

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of
NEWTON SCHOOL COMMITTEE
and
NEWTON TEACHERS ASSOCIATION

Case No.: MUP-22-9236

Date Issued: February 12, 2026

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

John Foskett, Esq. - Representing the Newton School
Jill Murray Grady, Esq. Committee

Laurie Houle, Esq. - Representing the Newton Education
Association

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Newton School Committee (School
2 Committee) violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the
3 Law) by instructing bargaining unit members to remove placards that stated, "FULLY
4 FUND THE SCHOOLS" and "STOP ALL THE CUTS" from their classroom windows. For
5 the reasons described below, I find that the School Committee did not violate the Law as
6 alleged.

7 Statement of the Case

8 On April 14, 2022, the Newton Teachers Association (NTA or Union or Association)
9 filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations

1 (DLR) alleging that the Newton School Committee (School Committee or Employer)
2 violated Section 10(a)(1) of the Law. A DLR Investigator investigated the Charge on June
3 28, 2022. On July 15, 2022, the Investigator issued a Complaint of Prohibited Practice
4 (Complaint) alleging that the School Committee violated Section 10(a)(1) of the Law. On
5 July 27, 2022, after consideration of additional evidence, the Investigator issued an
6 amended Complaint alleging that the School Committee violated Section 10(a)(1) of the
7 Law by instructing bargaining unit members to remove placards that stated, "FULLY
8 FUND THE SCHOOLS" and "STOP ALL THE CUTS" from their classroom windows. The
9 School Committee filed an Answer to the Complaint on August 8, 2022.

10 I conducted a hearing on November 30, 2023, at which both parties had an
11 opportunity to be heard, to call witnesses and to introduce evidence. The parties
12 submitted their post-hearing briefs on March 1, 2024. Upon review of the entire record,
13 including my observation of the demeanor of the witnesses, I make the following findings
14 of fact and render the following opinion.

15 Stipulated Facts¹

- 16 1. The City of Newton (City) is a public employer within the meaning of
17 Section 1 of the Law.
- 18 2. The School Committee is the City's collective bargaining
19 representative for the purpose of dealing with employees of the
20 Newton Public Schools (NPS or the District).
- 21 3. The NTA is an employee organization with the meaning of Section 1
22 of the Law.
- 23 4. The NTA is the exclusive bargaining representative for five
24 bargaining units that include teachers, paraprofessionals, classroom

¹ I have lightly edited the stipulated facts for consistency throughout this Decision and removed exhibit number references.

- 1 support specialists, and other educators and professionals employed
2 by the City within NPS.
- 3 5. The School Committee and the NTA Unit A were parties to a
4 collective bargaining agreement effective September 1, 2015-August
5 31, 2018 (2015-2018 Agreement). By Memorandum of Agreement
6 on March 16, 2020, the parties agreed to a one-year agreement
7 effective September 1, 2019-August 31, 2020 (2019-2020
8 Agreement) along with a successor agreement effective September
9 1, 2020-August 31, 2023 (2020-2023 Agreement).
- 10 6. On or about March 31, 2022, members of NTA attended a rally at
11 City Hall to protest proposed budget cuts to the district budget. At the
12 rally, some people, including members, held two-sided signs; one
13 side read, in part, "FULLY FUND THE SCHOOLS;" the other side
14 read, in part, "STOP ALL THE CUTS." Both sides contained the NTA
15 logo. The sign measured approximately 19 inches wide by 13 inches
16 tall.
- 17 7. Starting in early April 2022 and continuing through April 14, 2022,
18 NTA members began placing the two-sided signs from the rally in
19 external windows in various classrooms in various school buildings
20 across the district.
- 21 8. On or about April 5-7, 2022, the NTA signs were placed by some
22 NTA members in the windows of one full-day Kindergarten inclusion
23 classroom at the Zervas Elementary School. In addition, the signs
24 were posted in the windows of the Zervas Elementary School library
25 on the second floor, overlooking the main entrance to the building.
- 26 9. In April of 2022, seventeen students were assigned to the
27 Kindergarten classroom at the Zervas Elementary School and one
28 teacher and one 1:1 aide were assigned full time to the classroom.
- 29 10. On or about April 5-7, 2022, NPS General Counsel had multiple
30 communications with the NTA leadership, the MTA field
31 representative working with NTA, and an MTA attorney regarding the
32 signs.
- 33 11. On or about April 7-8, 2022, the NTA signs were placed by some
34 NTA members in the windows of two first grade inclusion classrooms
35 at the Ward Elementary School.
- 36 12. In April of 2022, nineteen students were assigned to each of the first
37 grade classrooms at the Ward Elementary School, and one teacher
38 and one 1:1 aide were assigned full time to each classroom.

1 13. On April 8, 2022, Assistant Superintendent/Chief Financial and
2 Administrative Officer Liam Hurley sent an email to all NPS faculty
3 and staff under the subject, "Signs in our buildings."

4 14. On or about April 13, 2022, Mr. Hurley sent a follow-up email to all
5 NPS faculty and staff under the subject, "Signs in NPS buildings."

6 15. The NTA organized a coordinated one-day action of placing signs in
7 school classroom windows for April 14, 2022, the last day before
8 school vacation week (April 17-21).

9 16. On April 14, 2022, NTA signs were posted in the windows of one
10 inclusion classroom at the Burr Elementary School. The classroom
11 was either a first grade classroom or a second grade classroom.

12 17. In April 2022, twenty students were assigned to the first grade
13 classroom and twenty-one students were assigned to the second
14 grade classroom at the Burr Elementary School. One teacher and
15 one 1:1 aide were assigned full time in each classroom.

16 18. All NTA signs were removed from the windows in NPS school
17 buildings prior to April vacation and were not posted in classroom
18 windows after that.

19 19. The District did not discipline any NTA members for posting the
20 signs.

21 20. The NTA filed this charge on April 14, 2022.

22 Findings of Fact²

23 Collective Bargaining Agreement

24 Article 25 of the parties' 2020-2023 Agreement, Use of School Facilities, provides

25 that:

26 Section 1: The Association will have the right to use school buildings
27 without costs for two (2) meetings each school year, providing
28 such meetings are held Monday through Friday and
29 appropriate notice as provided in Section 2 herein is given.

30 Section 2: The Association will have the right to use school buildings
31 without cost and at reasonable times for meetings, subject to
32 safety requirements and availability, provided, however that

² The DLR's jurisdiction in this matter is uncontested.

1 the Association will be required to pay the customary and
 2 standard fees (including custodial costs) for the use of said
 3 buildings consistent with current Committee policy. The
 4 Principal of the building in question and the Superintendent
 5 will be advised sufficiently in advance of the time and place of
 6 all such meetings.

7 Section 3: Members of the bargaining unit will have the right to use the
 8 athletic facilities and equipment of a school one (1) evening
 9 each week. The Association will pay for the customary and
 10 standard fees (including custodial costs) for the use of said
 11 buildings consistent with current Committee policy. The
 12 schedule and other related matters must be arranged, in
 13 advance, with the Superintendent.

14 Section 4: There will be one (1) bulletin board in each school building
 15 which will be placed in the faculty lounge, for the purpose of
 16 displaying notices, circulars, and other Association material.
 17 Prior to the posting of any such Association material, a copy
 18 of the material will be given to the Principal of the building.
 19 The Association shall be responsible for materials posted, and
 20 agrees that such materials shall be legitimate professional
 21 materials.

22 Section 5: The Association shall have the right to invite representatives
 23 of the UNUM/MTA group insurance plan into each of the
 24 school buildings during the school day once per year.

25 Public Solicitations in the Schools

26 The School Committee has the following written Public Solicitations Policy:

27 The School Committee prohibits all non-school sponsored activities and
 28 fund-raising, such as commercial, recreational, or political solicitations, in
 29 the schools for the following reasons:

- 30 1. The district should provide students, parents, and employees some
 31 measure of protection from exploitation by commercial and
 32 charitable fund-raising organizations.
 33
- 34 2. The district should not give the public the impression of generally
 35 endorsing or sanctioning commercial, political and fund-raising
 36 activities.
 37
- 38 3. Commercial and fund-raising activities may disrupt school routine
 39 and cause loss of instructional time.

1 Following these guiding statements, the Superintendent and Principals may
2 permit occasional commercial fund-raising activities related to the
3 objectives of the schools, including but not limited to fund-raising for athletic
4 teams, extra-curricular activities, music, art, and theater productions, with
5 the following exceptions:

6 1. No direct solicitation of students or employees may take place
7 without School Committee permission.

8
9 2. No general or class distribution of commercial or fund-raising
10 literature may take place without School Committee permission.

11
12 For the purposes of this policy, local parent/guardian groups and groups
13 representing District employees will be considered "school groups" and will
14 be governed by the Committee's policy on staff solicitations.

15 Staff Gift and Solicitation Policy

16 The School Committee has the following Staff Gift and Solicitations Policy:

17 Newton Public School allows a group gift

18 * * *

19 Newton Public Schools allows and encourages giving to charitable
20 organizations such as school PTOs or the Newton Schools Foundation's
21 Honor Thy Teacher Program which honors staff while supporting our
22 schools.

23 Pre-April of 2022 Forms of Union Communication

24 The Union historically has used a variety of internal and external means of
25 communication. Within schools, areas for the Union's postings include designated bulletin
26 boards, staff bathrooms, and teachers' rooms. The Union has also negotiated the right to
27 use internal school communication systems to communicate with bargaining unit
28 members, which it uses to distribute flyers. Since 2010, the Union's bulletin board use for
29 general correspondence has waned in favor of direct email communications to bargaining

1 unit members.³ Additionally, the Union uses t-shirts, pins, stickers, flyers, brochures and
2 other methods of communication. It is common practice for the Union to have days where
3 bargaining unit members wear different Union t-shirts in school, in view of the public.

4 The Union also conducts “standouts” as a means to communicate and advocate
5 for its position on various issues with the public. “Standouts” are demonstrations at which
6 bargaining unit members stand on public sidewalks, for instance, outside of schools
7 holding signs, before school begins and after school is dismissed. Prior to April of 2022,
8 bargaining unit members held signs at “standouts” during contract campaigns and during
9 a “No on 2” campaign against expanding charter schools, but did not post those signs in
10 school or classroom windows or organize efforts to do so.⁴ No other organization posted
11 signs in school or classroom windows prior to April of 2022.⁵

³ Current Union President Michael Zilles (Zilles) did not negotiate Article 25 which addresses bulletin board use and is in the parties’ 2020-2023 Agreement. Zilles testified that not all school buildings have bulletin boards. There is no more detailed information on this point in the record. Each of the three schools discussed with specificity during the hearing in this case, the Zervas, Ward, and Burr Elementary Schools, have designated bulletin boards for the Union to use for messaging and signs in accordance with Article 25 of the 2020-2023 Agreement.

⁴ Zilles testified about standouts regarding a budget override that occurred in 2023. I do not consider these events for the purposes of this Decision because they occurred well after the filing of the Charge in this case.

⁵ Zilles testified on direct examination about a conversation that he had with Principal Henry Turner (Turner) regarding an instance around 2020 when a group posted a Black Lives Matters (BLM) poster at Newton High School and the School Administration told the group to remove it, which they did. Zilles also testified that the BLM organization solicits funds. For the purposes of this decision, I consider Zilles’ testimony only to the extent that he had a conversation with Turner around 2020 about a BLM poster that was put up and taken down at Newton North High School. I do not consider Zilles’ comments regarding the BLM organization’s collection of funds because the record contains no evidence demonstrating the foundation of his knowledge on that point. I also note that Zilles’ testimony about his conversation with Turner does not concern posters in classrooms or classroom windows.

1 There is conflicting testimony on two points that relate to school facilities and Union
2 materials. The first point is whether bargaining unit members post signs or notices about
3 standouts in restrooms, halls, classrooms, and on doors prior to standouts. The second
4 point is whether bargaining unit members display signs in their classrooms after
5 standouts. For the following reasons, I do not find that prior to April of 2022, there was a
6 practice in either regard.

7 Zilles testified in general terms that when the Union plans “a big action like a rally
8 or a standout or things like wearing our t-shirts on Tuesdays, we put signs up, but . . . not
9 necessarily on the bulletin board.” Zilles initially testified that the NTA signs “might go up
10 in the restrooms, they might go up in the halls, they might go up in the classrooms, they
11 might go up on doors.” He subsequently testified that the NTA posts standout instructions
12 around public areas such as in the lunchroom, and on classroom doors. Zilles also
13 testified on direct examination that after standouts, teachers bring signs with them into
14 their classrooms. Zilles further testified that prior to April of 2022, teachers brought signs
15 into their classrooms from standouts during the “No on 2” campaign against charter
16 school expansion, and during other contract negotiations. Zilles stated that teachers
17 “[u]sually stack them up . . . near their desk[s] [where they are] visible.” On cross-
18 examination, Zilles testified that he has seen signs on classroom floors propped against
19 “a wall,” and on “shelves.”

20 In contrast to Zilles’ testimony, three Principals from different schools testified that
21 the only materials posted around their schools and classrooms are instructional materials,
22 student work, and other material regarding school values and expectations. Diana Beck
23 (Beck) testified that during her time as Zervas School Principal since 2012, she has not

1 allowed groups or individuals to post signs conveying their messages in classrooms, in
2 the classroom windows, or in the library. Prior to April of 2022, the only types of signs that
3 Beck had seen posted in classrooms concerned instructional aids, classroom materials,
4 schedules, class lists, and items pertaining to students, instruction, and school practices.
5 The only types of signs she had seen posted in the library related to school core values
6 signs or rules. The only signs she allowed on school property generally, related to the
7 school experience, such as a sign welcoming families at the beginning of the school year,
8 and signs advertising Newton Community Edge, a public school program. Prior to April of
9 2022, Principal Beck occasionally had removed, or asked a custodian to remove, local
10 organizations' signs that appeared on school grounds but were not school related.

11 Likewise, Rebecca Brogadir (Brogadir) testified that in her experience as the Ward
12 Elementary School principal since 2018, she has observed classroom signs and
13 messages to consist only of instructional materials, student work, and material regarding
14 school values and expectations. In general, Brogadir has not allowed groups or people to
15 post signs or messages in the school without her approval. She has not allowed any
16 groups or people to post signs conveying messages in classrooms or windows. Prior to
17 April of 2022, Brogadir had not observed or been told, that teachers were bringing NTA
18 signs into their classrooms and stacking or storing them.

19 Mindy Johal (Johal) also testified that in her experience as the Burr Elementary
20 School principal since 2010, she has not allowed groups or individuals to post messages
21 in the school building or in classrooms or in classroom windows. She testified that only
22 student work and learning aids are displayed on the walls of the classrooms. Johal

1 testified that she has never seen signs stacked or stored in classrooms, and no staff or
2 student has reported that to her.

3 For the following reasons, and based on witness demeanor, I do not credit Zilles'
4 testimony. Zilles testified merely that the NTA signs "might" be in restrooms, halls, and
5 classroom doors. Although Zilles testified that the NTA posts standout instructions around
6 the lunchroom, it is not clear whether he was referring to the teachers' lunchrooms or to
7 the student cafeteria. His other claim that teachers post standout instructions on
8 classroom doors is also too vague to credit as it is unsupported by any salient details
9 such as examples of specific individuals who put up signs, the schools where they put up
10 the signs, and the consistency, frequency, and duration of time the signs were visible.

11 I also do not credit Zilles' testimony that, prior to April of 2022, teachers visibly
12 displayed signs in their classrooms after standouts. On direct examination, Zilles testified
13 with confidence that teachers brought signs into their classrooms after standouts and
14 "stacked them on the floor" where they were visible. However, he equivocated on cross-
15 examination, stating that teachers "stored" signs in the classroom but he did not say
16 exactly where, before remembering that he had seen signs on the floors of unidentified
17 classrooms at unidentified schools propped up against "a wall" and on "shelves." While it
18 is plausible that prior to April of 2022 some teachers may have brought signs into their
19 classrooms after standouts, Zilles testimony is vague and nonspecific. His claim to have
20 seen signs stacked on classroom floors or shelves after standouts lacks crucial details
21 about the numbers of teachers who put up signs, the schools where they put up the signs,
22 and the locations, consistency, frequency, and duration of time the signs were visible.

1 Based on witness demeanor, and because Beck, Brogadir, and Johal each
2 provided descriptive, detailed testimony based on their personal knowledge that arose
3 from their years of daily observations at their schools, I credit their testimony that the only
4 materials posted in their schools and classrooms are instructional materials, student work,
5 and other material regarding school values and expectations. Therefore, I find that prior
6 to April of 2022, the parties did not have a practice of posting or displaying Union signs
7 or posters in classrooms, in halls, on doors, or other locations apart from the Union's
8 designated bulletin boards, staff bathrooms, and teachers' rooms.

9 March 2022 Events

10 By email dated March 8, 2022, Superintendent David Fleishman (Fleishman)
11 informed the NPS faculty and staff of a \$5.2 million budget gap for the 2022-2023 school
12 year, including an approximate \$4 million deficit in operating costs. Fleishman's email
13 also stated that the proposed budget would be presented to the School Committee on
14 March 23, 2022, and that the final budget was scheduled for a School Committee vote on
15 April 11, 2022, with presentation to the City Council on April 13, 2022. The Union
16 anticipated a reduction of 50 NTA unit members because 88% of the school budget is
17 comprised of personnel costs. The Union was also concerned that there would be other
18 impacts to working conditions from the budget cuts, including cuts to services, materials,
19 and training.

20 The Union subsequently organized the following events: a March 30, 2022 rally at
21 City Hall; at least one standout outside of each school in the District; email and postcard
22 campaigns urging the Mayor to close the budget gap; and speeches from unit members
23 during the public comment portion of School Committee meetings. In addition, the Union
24 had lawn signs made for community members to place in their yards.

1 At the March 30, 2022 City Hall rally and during school standouts, bargaining unit
2 members and other Union supporters held two-sided placards that the Association had
3 printed which stated: “STOP ALL THE CUTS” on one side and “FULLY FUND THE
4 SCHOOLS” on the other side.⁶ Both sides of the sign displayed a large NTA logo as well
5 as a small “union made” logo. At standouts, teachers in each building would stand outside
6 the building with printed and homemade signs as children were arriving or leaving school
7 such that parents and the general public could see the signs.

8 After the March 30, 2022 rally, bargaining unit members asked Zilles whether they
9 could put their placards up in their classroom windows. Zilles told them that they could do
10 so. According to Zilles, the purpose of generating and posting the signs was:

11 To encourage the public awareness of the impact the budget cuts would
12 have, to encourage the public – in the case of the fully funded schools, to
13 encourage the public to recognize that the Mayor had not restored enough
14 funds to prevent the cuts that were going to happen, impacting the students.
15 And . . . we also knew that they would impact our working conditions.

16 His intent in having bargaining unit members post the Union placards in school windows
17 was to urge members of the public to contact the Mayor and advocate for school funding.

18 April 2022 Events

19 In an April 3, 2022 “Ebulletin” to bargaining unit members, Zilles summarized the
20 March 30, 2022, rally and subsequent School Committee meeting. In a section entitled
21 “Next steps,” Zilles urged bargaining unit members to sign up to speak at the School
22 Committee’s budget hearing the following day, to organize school standouts, and to follow
23 the Association on social media. The Ebulletin also stated, in relevant part:

24 For those of you whose classrooms have windows that face the street, put
25 up your “Stop the Cuts, “Fund the Schools” signs – both those the NTA

⁶ The signs measured approximately 19 inches wide by 13 inches tall. An earlier version of the NTA-made signs said, “Stop the Cuts” and “Fund the Schools.”

1 printed, and those you made yourselves – in your windows! (As a union
2 member, to do this is your legally protected right, just as you have a right to
3 wear a NTA button or an NTA t-shirt in your classroom.)

4 During the first two weeks in April of 2022, after the morning standouts, bargaining
5 unit members brought their signs with them into their classrooms, placing the two-sided
6 signs in external windows in various classrooms in various school buildings across the
7 District. Around April 3, 2022, Zilles drove around to various schools, including the
8 Lincoln-Eliot Elementary School, Bigelow Middle School, Underwood Elementary School,
9 and Ward Elementary School, and saw about 5-10 signs in each school's windows. Signs
10 at the Ward School were in two 1st grade classrooms and in the art classroom that all
11 students use once per week. During the same time period, bargaining unit members
12 placed signs in the windows at the Zervas Elementary School. At the Zervas school, the
13 two Union building representatives, one of whom is a librarian, put up signs in the second-
14 floor library windows facing the main entrance where members of the public enter, buses
15 drive up, and parents drop off children. Every classroom uses the library over the course
16 of the week. Signs at the Zervas School were also placed in the kindergarten inclusion
17 classroom.

18 Between April 5-7, 2022, NPS General Counsel Jill Murray Grady (Murray Grady)
19 and Union representatives, including Zilles, exchanged emails and phone calls regarding
20 the NTA's signs in the school windows. Grady and Zilles disagreed about whether
21 hanging Union signs on school buildings was protected, concerted activity and whether
22 the signs violated NPS policy. On April 5, 2022, Murray Grady informed Jason Leto (Leto)
23 of the MTA and Zilles, in relevant part that, "I'm seeing this as time, place and manner as
24 well as government speech because its (sic) on school buildings/school property, etc."
25 Leto responded on April 6 by stating, in relevant part: "[h]anging signs is protected

1 concerted activity under section 2 of MGL 150E. I don't know for sure whether there's a
2 case about hanging signs in windows – although given how many signs I see hanging in
3 the windows of Boston schools, I wouldn't be shocked if there is one – but the attached
4 case about wearing and displaying buttons is relevant.” Murray Grady then responded
5 on April 7 by email stating, in relevant part:

6 I have reviewed the case you sent as well as the link on the DLR as well as
7 did some research myself, I believe that hanging union signs on SCHOOL
8 BUILDINGS is not protected concerted activity and violates NPS Policy. Of
9 course union members have the right to wear buttons, t-shirts, etc. as is
10 clearly defined. I see no support that this extends to school property (or
11 city/government property) vs. a person's own wear). (sic) I see this as
12 analogous to planting a sign on school grounds, which you did not argue was
13 allowable. If you have additional legal authority or resources that I should
14 consider, please let me know.
15

16 In an April 7, 2022 email to bargaining unit members, Zilles stated, in relevant part:

17 Many of you are displaying NTA “Stop the Cuts, Fund the Schools” signs in
18 your classroom windows. It is likely that all NPS staff will receive a memo
19 tomorrow stating that the display of signs of a political nature in school
20 windows violates school and city policy. The memo will require you to
21 remove them, and not display any Union or other signs in your window in
22 the future.

23 We believe this is illegal. We have consulted extensively with MTA legal
24 counsel, and believe that the district will in fact be in violation of our rights
25 to “concerted Union speech” under Massachusetts General Law 150E. We
26 have expressed this concern to district council, and informed them that if
27 they do require members to remove the signs, we will file an unfair labor
28 charge with the Department of Labor Relations. This is a precedent we
29 cannot allow to go uncontested. We hope that the district will reconsider.

30 If you do have signs displayed in the windows of your classroom, or have
31 signs stored in your classrooms for standouts, upon receipt of a memo
32 ordering you to remove the signs, we recommend you do so. But please
33 display the signs in the windshields of your car in the most visible way
34 possible! (Emphasis omitted.)

35 On April 7, 2022, Assistant Superintendent/Chief Financial and Administrative
36 Officer Liam T. Hurley (Hurley) learned from Murray Grady at a Central Staff Meeting that

1 bargaining unit members were putting up signs in school windows. By email dated April
2 8, 2022, Hurley instructed bargaining unit members to remove the placards from their
3 classroom windows, stating, in relevant part:

4 In the past few days, we have noticed signs posted in the windows of our
5 school buildings. I did want to remind everyone that in accordance with NPS
6 policy and practice, signs and posters may not be placed on school property
7 or affixed to school buildings without explicit affirmative approval from NPS.

8 Please note that you may post signs in allowable spaces which have been
9 designated pursuant to applicable Collective Bargaining Agreements and/or
10 spaces designated by building administrators for such postings and
11 signage. (Emphasis omitted.)

12 I respectfully ask that you remove these signs from the windows by the end
13 of the day, today, April 8, 2022.

14 To protest the School District's directive that bargaining unit members take down
15 the signs in the windows, the NTA decided to increase the number of signs in school
16 windows. In an April 10, 2022, Ebulletin to members, posted on the Union's website on
17 April 13, 2022, Zilles stated, in relevant part, that:

18 Last Friday Liam Hurley sent a message to the NPS staff stating that staff
19 had to remove signs from their [classroom] windows -- in response to the
20 "Stop the Cuts," "Fund the Schools" signs that many of you had on display.

21 As I said last Friday, after extensive consultation with MTA legal counsel we
22 believe this is an illegal invasion of our rights to communicate as union
23 members showing our opposition to the cuts and our support for further
24 funding. . . we cannot allow this precedent to stand.

25 Thus, we are taking two courses of action. On Monday, we will file an unfair
26 labor practice charge with the Department of Labor Relations. . . .

27 [A]s a second course of action, the NTA will print additional signs that state
28 "Stop ALL the Cuts!" and "FULLY Fund the Schools" and distribute these to
29 schools before Friday. Then on this Thursday (April 14), we will ask
30 members to place signs in their classroom windows. (Emphasis omitted.)

31 The reasoning is this: if one member refuses to take down a sign that could
32 result in discipline for insubordination; if most or all members do this, the

1 district cannot discipline everyone. They could file a counter-charge against
2 the NTA with the Department of Labor Relations. . . .

3 Meanwhile, if you have signs, please display them in the windshield of your
4 car in the most visible way possible! (Emphasis omitted.)

5 By email dated April 12, 2022, Zilles confirmed to the NTA members that the
6 Union’s effort to increase the number of signs in school windows would go forward before
7 and after the upcoming school vacation week, stating in relevant part:

8 On Sunday we polled you on your willingness to post “Stop ALL the Cuts,”
9 FULLY FUND THE SCHOOLS” in your windows this Thursday, April 14.
10 You responded 5 to 1 in support of the action—so here we go!

11 Here is how it will happen:

- 12 • Chris and I will work with building representatives to get the signs to your
13 buildings before Thursday morning.
- 14 • You will pick up the signs from your reps and post them in your windows
15 on Thursday for the day.
- 16 • At the end of the day on Thursday, you will take down the signs and take
17 them home with you for April break.
- 18 • When you return to school after break, each morning you will place the
19 signs in your window and you will take them down at the end of the day
20 and take them home.

21 We will take the signs down every day in order to avoid forcing the district
22 to require principals, assistant or vice principals, department heads, or
23 custodians to take down the signs. We certainly don’t want to put any of
24 these people in that awkward position. And we hope the district will view
25 this as a reasonable compromise, and we will not need to go forward with
26 an unfair labor practice charge at the Department of Labor Relations.

27 On April 13, 2022, Hurley sent another email, instructing teachers to remove the
28 signs, or risk discipline, and stating in relevant part:

29 Last week I emailed all NPS staff to share information about posting signs
30 on school property. The email was prompted by the posting of signs in
31 locations that violate district policy. I respectfully asked that the signs be
32 removed by the end of the day on Friday, April 8, 2022.

33 It has come to our attention that signs have either not yet been removed
34 and/or that staff plan to put signs up on their classroom windows tomorrow,
35 April 14, 2022. The posting of signs outside of allowable spaces without

1 [D]istrict approval is a violation of District policy KHA-Public Solicitation in
2 the Schools, which applies equally to all students, staff and community
3 members.

4 As previously communicated, NPS staff have the right to post signs in
5 allowable spaces which have been designated pursuant to applicable
6 Collective Bargaining Agreements (Article 25 of Unit A CBA...) and/or
7 spaces designated by building administrators for such postings and
8 signage. Please note that [D]istrict policy does not apply to and does not
9 impact or affect your rights to wear insignia on your persons. (Emphasis
10 omitted.)

11 I respectfully ask again that you refrain from posting signs outside of
12 designated areas, including your classroom, without express permission or
13 approval from the [D]istrict. Continued failure to comply with [D]istrict policy
14 could lead to consequences, up to and including discipline.

15 Thank you for your understanding and cooperation.

16 Bargaining unit members subsequently contacted Zilles and told him that they
17 were afraid to follow through with the Union's planned course of action putting up signs
18 in school windows in light of the threat of discipline. Zilles then emailed NTA members,
19 stating in relevant part:

20 I'm sure you have seen the email that Assistant Superintendent Liam Hurley
21 just sent in which he reiterates that posting signs in school windows is a
22 violation of school policy.

23 That's a pretty big stretch of the legal imagination! The policy concerns
24 "commercial, recreational, or political solicitations." Our signs, and your
25 posting of them in your windows, is not "political solicitation."

26 Posting signs is union advocacy. It is your expression of union solidarity
27 with Newton families in opposition to ALL the cuts—including the many
28 harmful cuts that remain in the budget the School Committee voted for last
29 night. And your right to this "concerted union activity" is supported by
30 Massachusetts General Law. If NPS attempts to discipline anyone in
31 violation of that law, you will have the full support of the NTA and MTA!

32 And these cuts are wrong. Not fully funding the schools is wrong. For the
33 School Committee and the Central Administration to acquiesce to a
34 backroom deal and vote on a school budget that leaves so many cuts in
35 place is wrong. Possibly putting your supervisors in the position of having
36 to direct you to take down signs is wrong!

1 We must stand up together to protect our rights as union members, and to
2 protect our schools. Please, do not be intimidated: Post the signs in your
3 windows; post the signs in your cars. Post the signs! We've got your backs!

4 Zilles was not sure how many bargaining unit members participated in putting up
5 signs in their classroom windows on April 14, 2022. He drove around the School District
6 on April 14, and saw signs windows at a few schools, but did not see "the level of
7 participation that [he] would have liked." He also received pictures of signs in the windows
8 at Newton North High School.

9 At the time of the events at issue, one parent complained about the signs. On April
10 14, 2022, an upset parent complained to Principal Johal about a Union sign posted in a
11 classroom window, and emailed Hurley a photograph of a sign in a window.⁷ Johal asked
12 a few of the teachers there to take the signs down, and the teachers removed the signs.

13 The following day, April 15, 2022 was the first day of April vacation. By email dated
14 April 24, 2022, Zilles stated to Union members, in relevant part: "Until we decide on the
15 next steps in our campaign, please do not put signs in your classroom windows on
16 Monday. Feel free to display them in your car windows." Bargaining unit members did not
17 place Union placards in classroom windows again after April 15, 2022.

⁷ The Union raised hearsay objections at the hearing to Johal's testimony about the parent's complaints to her about a sign in a window, and to Hurley's testimony about receiving an emailed complaint from a parent with a picture of a sign in a school window. In its brief, the Union argues that such hearsay testimony should be disregarded. I credit it nonetheless because I find it to be sufficiently reliable for the purpose of establishing that one parent complained about the signs in the school windows. See generally, Dwyer v. Comm. of Insurance, 375 Mass. 227 (1978) (Administrative agency need not rely on the rules of evidence but may rely on the kind of evidence on which reasonable persons are accustomed to rely in serious matters.) Both Johal and Hurley identified the same parent by name.

1 Opinion2 Summary⁸

3 The issue in this case is whether the School Committee violated Section 10(a)(1)
4 of the Law by Hurley's April 8, 2022 and April 13, 2022 emails instructing teachers to
5 remove the double-sided Union placards from classroom windows. The Union's position
6 is that the School Committee's directive prohibiting the posting of Union placards in school
7 windows is a presumptive interference with Section 2 rights, excused only by special
8 circumstances, as is true for Union pins and apparel. In contrast, the School Committee
9 argues that the bargaining unit members' presumptive right to wear pins and apparel does
10 not extend to posting union signs in the workplace, and that it has a core, nondelegable
11 prerogative to prohibit Union posters in classroom windows. For reasons discussed in
12 greater detail below, I find that School Committee's directive against posting Union
13 placards in school windows is a presumptively valid rule that was neutral and non-
14 discriminatory, and that was applied in a neutral and non-discriminatory manner.
15 Accordingly, I find that the School Committee did not violate Section 10(a)(1) of the Law
16 as alleged.

17 Section 10(a)(1) of the Law

18 Section 2 of the Law protects employee rights to organize, and to form, join or
19 assist any employee organization for collective bargaining purposes, free from
20 interference, restraint or coercion. It also affords employees certain rights, including,
21 under some circumstances, the right to distribute union material and the right to observe

⁸ This case does not address issues involving the First Amendment to the United States Constitution or Article 16 of the Massachusetts Declaration of Rights because the Union does not raise constitutional claims.

1 and read such material. Bristol County Sheriff's Department, 31 MLC 6, 15, MUP-2872
2 (July 15, 2004) (additional citations omitted). The Commonwealth Employment Relations
3 Board (CERB) considers the right of employees to wear union insignia, in the form of pins
4 or t-shirts, to be a form of workplace communication, analogous to the right of employees
5 to distribute union literature. Town of Oxford, 31 MLC 40, 44, MUP-2659 (August 4, 2004).
6 To be excluded from the realm of protected activity, the content of union literature or the
7 manner of its distribution must be designed to or have the predictable effect of significantly
8 disrupting the employer's normal operations. Southern Worcester Regional Vocational
9 School District, 2 MLC 1488, 1504, MUP-2090, MUPL-2010 (May 6, 1976), aff'd sub nom
10 Southern Worcester County Regional School District v. Labor Relations Commission, 377
11 Mass. 897 (1979).

12 An employer violates Section 10(a)(1) of the Law if its conduct may reasonably be
13 said to interfere with the free exercise of employees' Section 2 rights. Quincy School
14 Committee, 19 MLC 1476, 1480, MUP-5951 (October 21, 1992). An employer's rule that
15 conflicts with employees' Section 2 rights must be supported by a legitimate and
16 substantial business justification, and any diminution of employee rights by application of
17 the employer's rule must be balanced against the employees' interests. Id. The focus of
18 a Section 10(a)(1) analysis is the effect of the employer's conduct on reasonable
19 employees' exercise of their Section 2 rights, not the motivation behind the conduct, nor
20 whether the coercion succeeded or failed. Bristol County Sheriff's Department, 31 MLC
21 at 15. The CERB uses an objective test to determine the effect of an employer's conduct
22 on the employees' exercise of their statutory rights. Id. The subjective impact of the
23 employer's conduct on employees is not determinative. Id.

1 There is an inherent tension in balancing employees' undisputed right of self-
2 organization with "the equally undisputed right of employers to maintain discipline in their
3 establishments." Republic Aviation Corp. v. N.L.R.B., 324 U.S. 793, 798 (1945). Neither
4 right is unlimited. Id. "Opportunity to organize and proper discipline are both essential
5 elements in a balanced society." Id. In this vein, "[a]ccommodation between employee-
6 organization rights and employer-property rights must be obtained with as little
7 destruction of one as is consistent with the maintenance of the other." Beth Israel Hospital
8 v. N.L.R.B., 437 U.S. 483, 492 (1978) (quoting N.L.R.B. v. Babcock & Wilcox Co., 351
9 U.S. 105, 112 (1956)). "[T]he balance to be struck is not *vis-a-vis* the employer's property
10 rights, but only *vis-a-vis* the employer's managerial rights." Firestone Tire and Rubber
11 Co., Inc., 238 NLRB 1323, 1324 (1978). Over time, rules for applying the principle of
12 accommodation have emerged, effectively making certain conduct presumptively lawful
13 or unlawful, subject to the introduction of evidence sufficient to overcome the
14 presumption. Beth Israel Hospital, 437 U.S. at 492. In applying these rules on a case-by-
15 case basis, an appropriate balance must be struck between organizational and employer
16 rights in each particular industry to which each rule is applicable. Id. at 506.

17 For the purposes of this Decision, there are two categories of CERB cases where
18 employer rules and employees' Section 2 rights have clashed, and specific guidelines
19 regarding accommodation have emerged: 1) wearing of union buttons and insignia in the
20 workplace; and 2) use of an employer's facilities for union business.

21 Union Insignia and Pins

22 I begin with a discussion of union insignias and pins in the workplace because the
23 Union argues that my decision should turn on the existence of "special circumstances,"

1 the pivotal consideration in the CERB's cases involving insignias and pins in the
2 workplace. As a general and well-established rule, wearing union insignia during working
3 hours is lawful, concerted activity, protected under Section 2, "which cannot be denied
4 absent special circumstances or a clear and unmistakable indication that it was waived
5 as a result of the bargaining process." Sheriff of Worcester County v. Labor Relations
6 Commission, 60 Mass App. Ct. 632, 642 (2004). Consequently, any employer rule
7 prohibiting the wearing of union insignia is a presumptive violation of Section 10(a)(1),
8 unless the employer can establish that special circumstances or factors exist, so that the
9 employer's interests outweigh the employee's Section 2 rights. Sheriff of Worcester
10 County v. Labor Relations Commission, 60 Mass App. Ct. at 642; Dighton School
11 Committee, 8 MLC 1303, MUP-4233 (August 26, 1981). Special circumstances and
12 special factors are determined on a case by case basis. Sheriff of Worcester County, 27
13 MLC 103, 106, MUP-1910 (January 11, 2001), aff'd in part and rev'd in part on other
14 grounds sub nom., Sheriff of Worcester County v. Labor Relations Commission, 60 Mass.
15 App. Ct. at 632. A rule that is enforced only against union buttons demonstrates the lack
16 of any truly legitimate purpose for the rule. Dighton School Committee, 8 MLC at 1305.
17 Buttons may not be "provocative and neither alienate recipients of the [e]mployer's
18 service nor interfere with production or discipline." Southern Worcester Regional
19 Vocational Technical School District, 2 MLC at 1504.

20 For instance, in Dighton School Committee, the CERB found that no special
21 circumstances existed to justify the School Committee's prohibition against bargaining
22 unit members wearing a button with the initials S.O.S. where the facts demonstrated that:
23 1) wearing the button constituted protected activity; 2) the button had none of the

1 characteristics that otherwise would make protected activity unprotected, like profanity;
2 3) wearing the button would not disrupt the educational process; and, 4) the employer did
3 not prohibit wearing other buttons. 8 MLC at 1305-1306. In reaching this decision, the
4 CERB determined that, in the classroom setting, there must be an accommodation
5 between the traditional authority of school committees over their teaching employees and
6 the employees' exercise of their rights under Section 2 of the Law. Id. at 1305. See also,
7 Sheriff of Worcester County, 60 Mass. App. Ct. at 643 (finding that no special
8 circumstances connected to the jail's mission, command structure, need for discipline or
9 other functional requirement, justified the sheriff's unilateral prohibition of the union
10 buttons in light of a long prior period with no policy prohibiting pins); and Town of Oxford,
11 31 MLC at 43 (finding no evidence showing that wearing union insignia pins adversely
12 affected or undermined the safety of police officers and the public, created or threatened
13 to create disciplinary problems, interfered with the police officer's ability to enforce the
14 law, compromised the neutrality of a police officer, or interfered with the employer's ability
15 to maintain discipline). Cf., In Re Nat'l Ass'n of Letter Carriers, No. 5-CA-29667, 2003 WL
16 21134044 *4 (ALJ May 12, 2003) (unpublished) (finding that the wearing of union insignia
17 in the workplace did not extend to wearing sandwich-board style, large fluorescent poster-
18 board signs inside the employers office, and finding that wearing the signs violated the
19 employer's longstanding dress code.)

1 Facilities Use

2 I turn next to the CERB's other major line of cases, those involving employees' use
3 of an employer's facilities for union business (facilities use cases).⁹ The CERB's analysis
4 in facilities use cases considers whether an employee's Section 2 activity, such as the
5 distribution of union literature or discussion of union matters, takes place during or after
6 regular working hours, and in working or non-working areas of an employer's facility. In
7 general, absent any exception such as wearing pins and insignia, employers may make
8 and enforce reasonable rules covering the conduct of employees during working hours,
9 and such rules are presumptively valid in the absence of evidence that a rule was adopted
10 for a discriminatory purpose. See generally, Republic Aviation Corp. v. NLRB, 324 U.S.
11 at 803-804 (citing Peyton Packing Company, 49 N.L.R.B. 828 (1943)). There is no
12 inherent right to engage in union activity during working hours. Bristol County Sheriff, 31
13 MLC at 16.

14 For example, if the distribution of union literature or employee discussion of union
15 matters occurs using the employer's premises or equipment during working hours, the
16 employer's restrictions are presumptively valid, if the rules are neutral and non-
17 discriminatory and applied in a neutral and non-discriminatory manner so that employee
18 access to union information is not improperly restricted. Bristol County Sheriff, 31 MLC at
19 15-16; Worcester County (Jail and House of Correction), 28 MLC 76, 78, MUP-1323 (July

⁹ There is a distinction between employee and non-employee use of an employer's property. "[A]n employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution." N.L.R.B. v. Babcock and Wilcox Co., 351 U.S. at 105. See also, Salem Hospital, 1 MLC 1078, UP-2249 (August 26, 1974).

1 18, 2001). A rule that is enforced only against union literature or access demonstrates the
2 lack of any legitimate purpose for the rule. Bristol County Sheriff, 31 MLC at 15. A neutral
3 rule that is selectively applied is discriminatory. Id. at 16. In cases where an employer
4 previously has not promulgated any neutral rules by which to legitimately regulate
5 employee distribution of literature, the CERB examines the parties' past practice. Board
6 of Regents of Higher Education, 13 MLC 1697, 1701, SUP-2863, SUP-2864 (May 22,
7 1987).

8 In contrast, employer rules that impact employees' union activity during non-
9 working time, in non-working areas, are presumptively discriminatory in the absence of
10 evidence that special circumstances make the rule necessary in order to maintain
11 production or discipline. Beth Israel Hosp. v. N.L.R.B., 437 U.S. at 492-493; Republic
12 Aviation Corp. v. NLRB, 324 U.S. at 803; Worcester County (Jail and House of
13 Correction), 28 MLC at 79; Southern Worcester Regional Vocational Technical School
14 District, 2 MLC at 1503. For instance, the CERB has held that if the distribution of union
15 literature by employees occurs outside of an employer's buildings but on an employer's
16 property, such as in a parking lot, during non-working hours, an employer's rule restricting
17 the distribution is a presumptive violation of Section 10(a)(1), absent evidence of a
18 "material disruption," Southern Worcester Regional Vocational Technical School District,
19 2 MLC at 1503, or other "special circumstances" Worcester County (Jail and House of
20 Correction), 28 MLC at 79.

21 The CERB's decisions regarding facility use by employees during working time
22 have considered four aspects of an employer's premises or equipment: mailboxes
23 (Quincy School Committee, 19 MLC at 1476; Salem School Committee, 35 MLC 199,

1 214, MUP-04-4008 (April 14, 2009)); bulletin boards (Board of Regents of Higher
2 Education, 13 MLC at 1701-1702; Commonwealth of Massachusetts, 9 MLC 1842, 1847-
3 1848, SCR-2166 (May 20, 1983)); tables (City of Quincy/Quincy Hospital, 23 MLC 201,
4 MUP-9867 (March 13, 1997)); and telephones (Bristol County Sheriff's Department, 31
5 MLC at 16). In each premises use case involving employee use of an employer's
6 premises or equipment during working hours, the CERB's central consideration is
7 whether the employer's rule was discriminatory or discriminatorily enforced.

8 For example, regarding mailbox use, in Quincy School Committee, 19 MLC at
9 1476, the CERB held that a school superintendent's blanket policy prohibiting distribution
10 of union literature in teacher mailboxes was discriminatory because it was directed
11 exclusively at union-related literature. Likewise, in Salem School Committee, 35 MLC at
12 214, the CERB held that a mailbox policy could not be discriminatorily applied to limit
13 employee distribution of union-related materials. With respect to bulletin boards, in Board
14 of Regents of Higher Education, 13 MLC at 1701-1702, the CERB held that a rule against
15 employees posting union literature on a bulletin board was discriminatory where
16 employees routinely used the bulletin board to post a wide variety of items. Similarly, in
17 Commonwealth of Massachusetts, 9 MLC at 1847-1848, the CERB held that although
18 there is no statutory right of employees or unions to use an employer's bulletin boards,
19 discriminatory use of employer bulletin boards is unlawful. Regarding table use, in City of
20 Quincy/Quincy Hospital, 23 MLC at 201, the CERB held that a hospital's refusal to allow
21 a union to use a table in the cafeteria hallway for the purpose of distributing union
22 literature was discriminatory because the employer had allowed other groups to use a
23 table in the same hallway to distribute information. Finally, regarding telephone use, in

1 Bristol County Sheriff's Department, 31 MLC at 16, the CERB held that the employer's
2 selective application of an otherwise neutral work rule against telephone use for non-
3 official business was discriminatory because the employer allowed the use of telephones
4 for non-work-related matters, but disciplined employees for discussing union matters over
5 the telephone.

6 Non-CERB decisions regarding facility use by employees during working time also
7 consider whether an employer's rule is discriminatory or discriminatorily enforced. See
8 generally, Jensen Sound Laboratories, 258 NLRB 1314, 1316 (1981) (finding
9 discriminatory enforcement of a "no signs" rule against union signs posted around the
10 workplace); see also, Cashway Lumber Inc., 202 NLRB 380 (1973) (distinguishing
11 distribution of union literature from posting union stickers on the employer's walls, and
12 finding that employees had no right to post stickers on employer's walls in the absence
13 of evidence that the employer allowed other stickers or literature to be posted on its
14 premises); In re National Ass'n of Letter Carriers, 2003 WL 21134044 *4 (finding that an
15 employer's rule prohibiting the display of large union poster-board signs on employees'
16 workplace cubicles was not a violation of the law because the employer had a
17 longstanding policy against posting any material on the exterior walls of cubicles); In the
18 Matter of the Petition of Milwaukee Teachers' Educ. Ass'n, 2006 WL 4529858 *1, *11 (WI.
19 Emp. Rel. Com. August 3, 2006) (finding that union signs in the classroom could be
20 displayed "within the same parameters that apply to the display of other materials not
21 related to school district business," because prohibiting a union poster while allowing
22 family photographs, or music or sports posters is inherently discriminatory absent
23 "sufficient managerial purpose for excluding the union signs").

1 Union's Arguments

2 The Union argues that: 1) bargaining unit members engaged in protected,
3 concerted activity by displaying Union signs in school windows to advocate for stopping
4 budget cuts; 2) the School Committee interfered, coerced and restrained members for
5 engaging in protected, concerted activity by requiring removal of the signs under the
6 threat of discipline; and 3) no special circumstances justified banning the display of union
7 signs in windows. It further contends that the School Committee has no other defenses
8 to justify its unlawful conduct because: 1) the no-solicitation policy does not apply to
9 bargaining unit members and even if it did, bargaining unit members did not engage in
10 commercial or fundraising activities addressed by that policy; 2) the Union did not waive
11 its right to display union communications anywhere but a designated bulletin board; and,
12 3) there was no written rule concerning posting non-curriculum related materials in the
13 classroom. The Union denies generally that the School Committee has a right to control
14 what is displayed on its buildings, including displays in classroom windows. Finally, the
15 Union insists that the School Committee's managerial interests prevail over Section 2
16 rights only when restrictions on Section 2 rights are necessary to prevent the disruption
17 of operations, of which the Union maintains that there is no evidence.

18 The Union's central argument is that the placards that unit members placed in
19 classroom windows are a form of protected concerted communication that should be
20 analyzed according to the case law for wearing union insignia and pins, such that the
21 School Committee's rule against posting the placards in school windows is a presumptive
22 interference with bargaining unit members' Section 2 rights, excused only by special
23 circumstances. Citing Dighton School Committee, 8 MLC at 1303, the Union takes the

1 view that “[p]osters, along with other ways of displaying or wearing union insignia and
2 communications, have long been protected forms of communication, including in
3 classrooms.” Citing In the Matter of the Petition of Milwaukee Teachers’ Educ. Ass’n,
4 2006 WL 4529858 at *5, the Union further argues that displaying a sign in a window is no
5 different from communicating Union messages by wearing union insignia and that
6 “posting signs on windows is similar to posting them on publicly visible hallways, doors,
7 and bulletin boards.” Relying on Mass. Nurses Ass’n v. Comm. Employ. Rel. Bd., 77
8 Mass. App. Ct. at 128, Sheriff of Worcester County v. Labor Rel. Comm’n, 60 Mass. App.
9 Ct. at 632, and Dighton School Committee, 8 MLC at 1303, the Union argues that “[o]nly
10 if special circumstances exist may an employer lawfully interfere with otherwise protected,
11 concerted activity. In this regard, the Union emphasizes that the signs did not contain
12 profane language or demeaning sentiments or otherwise disrupt educational services.

13 School Committee Arguments

14 The School Committee argues that: 1) the right of Union members to wear pins
15 and personal apparel at work does not extend to posting union signs in the workplace;
16 and 2) the School Committee has a core managerial right to control the posting of signs
17 in its classrooms.¹⁰ The School Committee acknowledges the Supreme Court’s
18 conclusion in Republic Aviation Corp. v NLRB, 324 U.S. at 803 that “rules against
19 solicitation or prohibitions against the wearing of insignia must fall as interferences with
20 union organization,” as well as the CERB decisions in Dighton School Committee, 8 MLC
21 at 1303, and Sheriff of Worcester County v. Labor Relations Commission, 60 Mass. App.

¹⁰ The School Committee also raises defenses related to constitutional issues that I do not address because, as noted in footnote 8, the Union raises no constitutional issues.

1 Ct. at 640, that wearing union insignia during working hours is concerted, protected
2 activity. However, the School Committee argues that the right to wear Union pins, badges,
3 and personal apparel in the workplace does not create a right to post Union signs and
4 messaging in and on school buildings, including in classrooms and classroom windows
5 because there is an inherent “distinction between wearing personal apparel and the fixing
6 of a sign to a workspace.” The School Committee maintains that the NLRB recognized
7 this difference in Nat’l Assoc. of Letter Carriers, 338 NLRB 989, 991 (2003) and In re
8 National Ass’n of Letter Carriers, 2003 WL 21134044, finding that the right to wear union
9 insignia as described in Republic Aviation Corp. v NLRB, 324 U.S. at 793, does not extend
10 to posting union signs on employees’ workplace cubicles. The School Committee also
11 notes that while the NLRB decided in Firestone Tire & Rubber Co., 238 NLRB at 1324
12 that employees have a right to post union signs on their private vehicles parked in an
13 employer’s parking lot, the NLRB refused in Cashway Lumber, Inc., 202 NLRB at 382 to
14 extend “the rights of employees under the Act to engage in union activities at an
15 employer’s premises to include the right to post union stickers on the employer’s walls
16 and property.” The School Committee further argues that there is no DLR or
17 Massachusetts court case holding that the right to wear union pins extends to the posting
18 of union signs in the workplace. Accordingly, the School Committee argues that the
19 Union’s “disruption” analysis is inapplicable because the Union cannot establish that its
20 members had a “right” to post signs in the classroom windows.

21 With respect to its position that the School Committee has a core managerial right
22 to control the posting of signs in its classrooms, the School Committee cites M.G.L.

1 Chapter 71, Sections 1¹¹ and 37,¹² as well as Higher Educ. Coordinating Council/Roxbury
2 Community College v. Massachusetts Teacher's Association/Massachusetts Community
3 College Council, 423 Mass. 23, 29-30 (1996) (discussing non-delegability doctrine).
4 Accordingly, the School Committee argues that there is no basis for the Union to convey
5 Union messaging as part of bargaining unit members' teaching duties. The School
6 Committee warns that Union signs posted in classrooms alongside instructional material,
7 learning aids, and school values, improperly assume the same character as those
8 materials.

9 Additionally, the School Committee argues that in this case there is "no evidence
10 of any practice allowing teachers to have a wide range of personal signs and other
11 messaging in classrooms unconnected to instructional or school-related content, even in
12 areas at or near their desks – let alone in windows or on walls, chalkboards, or other
13 classroom spaces." The School Committee notes that in Board of Regents of Higher
14 Education, 13 MLC at 1697 a bulletin board "had been routinely, repeatedly, and regularly
15 used over a lengthy period of time for all sorts of personal messaging by numerous

¹¹ The School Committee cites the following language of G.L. c. 71, § 1: "[t]he department of education shall pay for the cost of any such instruction in cardiopulmonary resuscitation; provided, however, that a school committee may by majority vote decide that such instruction shall not be offered"; "[s]uch other subjects as the school committee considers expedient may be taught in the public schools"; and "[n]othing herein contained shall be construed as to authorize said board to require the establishment of a twelve-month school year in any city, town or school district the school committee of which has not voted to establish, maintain and operate such a twelve-month school year."

¹² G.L. c. 71, § 37 states in pertinent part:

The school committee in each city and town ... shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education.

1 employees,” whereas in the case at issue, the Union made no showing that this sort of
2 practice previously occurred in the classroom or in classroom windows. Moreover, the
3 School Committee argues that a bulletin board in a public area of a school used for a
4 variety of messaging should be distinguished from classrooms that have been reserved
5 for student instruction and where posted messaging has been limited to school-related
6 content.

7 Analysis

8 The threshold issue to be decided is whether the posting of placards in classroom
9 windows should be evaluated in the same manner as cases regarding the wearing of
10 union insignia at work, or as cases involving the use of an employer’s facilities for union
11 business during working hours. It is undisputed that during the first two weeks in April of
12 2022, after the morning standouts, NTA members brought Union-related placards with
13 them into their classrooms, placing the two-sided placards in external windows in various
14 classrooms in various school buildings across the District. Zilles testified at hearing that
15 the purpose of posting the signs was “to encourage the public to recognize that the Mayor
16 had not restored enough funds to prevent the cuts that were going to happen, impacting
17 the students [and] . . . our working conditions.” Therefore, I conclude that during the first
18 two weeks of April of 2022, bargaining unit employees used windows in the School
19 District’s buildings for Union business during regular working hours, specifically to display
20 Union messages opposing the District’s planned budget cuts.

21 The CERB’s analysis articulated in its line of cases involving union use of an
22 employer’s facilities for union business during working hours applies to the case at issue.
23 As previously noted, when the distribution of union literature or employee discussion of

1 union matters occurs using the employer's premises or equipment during working hours,
2 the employer's restrictions are valid if the rules are neutral and non-discriminatory and
3 are applied in a neutral and non-discriminatory manner so that employee access to union
4 information is not improperly restricted. Salem School Committee, 35 MLC at 214; Bristol
5 County Sheriff's Department, 31 MLC at 16; City of Quincy/Quincy Hospital, 23 MLC at
6 201; Quincy School Committee, 19 MLC at 1476; Board of Regents of Higher Education,
7 13 MLC at 1701-1702; Commonwealth of Massachusetts, 9 MLC at 1847-1848.

8 Although this case does not involve the physical distribution of union literature or
9 the verbal discussion of union business as in the CERB's other premises use cases, such
10 as City of Quincy/Quincy Hospital, 23 MLC at 201 and Bristol County Sheriff's
11 Department, 31 MLC at 16, the CERB's analysis other in premises use cases applies to
12 this case because bargaining unit members used the District's school windows for Union
13 business during working hours in a similar manner that employees in other CERB cases
14 used employers' premises and equipment for union business during working hours. For
15 instance, the CERB's premises use cases involved employer restrictions on bargaining
16 unit members' use of employers' mailboxes in Salem School Committee, 35 MLC at 214,
17 bulletin boards in Board of Regents of Higher Education, 13 MLC at 1701-1702, tables in
18 City of Quincy/Quincy Hospital, 23 MLC at 201, and telephones in Bristol County Sheriff's
19 Department, 31 MLC at 16. Like mailboxes, bulletin boards, telephones, and tables,
20 school windows are indisputably a feature of the School Committee's facilities. Therefore,
21 bargaining unit members' use of school building windows should be evaluated in the
22 same manner, specifically, by finding that the School Committee's directive to remove
23 placards from school windows is presumptively valid, if the directive was neutral and non-

1 discriminatory and applied in a neutral and non-discriminatory manner. See Salem School
2 Committee, 35 MLC at 199 (holding that a mailbox policy could not be discriminatorily
3 applied to limit employee distribution of union-related materials); see also, Bristol County
4 Sheriff's Department, 31 MLC at 16 (holding that the employer's selective application of
5 an otherwise neutral work rule against telephone use for non-official business was
6 discriminatory because the employer allowed the use of telephones for non-work-related
7 matters, but disciplined employees for discussing union matters over the telephone); City
8 of Quincy/Quincy Hospital, 23 MLC at 201 (holding that a hospital's refusal to allow a
9 union to use a table in the cafeteria hallway for the purpose of distributing union literature
10 was discriminatory because the employer had allowed other groups to use a table in the
11 same hallway to distribute information); and see Board of Regents of Higher Education,
12 13 MLC at 1701-1702 (holding that a rule against employees posting union literature on
13 a bulletin board was discriminatory where employees routinely used the bulletin board to
14 post a wide variety of items). Therefore, I find that the School Committee's April 8, 2022
15 and April 13, 2022 directives to remove the Union placards from school windows were
16 presumptively valid and lawful, absent evidence that the directives were not neutral and
17 non-discriminatory and were not applied in a neutral and non-discriminatory manner. See
18 generally, Bristol County Sheriff, 31 MLC at 16.

19 In so finding, I reject the Union's arguments that the placards unit members placed
20 in classroom windows are a form of protected, concerted activity entitled to the same type
21 of analysis as CERB cases concerning wearing union insignia and pins. The Union
22 concedes in its post-hearing brief that posting the placards in school windows is similar
23 to posting them on other structures around the Employer's premises, including hallways,

1 door and bulletin boards. And it cited no persuasive case law finding that, because the
2 message on the Union's placards could have been worn on buttons or t-shirts in
3 classrooms, the District's directive to remove the placards should be considered a
4 presumptive interference with bargaining unit members' Section 2 rights. As discussed
5 above, the CERB's analysis in cases involving the wearing of union insignia in the
6 workplace is distinct from its analysis in cases where bargaining unit members use an
7 employer's facilities for union business.

8 I also find no support for the Union's broad claim that Dighton School Committee,
9 8 MLC at 1303 and In the Matter of the Petition of Milwaukee Teachers' Educ. Ass'n,
10 2006 WL 4529858 hold that "[p]osters, along with other ways of displaying or wearing
11 union insignia and communications, have long been protected forms of communication,
12 including in classrooms." The wearing of union insignia in the workplace has been a well-
13 established right of singular importance since the Supreme Court decided Republic
14 Aviation Corp. v. N.L.R.B., 324 U.S. at 793, in 1945. However, neither Dighton School
15 Committee, 8 MLC at 1303, nor any other CERB case establishes the display of union
16 posters in classrooms as a protected form of communication on par with the right to wear
17 union insignia in the workplace. Dighton School Committee, 8 MLC at 1303 concerns only
18 the wearing of union insignia, and the CERB has never decided a case involving union
19 posters in classrooms. Even the Wisconsin case that the Union relies on in support of its
20 argument that a message on a window sign is no different from a message on a t-shirt,
21 finds only that union signs in the classroom can be displayed "within the same parameters
22 that apply to the display of other materials not related to school district business." In the
23 Matter of the Petition of Milwaukee Teachers' Educ. Ass'n, 2006 WL 4529858.

1 Finally, I reject the Union's claim that "[m]anagement's interest prevails only when
2 restrictions on Section 2 rights are necessary to prevent disruption of operations." Of
3 course, to be excluded from the realm of protected activity, the content of union literature
4 or the manner of its distribution must be designed to or have the predictable effect of
5 significantly disrupting the employer's normal operations. Southern Worcester Regional
6 Vocational School District, 2 MLC at 1504. Here, however, there is no dispute that the
7 Union placards consisted of inoffensive language regarding potential budget cuts. But, as
8 the CERB's facilities use cases establish, the necessary analysis extends beyond a
9 review of the language of the window placards.

10 As I have determined that the School Committee's placard removal directives were
11 presumptively valid and lawful, the secondary issue is whether the School Committee's
12 directives were invalidated by evidence that they were discriminatory, or discriminatorily
13 enforced against the Union.¹³ See generally, Bristol County Sheriff, 31 MLC at 16. For
14 this reason, I dismiss the School Committee's arguments that its core managerial rights
15 always supersede the Union's Section 2 rights. The Union did not apply the CERB's
16 premises use case analysis to the facts of this case and did not argue that the directives
17 were discriminatory or enforced in a discriminatory manner. Nevertheless, I find three
18 facts that raise a question of discrimination: 1) the fact that the School Committee's
19 removal requirement had a direct impact only on Union signs; 2) the reference in the April
20 8, 2022 email to prohibiting signs and posters without "explicit affirmative approval from

¹³ The Union also raises allegations not included in the Complaint, that Murray Grady's communications with NTA representatives between April 5-7, 2022, regarding the NTA's signs in the school windows violated the Law. I decline to consider these allegations because they are not included in the Complaint and the Union did not specifically raise them as allegations during opening statements at the hearing.

1 NPS"; and 3) the reference in the April 13, 2022 email to requiring District approval for
2 postings outside of allowable spaces.

3 Because the School Committee previously had not promulgated any neutral rules
4 specifically regarding posters in school building windows, I first consider the past practice
5 between the parties regarding signs in school windows. See, Board of Regents of Higher
6 Education, 13 MLC at 1701 (examining the parties' past practice regarding bulletin board
7 use). To determine whether a binding past practice exists, the CERB analyzes the
8 combination of facts upon which the alleged practice is predicated. Commonwealth of
9 Massachusetts, 23 MLC 171, 172, SUP-3586 (January 23, 1997). The CERB examines
10 whether employees in the unit have a reasonable expectation that the practice will
11 continue and whether the practice is unequivocal, has existed substantially unvaried for
12 a reasonable period, and is known and accepted by both parties. Commonwealth of
13 Massachusetts, 34 MLC 143, 146, SUP-04-5052 (June 17, 2008).

14 The Union concedes that prior to April of 2022, it did not post placards in classroom
15 windows. Although the Union asserts that prior to April of 2022 a practice existed whereby
16 bargaining unit members posted signs or notices in restrooms, halls, classrooms, and on
17 doors, and that another practice existed whereby bargaining unit members displayed
18 Union signs in classrooms after standouts, I declined to credit Zilles' testimony on either
19 of these points. Moreover, there is no evidence on either point that bargaining unit
20 members had been acting in an unequivocal, substantially unvaried manner for a
21 reasonable period of time, or that the School District was aware of, or had accepted such
22 conduct. Therefore, the parties did not have a binding past practice of bargaining unit
23 members placing Union placards in classroom windows, or a binding past practice of

1 bargaining unit members posting or displaying Union signs or posters in classrooms, in
2 halls, on doors, or in other locations apart from the Union's designated bulletin boards,
3 staff bathrooms, and teachers' rooms.

4 There is also no evidence in the record that any other group or organization used
5 school windows as a means of communication to promote their business or concerns,
6 with or without School District permission. Therefore, although the School Committee's
7 directives in April of 2022 to remove placards from school windows had an immediate
8 impact only on Union signs, I find that the directive was not discriminatory, or
9 discriminatorily enforced because there is no evidence that the School District previously
10 permitted any other group or organization to post non-educational materials in school
11 windows. Likewise, I find that neither the reference in the April 8, 2022 email to prohibiting
12 signs and posters without "explicit affirmative approval from NPS," nor the reference in
13 the April 13, 2022 email to requiring District approval for postings outside of allowable
14 spaces, was discriminatory or discriminatorily enforced against the Union because there
15 is no evidence of other prior approvals for posting signs in school windows. Finally, even
16 if the District's non-solicitation policy formed the basis of the School District's directive to
17 remove the Union placards from school windows, I find that it was not discriminatory or
18 discriminatorily enforced because there is no evidence that it did not form the basis of
19 other prior removal directives.¹⁴

¹⁴ In the April 13, 2022, email to bargaining unit members, Hurley stated that: "The posting of signs outside of allowable spaces without [D]istrict approval is a violation of District policy KHA-Public Solicitation in the Schools, which applies equally to all students, staff[,] and community members." The Union argues in its post-hearing brief only that the non-solicitation policy does not apply to the Union's signs in the classroom windows. The School Committee argues in its post hearing brief that Hurley's reference to the non-solicitation policy need not be addressed in light of the Union's claims that its right to post

1 My conclusions are buttressed by NLRB cases that also have examined
2 discriminatory “no signs” rules and discriminatory enforcement of “no signs” rules in cases
3 where employees have used an employer’s premises for union business during working
4 hours. For instance, in Jensen Sound Laboratories, 258 NLRB at 1314, the NLRB upheld
5 an ALJ’s conclusions that an employer discriminately enforced an existing “no signs” rule
6 where there were many signs located in the workplace and the company policy prohibiting
7 the posting of signs was not enforced until it was unilaterally enforced against pro-union
8 signs. Likewise, in Cashway Lumber Inc., 202 NLRB at 380, the NLRB upheld an ALJ’s
9 conclusions that employees had no right to post stickers on employer’s walls in the
10 absence of evidence that the employer allowed other stickers or literature to be posted
11 on its premises. See also, In re National Ass’n of Letter Carriers, 2003 WL 21134044, *4
12 (finding that an employer’s rule prohibiting the display of large union poster-board signs
13 on employees’ workplace cubicles was not a violation of the law because the employer
14 had a longstanding policy against posting any material on the exterior walls of cubicles).

15 For all of the reasons discussed above, I do not find that the School Committee’s
16 directives to remove the Union placards from classroom windows were discriminatory or
17 discriminatorily enforced such that employee access to union information was improperly
18 restricted. Accordingly, I find that the School Committee did not violate Section 10(a)(1)
19 as alleged.

signs is equivalent to the right to wear Union pins and apparel, irrespective of the non-solicitation policy.

1 CONCLUSION

2 Based on the record and for the reasons stated below, I conclude that the School
3 Committee did not violate Section 10(a)(1) of the Law in the manner alleged in the
4 Complaint.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KATHLEEN GOODBERLET, 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 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 be final and binding on the parties.