

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

FOXBOROUGH REGIONAL CHARTER
SCHOOL

and

ANN M. O'KEEFFE

Case Nos.: MUP-24-10874

Date Issued: July 21, 2026

Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Nicholas Anastasopoulos, Esq. - Representing Foxborough Regional
Sharon P. Siegel, Esq. Charter School

Ann M. O'Keeffe - Pro Se

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Foxborough Regional Charter School
2 (Charter School) violated Sections 10(a)(3), and derivatively, Section 10(a)(1) of
3 Massachusetts General Laws, Chapter 150E (the Law) when it decided not renew Ann
4 M. O'Keeffe's (O'Keeffe) employment for the 2024/2025 school year. Based on the record
5 and for the reasons explained below, I conclude that the Charter School did not violate
6 Sections 10(a)(3), and derivatively, 10(a)(1) of the Law as alleged in the Complaint.

STATEMENT OF THE CASE

7
8 On September 21, 2024, O'Keeffe filed a charge with the Department of Labor
9 Relations (DLR) alleging that the Charter School had engaged in prohibited practices

1 within the meaning of Section 10(a)(3), and derivatively 10(a)(1) of the Law. On January
2 7, 2025, a DLR Investigator investigated the charge. On March 6, 2025, the Investigator
3 issued a one-count Complaint of Prohibited Practice (Complaint) alleging that the Charter
4 School violated Section 10(a)(3), and derivatively, Section 10(a)(1) of the Law. On March
5 14, 2025, the Charter School filed its Answer to the Complaint.

6 On October 28, 2025, I conducted a hearing during which the parties received a
7 full opportunity to be heard, to examine and cross-examine witnesses, and to introduce
8 evidence. On January 8, 2026, the parties filed post-hearing briefs.¹ Based on my review
9 of the record, including my observation of the demeanor of the witnesses, I make the
10 following findings of fact and render the following opinion.

11 STIPULATIONS

- 12 1.) The Foxborough Regional Charter School Teachers Association is an employee
13 organization within the meaning of 150E, Section 1.
14
15 2.) The Foxborough Regional Charter School hired Ann Marie O'Keeffe as a special
16 education teacher on or about August 1, 2023.
17

18 FINDINGS OF FACT

19 Background

20 The Foxborough Regional Charter School Teachers Association (Union) is the
21 exclusive bargaining representative for teachers employed by the Charter School. The
22 Charter School is a public employer within the meaning of M.G.L.c.150E, Section 1. The

¹ On numerous occasions, I informed the parties that their post-hearing briefs cannot contain information that was not part of the record. On January 13, 2026, the Charter School filed a motion to strike portions of O'Keeffe's brief as it contains statements that I excluded from the record, or information that was never introduced into the record or supported by evidence. When rendering this decision, I only considered information that was introduced into the record through exhibits or testimony.

1 Union and the Charter School are parties to a collective bargaining agreement (CBA)
2 effective September 13, 2024 to June 30, 2027.

3 O'Keeffe's Employment
4

5 By letter dated August 1, 2023, the Charter School offered O'Keeffe a teacher
6 position for the 2023/2024 school year starting on August 28, 2023.² O'Keeffe accepted
7 the position and began working at the High School as a special education teacher.

8 Prior to September 14, 2023, the Charter School provided O'Keeffe with a copy of
9 the employee handbook and an electronic employee handbook acknowledgement form.

10 On the handbook acknowledgement form, employees must acknowledge that their
11 "employment relationship with the school is at-will (unless otherwise stated in a written
12 employment contract) meaning that either the school or [they] can terminate the
13 relationship at any time, with or without reason or notice." On or about September 14,
14 2023, O'Keeffe electronically acknowledged that she received and understood the employee
15 handbook and the contents of the employee handbook acknowledgement form.³

² Before O'Keeffe started working at the Charter School, the DLR certified the Union as the exclusive bargaining representative of the teachers employed by the Charter School. The Charter School issued O'Keeffe a non-renewal letter for the 2024/2025 school year before the Union and the Charter School agreed on a CBA.

³ O'Keeffe testified that she never received an employee handbook but had seen the handbook in staff rooms. O'Keeffe argued that she did not sign the acknowledgement form, and that the form submitted by the Charter School was not the one found at the back of the employee handbook. This argument has no merit. Heidi Berkowitz (Berkowitz), the Deputy Executive Director for the Charter School, testified that the acknowledgement form entered into the record by the Charter School was part of the onboarding process for all new employees. Berkowitz testified that the Charter School's Human Resources Department (HR) facilitates each new employee submitting acknowledgments for various documents, including the employee handbook. When O'Keeffe started working at the Charter School, HR employee Thomas Coughlin (Coughlin) handled her onboarding, and submitted her handbook acknowledgment form. Berkowitz testified that she has access to employees' personnel files, and that she found

1 Union Meetings

2 After being hired, O'Keeffe submitted a union dues authorization card to the Union.
3 Throughout the 2023/2024 school year, O'Keeffe attended union meetings which were
4 typically held in the Charter School's library.⁴ The administrators for the Charter School
5 did not attend union meetings and did not know which unit members attended the
6 meetings or who spoke at the meetings.⁵ During one of these union meetings, then Union
7 President Matthew Durka (Durka) assured members that the Charter School would not
8 layoff any unit members during contract negotiations.

9 Union Buttons

10 At the open house for parent/teacher conferences in April of 2024, Kim DiRodi
11 (DiRodi), the Union secretary, asked O'Keeffe to pass out buttons that contained
12 language supporting the Union in contract negotiations to teachers on the first two floors
13 of the High School. The Union asked other teachers to distribute buttons to teachers as
14 well.⁶ At the open house, some of the teachers choose to wear the buttons, including
15 O'Keeffe. After the open house, some of the teachers continued to wear the buttons for

this acknowledgement form in O'Keeffe's personnel file. Additionally, Berkowitz testified that the same form is included in other employees' personal files. I credit Berkowitz' testimony.

⁴ When the Union was certified as the exclusive bargaining representative of the teachers, the Charter School and the Union agreed that the Union could use work email or the Charter School's Google Classroom platform to communicate with members.

⁵ Lauren Ells (Ells), vice president for the Union at all relevant times, testified that the Charter School would not have known who spoke during union meetings. I credit her testimony.

⁶ During the open house, the Union passed out buttons to teachers on all floors of the Elementary, Middle, and High School.

1 the duration of the school year, including approximately sixty percent of the high school
2 teachers. At no point during the school year, including at contract negotiations, did the
3 Charter School comment or complain about the teachers wearing the buttons.

4 Mentor/Mentee

5 By letter dated September 11, 2023, Kathleen Foley (Foley), Director of Teaching
6 and Learning at the Charter School, assigned Christine Davidson (Davidson), a teacher
7 at the Charter School, as O’Keeffe’s mentor. In the letter, Foley explained to Davidson
8 that she should keep a log of her interactions with her mentee and meet with her mentee
9 for a minimum of 15 hours in the school year. Starting in September of 2023, Davidson
10 met with O’Keeffe on several occasions to review progress monitoring, how to write an
11 Individualized Education Program (IEP), and how to input relevant information into
12 “SchoolBrains”.⁷

13 During the school year, Davidson expressed concerns to Diedre West-Smith
14 (West-Smith), the Assistant Director of Special Education, that O’Keeffe was not writing
15 IEPs correctly. Despite O’Keeffe attending mentor/mentee meetings to discuss how to
16 write an IEP, West-Smith needed to rewrite O’Keeffe’s IEPs. Additionally, West-Smith
17 attended a meeting with O’Keeffe to review progress monitoring, and requested O’Keeffe
18 show her the data demonstrating that most of her students met their goals. However,
19 O’Keeffe did not submit any data to show that her assigned students had met their goals.
20 Also, on more than one occasion, Davidson informed West-Smith that O’Keeffe attended
21 a mentor/mentee meeting unprepared or was late for the meeting.

⁷ “SchoolBrains” is a platform for student information.

Complaints from Parents⁸

By email dated October 19, 2023, a parent of one of O'Keeffe's students contacted her stating that:

I hope this email finds you well. My name is [redacted] I want to thank you for the IEP help and supports that you have been providing to my daughter [redacted]. I am the mother of [redacted] who is your IEP student. This email serves as a meeting request that I would like to have with you and the IEP administrator (s). My daughter [redacted] came home a little upset and reported to me a few incidents that took place between you and her. So, I would like to clear things [up], resolve any misunderstandings and concerns that both of you may have about each other.

1) [redacted] reported to me that sometime last mont[h] while she was in her math class. [sic] And when she got there, Mr. Mario Barros pointed out a middle seat where he assigned [redacted] to s[it] during the whole school year. However, when you arrived in her math classroom, you quoted this to her, "that wasn't your seat, you're not supposed to s[it] there." Then my daughter [redacted] informed you that Mr. Barros assigned her that seat. You stated this to [redacted][:] "I am going to ask him. If you don't move right now, I am going to call Mr. Urie." I totally get that you were just making sure and confirming that [redacted] was seated at the right place on that incident. She was a little upset [with] the fact that you didn't believe her until you confirmed her statement with Mr. Barros.

2.) Last Friday[,] which was 10/13/2023, I picked up my daughter [redacted] from the school at around 2:35 p[.]m. She came to the car all upset about you, so I asked her to tell me what happened, then she said that she had another incident with you regarding her [eyeglasses]. While she was in front of her math class door ready to enter into the classroom. [sic] Then Mr. Mario Barros informed [redacted] that you wanted to speak with her. You then took her out of her math classroom, stood outside of the classroom and you stated this to [redacted][:] "where are your glasses?" Then she informed you that she doesn't wear glasses anymore. Then you said this, "yes you have glasses, yes you do." My daughter insisted that she doesn't wear glasses to you, but she felt that once again, you didn't believe her. And it was a back and forth argument between you and her.

[Redacted] also felt like you were forcing her to go the Nurse's office by stat[ing] this, "come with me to go take a vision eye test." My daughter

⁸ O'Keeffe had approximately twelve students on her caseload.

1 informed you that she doesn't want to go take the eye exam, nor would
2 she go get her eyes checked without her mother's permission. Then you
3 ended up accept[ing] her decision after all by saying this, "ok, that's fine."
4 Basically, my daughter felt like you were disrespecting her in a way. And
5 she also told me that you're not giving her the benefit of the doubt
6 whenever she tries to communicate with you as her IEP teacher.
7 [Redacted] brought to my attention that you have been providing your
8 assistance to her when she doesn't need it, and when she really needs
9 your help, she doesn't get the help from you. [sic]

10
11 I just wanted to make it clear that my email to you is not to point out any
12 fingers at you as her IEP teacher, but rather I want to solve the
13 aforementioned issues that my daughter brought up to my attention. As
14 her mother, it is my duty to ensure that her relationship with you doesn't
15 escalate into any other conflict. With that being said, I would appreciate
16 it if you would please review your calendar first then let me know when
17 you're available to meet so that we can discuss and resolve these listed
18 things on this email. Once again, thank you for your help and supports
19 that you're giving to my daughter. I look forward to hearing and working
20 in collaboration with you during the school year. [sic]

21
22 By email dated October 27, 2023, the same parent contacted Leanna Brown
23 (Brown), the guidance counselor, about O'Keeffe stating that:

24 I need Ms. Smith to contact me. [Redacted] is not using her LEGO to
25 work with [O'Keeffe]. I'm filing with the Board of Education against her for
26 violating 4th Amendment rights and looking to possibly file a restraining
27 order against her with the state. What she did was reprehensible and she
28 is the worst special needs teacher [redacted] has ever had. Never once
29 did she reach out to parents or email to introduce herself. She doesn't
30 follow up with updates like EVERY other special needs teacher did. She
31 is terrible and I'm filing with the state that [redacted] is not getting the
32 special needs required and the Charter School is violating her rights to
33 an education. I'm done playing nice about this matter. She sees a
34 homicide bereavement therapist with the state who has stated [O'Keeffe]
35 is causing issues with her mental health and I've already discussed this
36 with the director of the school who said he would get back to me but I'm
37 not waiting anymore. That teacher is to stay away from my daughter and
38 I don't want to express this again with the school. I don't care what has
39 to be done.
40

1 After receiving this email, Brown informed West-Smith of the parent's concerns regarding
2 O'Keeffe. Thereafter, West-Smith contacted O'Keeffe and made her aware of the parent's
3 concerns.

4 By email dated October 27, 2023, that same parent contacted West-Smith to
5 inform the Charter School of the following:

6 1. [O'Keeffe] asked [redacted] if she needed more binders and she said
7 NO. [redacted] went to the bathroom and [O'Keeffe] went through
8 [redacted]'s backpack, rearranging and taking things out for everyone
9 to see. [Redacted] asked her if she had permission and she lied stating
10 she had her permission. [redacted] also went up and asked if she had
11 permission and again she lied stating she had permission.
12

13 2. [O'Keeffe] then went looking for [redacted] and found her in a room
14 beside Ms. Brown's office, where she was crying and [O'Keeffe] told
15 [redacted] to take her issues/problems and place them in a box to leave
16 at home or deal with at home.
17

18 3. [O'Keeffe] has asked [redacted] if she has her period on 3 separate
19 occasions while she was sitting in class and in earshot of other students.
20

21 4. [O'Keeffe] has placed her hand on [redacted]'s forehead and
22 constantly touches her shoulders and back making [redacted] extremely
23 uncomfortable.
24

25 5. [O'Keeffe] will walk up to her in the middle of class putting her face
26 extremely close and then pick out things she is not doing right,
27 embarrassing her in front of her peers.
28

29 6. [O'Keeffe] was called out of class by the assistant principal about what
30 she did and when she came back she had an attitude and has been more
31 difficult to deal with towards [redacted] (retaliation).
32

33 7. [O'Keeffe] even after I clearly stated (as advised by an attorney for
34 students rights) in an email not to touch anything of [redacted] and to stay
35 away from her, she went through her binder when she once again went
36 to the bathroom. Again, violating her 4th amendment rights.
37

38 8. [O'Keeffe] has come into class removing SPED students loudly for
39 everyone to hear which is clearly not allowed. People with disabilities
40 have a right to non-discrimination, access, equality of opportunity,
41 inclusion and full participation in society INCLUSION and EQUALITY

1 (clearly this teacher doesn't know students['] rights and shouldn't be
2 working with students with disabilities).

3
4 9. [O'Keeffe] teaches her the wrong way to do Math and when [redacted]
5 addressed the issue with Mr. A, he then observed a class because he
6 agreed that's not the way she has been taught, so she's just confusing
7 her and not helping her education. If anything this woman is a constant
8 distraction for [redacted] who has ADHD and it's difficult for her to be
9 distracted by [O'Keeffe] incessantly picking at everything she does. Once
10 you distract a student with ADHD, it's hard for them to pick up and follow
11 and she shouldn't be doing this unless her hand is raised and she asks
12 for help.

13
14 10. [O'Keeffe] was asked by [redacted] if she read my email and she
15 stated No. [O'Keeffe] then asked if it were about the binder/backpack
16 which means she knew what she did was wrong. I told her not to touch
17 anything of [redacted] and that she was on notice and she completely
18 disregarded it. I put it in writing as advised by an attorney and she then
19 went through her belongings a SECOND time (binder when she left the
20 room).

21
22 11. [O'Keeffe] treats [redacted] like a child, talks down to her and
23 consistently interrupts her education by needlessly coming up to her
24 while she's trying to do work, not when she asks for help.

25
26 12. [O'Keeffe] said [redacted]['s] IEP is wrong and she needs to get her
27 off using a calculator and that is doing elementary school work. Who
28 would ever say that to students with disabilities? How is she a special
29 needs teacher when she devalues, belittles and berates her students? I
30 cannot express how bad this treatment is for a student with PTSD.
31 [Redacted] already has trust issues with people whom she thought she
32 could trust but the lack of boundaries and abusive behavior from this
33 teacher is reprehensible and unacceptable. She lost [redacted]['s] trust
34 when she violated her 4th amendment right and then lacked integrity to
35 tell the truth when asked if she had permission. She lost all credibility and
36 respect when she told her to place her emotions/issues in a box and
37 leave them at home. What if my daughter was suicidal? That lack of
38 empathy and compassion could have caused a student to take their life.
39 Especially a student who suffers PTSD.

40
41 Her therapist is very concerned that this teacher is bad for [redacted]['s]
42 mental health. Just seeing [O'Keeffe] causes anxiety and stress for
43 [redacted].

44
45 This year we have been so proud that she's showing up and she loves
46 her teachers but now dealing with this woman makes her day miserable

1 and not want to be there at all. [O'Keeffe] being there is a constant
2 distraction for [redacted] and it's inhibiting her from getting the education
3 she needs. Mr. A has stated [redacted] could see him during his LEGO
4 and I would rather she see him for help and not have any contact with
5 [O'Keeffe]. I held off returning the call from the board of education
6 because Mr. Ingram promised to call me back or have someone else call
7 me back that day or the next and that was last week. I returned the board
8 of education's call today, with an expected call back Monday. I honestly
9 don't want to go this route, but I don't want this teacher anywhere near
10 [redacted]. I believe this teacher has violated [redacted]'s rights as a
11 student and her rights as a student with disabilities and any further
12 interactions with her could be harmful for her mental health.

13
14 I need to advocate for [redacted] because of everything she's been
15 through. My mom's cases don't go to trial until March 23, 2026 and there
16 are depositions and hearings in between, so I need [redacted]'s life to
17 be as stress free as possible.

18
19 Please remove this teacher from interactions with [redacted] and if she
20 touches [redacted] in any way again or touches her belongings again, I'm
21 filing a restraining order with the Norfolk district court. How many times
22 does she need to be told not to touch students' belongings before she's
23 held accountable? How would a teacher feel if a student went through
24 their purse? It's extremely violating and to ask her if she has her period
25 near other students? This teacher lacks boundaries, common sense and
26 is abusive by her actions and words. [A] school's failure to act on warning
27 signs, reports of suspicious behavior, or direct abuse allegations
28 constitutes negligence. I've reported this teacher several times and the
29 school failing to protect [redacted] is negligent and responsible for the
30 abuse she's endured since the first report. There is no way forward with
31 this teacher involved in [redacted]'s education at this point. Had she
32 apologized for going through her backpack when it first happened,
33 maybe but since then she's intentionally, after being on notice went
34 through her binder when she left the room AGAIN! Please remove her
35 from being involved in [redacted]'s education.

36
37 By email dated November 16, 2023, O'Keeffe responded to the parent who
38 requested a meeting when she emailed O'Keeffe directly on October 19, 2023. O'Keeffe
39 informed the parent that:

40 Thank you for making the time to attend the Parent Conferences events
41 this week. My apologies for not seeing this email earlier. It was a genuine
42 pleasure to meet you. I will keep in mind each of the concerns that you
43 shared with me. [Redacted] has preferential seating near the front of

1 each classroom, especially during Algebra. It is important that she learn
2 to use her A-E and LEGO time for her benefit. She has this time available
3 to her to complete assignments and to receive additional support. I will
4 continue to modify all of the assignments for her, especially the Algebra
5 assignments. I would recommend that she come to Room 229 during her
6 open LEGO time to complete the ELA assignments and prepare for
7 Algebra quizzes or History projects. We will also reserve time to practice
8 math operations with decimals. We very much appreciate the fact that
9 you made the time to speak to each of [redacted]'s teachers and we are
10 hoping that she will speak to us when she has anxiety about any
11 assignment or its due date. She also has the support of the Guidance
12 staff available to her.

13
14 By email dated January 18, 2024, the same parent reached out to West-Smith about
15 O'Keeffe's conduct. The parent informed West-Smith that:

16 I hope this email finds you well. This email serves the purpose to inform
17 you that my daughter [redacted] has been going under countless stress
18 with [M]s. Ann Marie O'Keeffe, who is supposed to be there for my
19 daughter's well being as her IEP teacher. [Redacted] has been reporting
20 many stressful incidents to me that she has been enduring with Ms.
21 O'Keeffe. Even though I've previously emailed her and attended the
22 teacher/parent conference meeting mainly to meet with Ms. O'Keeffe.
23 I've spoken with her about the things that my daughter [redacted] has
24 reported to me about her until today, she continues to ignore my requests
25 and behave[s] the same towards [redacted]. With that being said, I am
26 requesting a meeting [with] you and my daughter [redacted] so that she
27 can bring up all of her concerns to your attention. Please feel free to read
28 my previous email [correspondence] with Ms. O'Keeffe for your review
29 and awareness. We would appreciate [it] if you would please schedule a
30 meeting that fits with your busy schedule for us to meet, so that we
31 discuss things in order to come up with the best solution with this
32 concern. By the way, Ms. Leanne Brown is fully aware of this situation as
33 well. I asked [redacted] to always bring the incidents to Ms. Brown's
34 attention as her academic counselor. I thank you in advance for your
35 prompt attention to this matter and I look forward to hearing from you
36 soon.

37
38 Following the complaints from this parent, West-Smith removed this student from
39 O'Keeffe's caseload.⁹

⁹ During the school year, several students complained to West-Smith that O'Keeffe did not "understand their space" and "was always in their space".

1 Contract Negotiations

2 Throughout the 2023/2024 school year, the Union and the Charter School engaged
3 in bargaining for a first CBA. At each bargaining session, the Union had a designated
4 bargaining team and silent observers. Heidi Berkowitz (Berkowitz), the Deputy Executive
5 Director for the Charter School, was a member of the Charter School's bargaining team.
6 For the Union, the core bargaining team consisted of Attorney Alan McDonald
7 (McDonald), Duska, Lauren Ells (Ells), the Union vice president, Rebecca Littlefield
8 (Littlefield), the Union treasurer, and DiRodi.

9 The parties kept an attendance list for each bargaining session which listed the
10 bargaining team members for each party and the silent observers that attended the
11 sessions. The Union and the Charter School met on October 17, 2023, November 29,
12 2023, December 19, 2023, January 18, 2024, January 30, 2024, March 4, 2024, March
13 25, 2024, and April 8, 2024.

14 The Charter School and the Union required the unit members to submit information
15 on their years of service to estimate where unit members would fall on a wage scale. The
16 Charter School and the Union needed this information for contract negotiations so they
17 could "cost out" their respective proposals on wages. On April 11, 2024, the Union sent
18 bargaining unit members a newsletter which stated that:

19 At the last negotiation session on 4/8/2024, FRCSTA presented a counter
20 proposal to the Senior Leadership's salary document, and we resumed
21 discussion about the evaluation system. FRCSTA is working to collect
22 updated information for years of service. Please fill out the form no matter
23 how long you've been working here. We need accurate numbers. HR can
24 see your responses.

25
26 The Union included a QR code on the newsletter that allowed unit members to provide
27 the Charter School and the Union with information about their years of service. O'Keeffe,

1 along with many other unit members, provided the Union with this information. Thereafter,
2 the Union submitted the information collected from the unit members to the Charter
3 School. In October of 2024, after the Union and the Charter School executed the CBA,
4 the Charter School sent unit members letters explaining their placement on the steps of
5 the new pay scale.

6 On April 22, 2024, May 6, 2024, May 16, 2024, and May 21, 2024, the Union and
7 the Charter School met to continue contract negotiations.¹⁰ During the 2023/2024 school
8 year, O'Keeffe attended one bargaining session as a silent observer either on May 16 or
9 May 21, 2024.¹¹

10 On or about November 5, 2024, the Union and the Charter School executed their
11 first CBA which is effective September 13, 2024 to June 30, 2027. Article 15 in the CBA
12 states that evaluations will be conducted in accordance with Appendix A of the CBA.
13 Pursuant to an agreement with the Union, during the 2023/2024 school year, the Charter
14 School did not conduct any performance evaluations for any teacher.

¹⁰ O'Keeffe was not the Union's bargaining team. Additionally, O'Keeffe's name does not appear on the attendance list for any of the bargaining sessions. However, for May 16 and May 21 bargaining sessions, the attendance sheet lists several silent observers by name followed by the words "and more".

¹¹ O'Keeffe testified that she attended one bargaining session in March of 2024. However, her name is not listed on the Union's sign in sheets for any March negotiation sessions. Additionally, Ells testified that the Union's sign in sheets do not reflect that O'Keeffe attended a bargaining session prior to May 16, 2024. Ells testified that O'Keeffe may have taken notes during negotiations. However, Ells testified that any notes taken were not submitted to the Charter School in its original form. Rather, the Union utilized any notes to formulate a proposal that was then submitted to the Charter School. The Union's contract proposals to the Charter School were never attributed to any participant. I credit Ells' testimony.

1 Non-renewal Discussions and Decisions

2 On or about March 18, 2024, West-Smith, Foley, and the principals for the
3 Elementary, Middle, and High Schools met to discuss various issues including voluntary
4 and involuntary resignations and non-renewals of staff. During the meeting, they
5 discussed eight employees who were being involuntarily non-renewed at the Elementary
6 School, two employees at the Middle School, and three employees at the High School,
7 including O'Keeffe. When discussing O'Keeffe's continuation of employment at the
8 Charter School, West-Smith, Foley, and the principals discussed O'Keeffe's performance
9 issues and found that O'Keeffe was "not coachable".¹²

10 By letter dated May 15, 2024, the Charter School issued O'Keeffe a notice of non-
11 renewal for the following school year.¹³ West-Smith authored the non-renewal letter,
12 which stated that:

13 This letter is a follow up to our conversation today and serves as written
14 notification of nonrenewal of your employment as High School Special
15 Education Teacher with Foxborough Regional Charter School (FRCS) for
16 the 2024-2025 school year. It has been determined that your instruction
17 and approach to students does not align with the expectations and
18 requirements of your role, and ultimately [cannot] meet our needs. We
19 understand that this may come as unexpected news, and we want to
20 assure you that this decision was not made lightly. As a 10-month
21 employee if you continue to serve through the last day of school, you will
22 continue to receive your paychecks for the current school year through

¹² During the meeting, Foley took notes which are dated March 18, 2024, and the Charter School submitted the meeting notes into evidence. In the meeting notes, under the section for involuntary non-renewals for the High School, next to O'Keeffe's name is a note stating "not coachable".

¹³ O'Keeffe testified that the Charter School terminated at least seven staff members in the 2023/2024 school year. Additionally, the Charter School established that it discussed the involuntary non-renewal of several unit members across the Elementary, Middle, and High Schools. As such, I find that the Charter School decided not to renew the employment of several teachers, including O'Keeffe, for the 2024/2025 school year.

1 August 15, 2024. If you are enrolled in our health insurance, your
2 coverage will end on the date of separation, which will be August 15,
3 2024 unless you decide to resign prior to the last day of school, in which
4 case, your benefits will end on the date of your resignation. Your rights to
5 continue coverage under COBRA will be provided to you by mail from our
6 plan administrator. You are also eligible to file for unemployment. An exit
7 packet containing information about continuing benefits, MTRS,
8 unemployment, and other information will be provided to you via email.
9

10 On or about May 22, 2024, O’Keeffe filed a grievance under the employee
11 handbook, as the CBA was not yet in effect, regarding her non-renewal for the following
12 school year and lack of performance evaluation.¹⁴ After Berkowitz spoke with O’Keeffe,
13 Duska, and then West-Smith, Berkowitz decided to uphold O’Keeffe’s non-renewal.

14 By email dated June 13, 2024, Berkowitz informed O’Keeffe of the following:¹⁵

15 Thank you for sharing your concerns with me. As per our discussion, we
16 are all employees at will and this is outlined in our employee handbook.
17 The conclusion to uphold the nonrenewal decision was made based on
18 a review of the information you provided as well as information collected
19 from conversations that took place with your supervisor throughout the
20 year. It has been determined that coaching, mentoring and other
21 supports have been in place all year and have not resulted in improved
22 performance. In follow up to our conversation yesterday, attached please
23 find documentation to support the nonrenewal decision which shows a
24 pattern of required conversations that were requested in response to
25 performance-based tasks. Enclosures include: the paperwork you
26 submitted to HR to pass along to payroll titled Retirement Application[,
27 and] emails that show a pattern of supervisory discussions that took
28 place in response to performance issues.
29

30 Opinion

31 10(a)(3)- Prima Facie Case

¹⁴ In May of 2024, O’Keeffe submitted to the Charter School an application for retirement.

¹⁵ The Charter School did not submit into evidence the emails that allegedly showed a “pattern of supervisory discussion[s] that took place in response to performance issues”.

1 A public employer that retaliates or discriminates against an employee for
2 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the
3 Law. Southern Worcester Reg. Voc. School District v. Labor Relations Commission, 388
4 Mass. 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass.
5 App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party
6 must show that: 1) an employee was engaged in activity protected by Section 2 of the
7 Law; 2) the employer knew of that conduct; 3) the employer took adverse action against
8 the employee; and 4) the employer took the adverse action to discourage the protected
9 activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000);
10 Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9, 1985).

11 *Protected Activity*

12 The record shows that O'Keeffe engaged in a variety of protected, concerted
13 activities. First, at an open house in April of 2024, O'Keeffe distributed Union buttons to
14 other teachers and wore a button to support the Union in contract negotiations. Dighton
15 School Committee, 8 MLC 1303, MUP-4233 (August 26, 1981).

16 Also, during contract negotiations, the Charter School and the Union asked unit
17 members to provide information on their years of service for the purpose of costing out
18 wage scale proposals in bargaining. O'Keeffe submitted the information on her years of
19 service. Additionally, O'Keeffe attended a contract negotiation session as a silent
20 observer. Finally, O'Keeffe regularly attended Union meetings wherein the union
21 members discussed the contract negotiations with the Union leadership. Given that
22 O'Keeffe took the above-described actions in concert with other union members, and the

actions supported the Union in contract negotiations, I find that O'Keeffe engaged in concerted activity, protected by Section 2 of the Law.

Employer Knowledge

The Charter School had knowledge of some, but not all of O'Keeffe's protected, concerted activities. First, there is no evidence to indicate that the School Charter knew O'Keeffe attended or participated in Union meetings.

Second, although the Charter School may have known that O'Keeffe attended either the May 16 or May 21 bargaining session for contract negotiations as a silent observer, O'Keeffe did not engage in this activity until after she was issued the non-renewal letter on May 15, 2024. As such, there is no evidence to demonstrate that the Charter School knew O'Keeffe was a silent observer in contract negotiations before it issued her the non-renewal letter.

Next, there is no evidence to demonstrate that the Charter School knew that O'Keeffe distributed buttons in support of the Union to other teachers at the open house. The record does not contain any testimony or exhibits demonstrating that an administrator from the Charter School witnessed O'Keeffe distributing the buttons or that the Charter School received information on which individuals distributed the buttons. Also, I do not find sufficient evidence to demonstrate that the Charter School knew that O'Keeffe wore a Union button at the open house or thereafter. Both during and after the open house, many unit members wore a button in support of the Union, not just O'Keeffe.

Finally, because the Union submitted O'Keeffe's years of service information to the Charter School in April, the Charter School knew that O'Keeffe provided information for the purpose of contract negotiations before the Charter School issued her letter of non-

1 renewal on May 15, 2024. This evidence shows that the Charter School knew that
2 O'Keeffe had engaged in a protected activity under Section 2 of the Law.

3 *Adverse Action*

4 The Commonwealth Employment Relations Commission (CERB) has decided that
5 an employer's conduct is not an adverse employment action unless it materially
6 disadvantages the affected employee in some way. City of Boston, 35 MLC 289, MUP-
7 04-4077 (May 20, 2009). There is a material disadvantage when objective aspects of the
8 work environment are affected. See King v. City of Boston, 71 Mass. App. Ct. 460, 468
9 (2008) (failing to provide female superior officers with rank-specific locker rooms rises to
10 the level of an adverse action). On May 15, 2024, the Charter School issued O'Keeffe a
11 non-renewal letter. The Charter School's decision to issue O'Keeffe a non-renewal letter
12 ended her employment as a teacher for the Charter School; therefore it is an adverse
13 action under the Law. Town of Northborough, 22, MLC 1528, 1548, MUP-8006 (February
14 26, 1996).

15 *Unlawful Motivation*

16 To support a claim of unlawful motivation, the last element of a prima facie case, a
17 charging party may proffer direct or indirect evidence of discrimination. Lawrence School
18 Committee, 33 MLC 90, 97, MUP-02-3631 (December 13, 2006) (citing Town of
19 Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002), aff'd sub nom. Town of
20 Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005)). Direct evidence is
21 evidence that, "if believed, results in an inescapable, or at least a highly probable
22 inference that a forbidden bias was present in the workplace." Wynn & Wynn, P.C. v.

1 Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (quoting
2 Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)).

3 Unlawful motivation also may be established through circumstantial, or indirect,
4 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35 MLC
5 29, 48, MUP-03-3894 (June 30, 2008) (citing Town of Brookfield, 28 MLC at 327-
6 328). Several factors may suggest unlawful motivation, including: the timing of the
7 alleged discriminatory act in relation to the protected activity; triviality of reasons, or
8 shifting and inconsistent reasons given by the employer; disparate treatment; an
9 employer's deviation from past practices; or expressions of animus or hostility towards a
10 union or the protected activity. Town of Carver, 35 MLC at 48 (citing Melrose School
11 Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006)); Lawrence School
12 Committee, 33 MLC 90, MUP-02-3631 (December 13, 2006); Cape Cod Regional
13 Technical High School District Committee, 28 MLC 332, 335, MUP-2541 (May 15, 2002).

14 I do not find that O'Keeffe provided any direct or indirect evidence of unlawful
15 motivation. Although the Charter School may have known O'Keeffe attended a negotiation
16 session for the CBA as a silent observer, she attended the session *after* the Charter
17 School issued the non-renewal letter on May 15, 2024. Consequently, her conduct could
18 not have influenced the Charter School's action. Also, even if the Charter School knew
19 that O'Keeffe distributed buttons to teachers and wore a button in support of the Union at
20 the open house in April of 2024 or thereafter, which the evidence does not support, West-
21 Smith's concerns about O'Keeffe's performance pre-dated the open house. On March 18,
22 2024, West-Smith discussed with Foley and the principals for the Elementary, Middle and
23 High Schools, O'Keeffe's performance issues and found that O'Keeffe was not coachable.

1 Furthermore, the Charter School did not engage in disparate treatment when it
2 decided not to renew O'Keeffe's employment. At the end of the 2023/2024 school year,
3 the Charter School "involuntarily non-renewed" several teachers, not just O'Keeffe.
4 Additionally, the record does not contain any evidence that the Charter School treated a
5 similarly situated individual differently when it decided not to renew O'Keeffe's
6 employment.

7 While the Charter School may have known that O'Keeffe submitted information for
8 the wage scale proposals, she was just one of a large pool of teachers who submitted the
9 same information for the same purpose. O'Keeffe did not offer any evidence to suggest
10 that the Charter School singled her out when it decided not to renew her employment
11 because she submitted information on her years of service along with many other
12 teachers.

13 O'Keeffe argued that the Charter School never provided her with a performance
14 evaluation during the school year. However, due to the contract negotiations, the Union
15 and the Charter School agreed to suspend performance evaluations for all unit members
16 during the 2023/2024 school year. The Charter School did not treat O'Keeffe differently in
17 this regard as no one received a performance evaluation for the 2023/2024 school year.

18 Next, O'Keeffe argued that the Charter School had assured unit members that no
19 one would be released from their employment during contract negotiations. This
20 argument has no merit. During a union meeting, Duska assured members that the Charter
21 School would not be conducting any layoffs. The Charter School did not lay off O'Keeffe;
22 it decided not to renew her employment for the following school year. Furthermore, there
23 is no evidence that the Charter School made this promise.

1 Also, O'Keeffe argued that she never received the employee handbook from the
2 Charter School and was not aware that she was an "at-will" employee.¹⁶ The evidence
3 shows otherwise.¹⁷ The Charter School did provide O'Keeffe a copy of the employee
4 handbook and the handbook acknowledgement form. However, even if I assume that
5 O'Keeffe did not receive the handbook directly from the Charter School, she did have
6 access to the handbook in the staff rooms. More importantly, O'Keeffe's alleged lack of
7 knowledge or understanding that she was an "at-will" employee, does not demonstrate
8 that the Charter School was unlawfully motivated when it decided not to renew her
9 employment for the following school year.

10 The Charter School's reasoning for deciding not to renew O'Keeffe's employment,
11 i.e. complaints from a parent and O'Keeffe's performance issues and not being
12 "coachable", was neither trivial nor inconsistent and shifting. Finally, the record does not
13 contain any expressions of animus or hostility towards the Union or O'Keeffe's protected,
14 concerted activities. In sum, there is no evidence that the Charter School was unlawfully
15 motivated when it decided not to renew O'Keeffe's employment for the 2024/2025 school
16 year. Thus, O'Keeffe has failed to establish the fourth element of her prima facie case.

17 Legitimate, Non-Discriminatory Motive

¹⁶ Because O'Keeffe attended a contract negotiation session on May 16 or 21, she must have been aware that there was no CBA in effect at the time of her non-renewal.

¹⁷ M.G.L. c. 71, Section 41 states in relevant part that "a teacher, school librarian, school adjustment counselor, school nurse, school social worker or school psychologist who has served in the public schools of a school district for the three previous consecutive school years shall be considered a teacher and shall be entitled to professional teacher status as provided in section forty-two." O'Keeffe's first year teaching at the Charter School was the 2023/2024 school year.

1 Even if O’Keeffe had established a prima facie case of retaliation, which she did
2 not, the Charter School produced evidence that it had a legitimate, non-discriminatory
3 motive for taking the adverse action. Higher Education Coordinating Council, 23 MLC 90,
4 93, SUP-4090 (September 17, 1996); Town of Clinton, 12 MLC 1361, 1365, MUP-5659
5 (November 9, 1985) (citing Trustees of Forbes Library, 364 Mass. at 563).

6 Under the three-part Trustees of Forbes Library analysis, once a charging party
7 establishes a prima facie case of retaliation, it is the employer’s burden to produce a
8 legitimate, non-discriminatory reason for taking the adverse action. The employer’s
9 burden to produce a legitimate, non-discriminatory reason for taking the adverse action
10 is more than simply stating an unsubstantiated allegation. Commonwealth of
11 Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998). The employer must state
12 a lawful reason for its decision and produce supporting facts indicating that the lawful
13 reason was actually a motive in the decision. Trustees of Forbes Library, 384 Mass. at
14 566; Quincy School Committee, 27 MLC at 92; Commonwealth of Massachusetts, 25
15 MLC at 46.

16 The Charter School decided not to renew O’Keeffe’s employment for the
17 2024/2025 school year due to complaints from a parent and issues with O’Keeffe’s
18 performance. It supported its rationale by introducing emails into the record from the
19 parent who complained. While O’Keeffe may dispute the merits of the parent’s complaint,
20 and the parties may not agree on whether O’Keeffe engaged in unprofessional behavior
21 when interacting with this student, it is not disputed that a parent emailed administrators
22 at the Charter School on numerous occasions to complain about O’Keeffe’s conduct. I

1 find that the Charter School provided sufficient evidence that a parent of a student
2 complained about O'Keeffe.

3 Also, the Charter School decided not to renew O'Keeffe's employment for the
4 2024/2025 school year because it found that O'Keeffe had performance issues and was
5 "not coachable". The Charter School presented evidence that Davidson mentored
6 O'Keeffe on how to write an IEP, how to input relevant information into SchoolBrains, and
7 reviewed with O'Keeffe progress monitoring of her caseload. Despite these
8 mentor/mentee meetings, West-Smith needed to rewrite O'Keeffe's IEPs. Also, O'Keeffe
9 did not have adequate data to support her caseload upon request, and she attended
10 mentor meetings unprepared or late. I find that the Charter School provided sufficient
11 evidence that the Charter School found that O'Keeffe was exhibiting performance issues
12 and was "not coachable".

13 The Charter School presented credible evidence to support its reasoning for
14 deciding not to renew O'Keeffe's employment for the 2024/2025 school year.
15 Consequently, the Charter School satisfied its burden to show that it decided not to renew
16 O'Keeffe's employment for the 2024/2025 school year for legitimate, non-discriminatory
17 reasons.

18 *But for Test*

19 Finally, even if O'Keeffe had proven that the Charter School was unlawfully
20 motivated, which she did not, O'Keeffe cannot prove that but for the protected activity, the
21 Charter School would have renewed her employment for the 2024/2025 school year. The
22 record simply contains no credible evidence to support her claim.

23 CONCLUSION

- 1 The Charter School did not violate the Law when it decided not to renew O'Keeffe's
- 2 employment for the 2024/2025 school year. I therefore dismiss the Complaint.
- 3 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, 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 become final and binding on the parties.