this in the past 2 months, as
29 well as on a separate occasion by an employee in the Human Resources
30 Office.²²
31
- 32 5. On Monday, November 8th, Nazarian emailed you with a directive to prepare a
33 draft application for a Municipal Cybersecurity Grant offered by the state,
34 asking that you provide the draft by the end of the week. Based on a lack of
35 response from you, she followed up with you on Monday, November 15th
36 asking for the status of the draft application. You never responded. Chief of
37 Staff Nazarian found an alternative to complete this task in December, which
38 was ultimately your responsibility. This example is one of several examples

²² The allegation is that Ferretti continued to violate the smoking policy despite having received a March 3, 2021 written warning regarding the smoking policy. Nazarian's testimony corroborates this allegation. Lungo-Koehn testified that this violation alone would not lead to discharge.

1 where you have not responded, or responded insufficiently to directives given
2 or questions asked.²³
3

4 As of the date of the hearing, Ferretti had not sought other employment since the City
5 discharged him.

6 Written Majority Authorization Petition

7 On January 21, 2022, the Union filed a Petition for Certification by Written Majority
8 Authorization of the department heads (Petition) with the DLR and served a copy on the
9 City's counsel. The City's counsel then forwarded the Petition to Nazarian.²⁴

10 City Contracts with TOSS to Perform IT Work

11 On or around November 24, 2021, after Ferretti's failure to respond to Nazarian's
12 communications about the cybersecurity grant, Nazarian began discussing with TOSS
13 the possibility of contracting TOSS to perform IT work. In mid-December 2021, Nazarian
14 met with TOSS again about contracting out IT work, including the IT Director's duties. On
15 February 10, 2022, the City executed a contract with TOSS for TOSS to perform work
16 consisting of "Information Technology and Cybersecurity Project Service support." This

²³ Nazarian testified that this cybersecurity incident was the "final straw" for her, and that discussions with legal counsel about separating Ferretti from employment with the City began in early December. Lungo-Koehn testified that discussions about separating Ferretti began as early as late summer, early fall of 2021, but she knew she could not take any action prior to the upcoming November election. Like Nazarian, she also testified that the cybersecurity grant was the "final straw" and that after it occurred, her team knew what it needed to do regarding Ferretti, i.e., discharge him. Her team was also making changes to the Department of Public Works around this time, and they used the holidays to prepare to discharge Ferretti.

²⁴ Nazarian testified that she became aware of the organizing campaign for the department heads upon receiving this Petition. She denied having knowledge of Ferretti's role in organizing the department heads. Lungo-Koehn testified that she did not learn of the organizing campaign until receiving the Petition, and she did not learn of Ferretti's role in organizing the department heads until the day of the hearing in this matter. The Union did not rebut this testimony, and I credit it.

contract has an effective date of February 14, 2022, and continues on a month-to-month basis unless terminated.

Certification and Amended Certification of WMAM-22-9067

On February 14, 2022, the DLR certified the Union as the exclusive representative of the department head bargaining unit. On December 19, 2022, the DLR amended the February 14, 2022 certification in WMAM-22-9067 to exclude the position of City Clerk. The amended certification certified the Union as the exclusive bargaining representative for:

All full-time and regular part-time employees employed by the City of Medford in the positions of Treasurer/Collector, Assistant Treasurer/Collector, Co-Directors of the Consumer Advisory Commission, Building Commissioner, Director of Traffic and Transportation, IT Director, Network Administrator, Assistant City Clerk, Chief Assessor, Assistant Assessor, City Engineer, Assistant City Engineer, Election Coordinator, Senior Sanitarian, Assistant Finance Director and Veterans Services Director but excluding all managerial, confidential, casual and other employees.

On October 18, 2023, the Union disclaimed interest in representing the bargaining unit.²⁵ On October 23, 2023, the DLR received a petition to decertify the bargaining unit. On December 1, 2023, the DLR revoked the amended certification issued in WMAM-22-9067.

OPINION

There are two issues in this case: whether the City violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by terminating Ferretti in retaliation for engaging in concerted, protected activity; and whether it violated Section 10(a)(5) and, derivatively,

²⁵ South testified that the Union and City were unable to agree on an initial collective bargaining agreement. He further testified that many employees in the bargaining unit were either terminated or forced out, and that there were not many employees left who were part of the initial group that certified, and they “deserted.”

1 Section 10(a)(1) of the Law by transferring Ferretti's IT duties to non-bargaining unit
2 personnel without giving the Union prior notice and an opportunity to bargain to resolution
3 or impasse.

4 10(a)(3) – Ferretti's Discharge

5 To establish a violation of Section 10(a)(3) of the Law, a charging party must first
6 establish a prima facie case of retaliation or discrimination by demonstrating that: 1) the
7 employee was engaged in activity protected under Section 2 of the Law; 2) the employer
8 was aware of this activity; 3) the employer took adverse action against the employee; and
9 4) the employer's conduct was motivated by a desire to penalize or discourage the
10 protected activity. Town of Carver, 35 MLC 29, 47, MUP-03-3894 (June 30, 2008);
11 Lawrence School Committee, 33 MLC 90, 96-97, MUP-02-3631 (December 13, 2006).

12 To support a claim of unlawful motivation, the last element of a prima facie case, a
13 charging party may proffer direct or indirect evidence of discrimination or retaliation.
14 Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002), *aff'd sub nom.*,
15 Town of Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005).

16 Concerted, Protected Activity

17 Here, Ferretti contacted the Union and collected authorization cards to organize a
18 bargaining unit of department heads. He also attended a January 2, 2022 Union rally to
19 support Union employees. Section 2 expressly provides that employees shall have the
20 right of self-organization. Accordingly, Ferretti engaged in activity that Section 2 of the
21 Law protects.

22 Employer Knowledge

1 The City argues that it had no knowledge of a campaign to organize the department
2 heads, let alone Ferretti's involvement in it, when it discharged him on January 7, 2022.
3 The City argues that it did not learn about the organizing campaign until it received notice
4 of the Petition on January 21, 2022. The Union argues that the City must have known
5 about Ferretti's organizing activity, and circumstantial evidence can establish employer
6 knowledge. Although the Union correctly states that circumstantial evidence can establish
7 employer knowledge, the Union largely speculates rather than produces circumstantial
8 evidence.

9 On this point, as the City notes, Fowler v. Labor Relations Commission, 56 Mass.
10 App. Ct. 96 (2002) is instructive. In Fowler, the Appeals Court found that the former Labor
11 Relations Commission, now the Commonwealth Employment Relations Board (CERB),
12 erred when it required direct proof of employer knowledge and declined to consider
13 circumstantial evidence. The facts in this case, however, are easily distinguishable from
14 the facts in Fowler.

15 Fowler was a mid-level manager who was demoted and fired soon after
16 commencing an organizing campaign. Direct evidence established that Fowler's role in
17 the organizing campaign had come to the attention of the employer's general counsel. Id.
18 at 98 n. 2. Additionally, after his demotion, Fowler's direct superior closely supervised
19 him. That superior served as a conduit of information to the employer's executive director.
20 Fowler's superior, the executive director and his chief of staff knew that union activities
21 were afoot. Moreover, Fowler's union activities were open and well-known in the
22 workplace. Id. at 98-99. Fowler's supervisor received union organizing information and
23 immediately shared it with the chief of staff, who relayed it to the executive director; there

1 was direct proof that management knew of an organizing campaign. Based upon those
2 facts, employer knowledge of Fowler's activity could be inferred. Id. at 102.

3 Here, although Ferretti testified that he talked openly at times about the organizing
4 drive, he testified that he only talked to people he thought might be interested in joining
5 the Union. He testified that he avoided people he did not trust, he avoided places like the
6 Mayor's Office and the Law Department, and, most importantly, he tried to conduct the
7 campaign to prevent the Mayor from becoming aware of it. Although two employees
8 approached Ferretti about joining, this fact alone does not produce evidence sufficient to
9 infer management's knowledge where Ferretti was attempting to limit his contacts to
10 people he thought might be favorable the joining the Union. Nor does his mere
11 participation in the Solidarity Rally, where the record does not reflect the nature of his
12 participation in that rally.²⁶ Ferretti's assertions that people must have overheard him and
13 the Mayor must have known about his activities, without more, amount to speculation
14 rather than circumstantial evidence. I therefore decline to infer employer knowledge
15 based upon the limited circumstantial evidence in the record. Id. at 101, citing American
16 League, 189 N.L.R.B. 541 (1971) (employer knowledge need not be inferred when there
17 is no direct evidence that anyone has reported union activity to the employer).

18 The Union also argues that the City's knowledge should be inferred under the small
19 plant doctrine. Citing the Tenth Circuit, the CERB, in Plymouth County House of

²⁶ Indeed, evidence that Ferretti spoke at the rally about the organizing drive, or that it was even mentioned, might constitute circumstantial evidence sufficient to infer employer knowledge of Ferretti's Union activity. The record contains no such information, and is unclear as to what role, if any, Ferretti played when he "participated."

1 Correction, 4 MLC 1555, 1574, MUP-2234, 2429 (December 6, 1977), explained the small
2 plant doctrine thus:

3 The inference of employer knowledge that the employee in question engaged in
4 union activities may be derived under the “small plant doctrine” as stated by the
5 Tenth Circuit: “In a small plant it is a reasonable inference that evidence of union
6 activity brought to the attention of a subordinate management official will in turn be
7 brought to the attention of higher management officials.”
8

9 Similarly, in Town of Stow, knowledge of union activity could be imputed to the
10 town where the employee engaged in concerted, protected activity directly to the fire
11 department’s leadership. 11 MLC 1312, 1319, MUP-5281 (December 19, 1984). Here,
12 the Union faces the same problem already discussed. Although not acting clandestinely,
13 Ferretti was attempting to keep management from discovering his efforts, and the record
14 contains no evidence, direct or circumstantial, of any organizing activity coming to the
15 attention of any member of management at any level. Accordingly, I conclude, on this
16 record, that the Union has failed to establish that the City knew of Ferretti’s concerted,
17 protected activity.

18 To the extent that the Union argues that Employer knowledge can be inferred from
19 the alleged pretextual nature of the reasons given for the discharge, I disagree. Ferretti
20 was under scrutiny from the very beginning of Lung-Koehn’s administration, and the
21 record contains no evidence to rebut the testimony of Nazarian and Lungo-Koehn that
22 Ferretti’s failure to responsively handle the cybersecurity grant application in late
23 November 2021 amounted to what they considered the “final straw” in a documented
24 series of ongoing, related performance issues.²⁷ Similarly, although the Union does not
25 expressly argue that the City’s alleged anti-Union animus should give rise to an inference

²⁷ The substantive merits of the discharge are not at issue.

1 of Employer knowledge, I note that of the five unfair labor practice charges that the Union
2 referenced to support its argument regarding the City's anti-Union animus – MUP-22-
3 9147; MUP-22-9350; MUP-22-9555; MUP-22-9577; and MUP-23-9848 – all were filed
4 after Ferretti's discharge. These charges are therefore irrelevant to establishing anti-
5 Union animus in this case, and do not suggest Employer knowledge of Ferretti's Union
6 activity.

7 In sum, the Union has failed to establish circumstantial evidence sufficient to infer
8 that the City was aware of Ferretti's Section 2 activity. Accordingly, the Union cannot
9 establish a prima facie case of retaliation under Section 10(a)(3) of the Law. I therefore
10 dismiss Count I of the Complaint.

11 10(a)(5) – Transfer of Bargaining Unit Work

12 Section 10(a)(5) of the Law requires an employer to give the exclusive bargaining
13 representative prior notice and an opportunity to bargain before transferring bargaining
14 unit work to non-bargaining unit personnel. To prove that an employer unilaterally
15 transferred bargaining unit work to non-unit personnel, the charging party must show that:
16 1) the employer transferred bargaining unit work to non-unit personnel; 2) the transfer of
17 work had an adverse impact on either individual employees or on the bargaining unit itself;
18 and 3) the employer did not provide the exclusive bargaining representative with prior
19 notice and an opportunity to bargain over the decision to transfer the work. Town of
20 Bridgewater, 25 MLC 103, 104, MUP-8650 (December 30, 1998).

21 Here, the City commenced discussions with TOSS to perform IT duties, including
22 Ferretti's, in late November 2021, and the City executed its contract with TOSS to perform
23 IT duties on February 10, 2022, prior to the DLR certifying the bargaining unit on February

1 14, 2022. The Union's assertion that the City did not subcontract its IT services until March
2 18, 2022, is inaccurate. When the City contracted out the IT duties, there was no
3 bargaining unit work, there was no bargaining unit to be impacted, and there was no
4 exclusive representative to bargain with. Cf. Town of Wakefield, 10 MLC 1016, MUP-5082
5 (June 14, 1983) (Employer may not bargain with incumbent union upon receiving a
6 petition from a rival union to represent an existing bargaining unit).

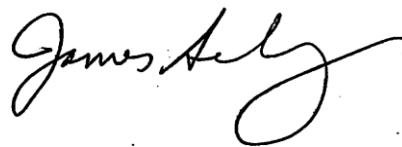
7 Finally, the Union has not argued that receipt of a Written Majority Authorization
8 Petition freezes or negates a third-party contract executed prior to certification of a
9 bargaining unit.²⁸ I therefore dismiss Count II of the Complaint.

10 CONCLUSION

11 The City did not violate Section 10(a)(3) and, derivatively, Section 10(a)(1) of the
12 Law when it discharged Ferretti. The City also did not violate Section 10(a)(5) and,
13 derivatively, Section 10(a)(1) of the Law by transferring bargaining unit work to non-
14 bargaining unit personnel. I therefore dismiss the Complaint.

15 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
HEARING OFFICER

²⁸ I note that the Union ceased to represent the bargaining unit as of October 18, 2023, more than six months before the hearing in this matter, when it disclaimed interest in the bargaining unit.

APPEAL RIGHTS

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