

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
SECRETARY OF ADMINISTRATION
AND FINANCE

and

SEIU, LOCAL 509

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Case No.: SUP-17-6294

Date Issued: February 13, 2020

Hearing Officer:

Sara Skibski Hiller, Esq.

Appearances:

James Hykel, Esq. - Representing SEIU, Local 509

Melissa Thomson, Esq. - Representing the Commonwealth of
Massachusetts / Secretary of Administration
and Finance

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the Commonwealth of Massachusetts /
2 Secretary of Administration and Finance (Commonwealth) interfered with, restrained or
3 coerced its employees in the exercise of their rights guaranteed under Section 2 of
4 Massachusetts General Laws, Chapter 150E (the Law) in violation of Section 10(a)(1) of
5 the Law by investigating and questioning Sol Brito (Brito) and Katie Burgess (Burgess)
6 on October 19, 2017 regarding an email that Burgess sent complaining about working
7 conditions and seeking union support. Based on the record and for the reasons

1 explained below, I find that the Commonwealth unlawfully investigated and interrogated
2 Brito and Burgess concerning their union activities.

3 Statement of the Case

4 On October 20, 2017, the SEIU, Local 509 (Union) filed a Charge of Prohibited
5 Practice (Charge) with the Department of Labor Relations (DLR) alleging that the
6 Commonwealth of Massachusetts / Secretary of Administration and Finance
7 (Commonwealth) had engaged in prohibited practices with the meaning of Section
8 10(a)(1) of the Law. On February 26, 2018, a DLR Investigator issued a three-count
9 Complaint of Prohibited Practice (Complaint). Count I of the Complaint alleges that the
10 Commonwealth independently violated Section 10(a)(1) of the Law when it interfered
11 with, coerced and restrained its employees in the exercise of their rights under Section
12 2 of the Law when it carried out an investigation and questioned Brito regarding a union
13 email distributed by Burgess complaining about working conditions and soliciting union
14 support. Count II of the Complaint alleges that the Commonwealth independently
15 violated Section 10(a)(1) of the Law when it carried out an investigation and
16 interrogated Burgess regarding the same union email. Count III of the Complaint further
17 alleges that the Commonwealth independently violated Section 10(a)(1) when it
18 interfered with, coerced and restrained Burgess in her service as Union Steward and
19 her participation in a DLR proceeding when it carried out an investigation and
20 interrogated her.

21 On December 5, 2018, I conducted a hearing at which both parties had a full
22 opportunity to be heard, to examine and cross-examine witnesses and to introduce

evidence. The Union and the Commonwealth filed their post-hearing briefs on January 25, 2018.

Stipulations of Fact

1. The Commonwealth of Massachusetts is a public employer within the meaning of Section 1 of M.G.L. c. 150E.
2. The SEIU, Local 509 is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive collective bargaining representative for certain employees in statewide bargaining unit eight, including Benefit Eligibility Review Social Workers (BERSW) A/B, C and D at Taunton, Massachusetts.
4. On October 5, 2017, Burgess testified in a hearing at the DLR in Case No. SUP-16-5168, a hearing at which Couto also testified.

Findings of Fact

General Background

MassHealth is an agency of the Commonwealth of Massachusetts under the Executive Office of Health and Human Services (EOHHS). MassHealth oversees operations of the Taunton Mass Health Enrollment Center (Taunton MEC) that provides health care enrollment services to the public. At all relevant times, Diane Pixley (Pixley) is the Director of the Taunton MEC. The Taunton MEC regularly asks personnel employed by the EOHHS to assist with labor relations issues, including Labor Relations Specialist Richard Couto (Couto) and Labor Relations Advisor Matt Leccese (Leccese). Leccese began working for EOHHS in August of 2017 and prior to September 2017, had not worked with the Union at the Taunton MEC.

The Union is the exclusive bargaining representative for individuals employed by MassHealth, including BERSW A/B, C, and D, at the Taunton MEC. The Union and the Commonwealth are parties to a collective bargaining agreement and memorandum of

1 understanding effective January 1, 2014 to June 30, 2016 (CBA). Burgess is employed
2 as a Benefit Eligibility Social Worker A/B (BERSW A/B). In her position, Burgess
3 determines eligibility for MassHealth benefits by meeting with applicants in person or by
4 phone and reviewing their application documents. As a member of the Union, Burgess
5 has served as Union Steward for approximately 10 years and Chief Steward for the past
6 4 to 5 years.

7 **October 5, 2017 DLR Proceeding**

8 In March of 2016, the Union filed a charge of prohibited practice against the
9 Commonwealth alleging that Pixley violated Section 10(a)(1) of the Law by surveilling
10 Union meetings and threatening to investigate Union activity during a labor
11 management meeting.¹ A DLR Investigator issued a Complaint on December 14, 2016,
12 and a Hearing Officer conducted a hearing on October 5, 2017. During the October 5,
13 2017 hearing, Burgess testified on behalf of the Union about Pixley's surveillance at a
14 labor management meeting in which Couto was present. Couto, who was not
15 sequestered and heard Burgess's testimony, testified on rebuttal for the Commonwealth
16 contradicting Burgess's testimony.

17 **September 12, 2017 Email**

18 In September of 2017, Brito, an employee of the Taunton MEC and bargaining
19 unit member, informed Burgess that she was disciplined for taking leave without pay
20 because she had to miss work due to her son's medical condition.² Burgess asked
21 Brito if she could email bargaining unit members requesting they wear purple on
22 Wednesday to show support for Brito. During the period of contract negotiations,

¹ The DLR docketed the case as SUP-16-5168.

² An employee who takes leave without pay is placed on not-on-payroll (NOP) status.

1 Burgess regularly sent out emails to bargaining unit members on her EOHHS email
2 account reminding them to wear purple on Wednesdays to show support for their
3 negotiation team members. After reviewing the email's contents, Brito gave Burgess
4 permission to send the email.

5 On September 12, 2017, Burgess sent the email through her EOHHS email
6 account. The email, titled "Purple Power Day tomorrow...PLEASE READ," stated in
7 relevant part:

8 With permission from my beautiful sister, Sol Brito, I am sending this SEIU Purple
9 Power email! As you know tomorrow is Wednesday and we wear PURPLE! What
10 you don't know is that we will be DEDICATING this purple day to our fellow 509
11 sister SOL BRITO!

12
13 Long story short - Sol was given a written warning in August for going NOP –
14 which is NOT ON PAYROLL. Most of you know that Sol's son is a kidney
15 transplant recipient. Sol has FMLA days, but not enough approved to cover his
16 appointments or hospitalizations or just basic sick days, so she has to call in with
17 NO PAY.

18
19 Not getting paid is hard enough without the stress of being written up for the fear
20 of losing your job. No one should have to choose between a SICK family member
21 or keeping your job. I think we all understand the importance of being at work,
22 but in extenuating circumstances such as a sick child YOU HAVE TO DO WHAT
23 YOU HAVE TO DO.

24
25 So, I am asking you ALL to PLEASE wear purple tomorrow on behalf of our Sol
26 Sister!

27
28 Most of us have children and this could be anyone of us, at any time and I would
29 want someone to stick up for me.

30 Burgess sent the email to approximately thirty bargaining unit members and one
31 non-bargaining unit member, MassHealth Supervisor Michael Aguiar (Aguiar). As a
32 supervisor, Aguiar was aware of Brito's written warning, payroll status and her use of
33 leave without pay for the care of her son's medical condition as disclosed in the email.

1 Aguiar forwarded the email to Pixley, who then then forwarded the email to Couto and
2 to Chief Operating Officer Patricia Grant (Grant).

3 On September 15, 2017, Grant emailed Couto, Labor Relations Director Donna
4 Morin (Morin), and one additional supervisor, stating:

5 Please move ahead with investigating the email sent out by Katie. We will make
6 a decision on discipline after we have the results of the interviews. I would
7 suggest meeting with Sol (with a union rep other than Katie) to find out if she gave
8 permission to Katie to send out her confidential information. I would then meet
9 with Katie. We should also find out when her lunch was that day to see if she was
10 sending information out during her work time.³

11 Subsequently, Morin sent a second email directly to Couto requesting that he
12 "please invite Matt [Leccese] to assist you in this so we have a neutral person involved."
13 Neither Couto nor Leccese had previously performed an investigatory interview at the
14 Taunton MEC. After reviewing the email, Couto and Leccese engaged in management
15 level discussions in which they shared concerns over Burgess's disclosure of Brito's
16 disciplinary information, payroll status and medical information to a member outside of
17 the bargaining unit. Leccese identified possible violations of the Administration and
18 Finance Policy on the "Use of Information Technology Resources" and the November 2,
19 2015 MassHealth Memo, titled "Use of EOHHS and Personal Technology Resources"
20 (Commonwealth's Technology Policies). Further, Couto and Leccese decided that
21 Leccese would take the lead on the investigation and prepare questions for Brito and

³ Although Grant sought to investigate whether Burgess sent the email during her lunch break or during work time, the Commonwealth dropped this allegation shortly after the interview of Burgess.

1 Burgess while Couto scheduled a date for the investigations to take place at the
2 Taunton MEC.⁴

3 **Questioning of Sol Brito**

4 On October 19, 2017, Couto and Leccese arrived at the Taunton MEC to conduct
5 the investigations of Brito and Burgess. Union Steward Joanne Arujo-Moniz (Arujo-
6 Moniz) was asked to attend each investigation as a Union representative. At the request
7 of Couto and Leccese, Jenny Duval, the Assistant Director of the Taunton MEC,
8 escorted Brito from a staff meeting and brought her to an employee training room where
9 Couto and Leccese were to conduct the investigation. At the start of the investigation,
10 Arujo-Moniz told Brito that Couto and Leccese were investigating the email, and their
11 investigation could lead to Brito's discipline. Both Leccese and Couto heard Arujo-Moniz
12 make this statement to Brito, and neither confirmed nor denied whether it was correct.

13 In the training room, Leccese asked Brito a series of questions regarding the
14 email, and Couto took notes. Specifically, Leccese asked Brito how long she worked for
15 the Taunton MEC and how long she worked with Burgess. Leccese also asked Brito
16 several times whether Brito gave Burgess permission to send the email disclosing her
17 disciplinary history, payroll status and medical information to bargaining unit members
18 and to Aguiar. In response, Brito repeatedly affirmed that she gave Burgess permission.
19 Brito explained that she reviewed the email before it was sent out and the information
20 contained in it was accurate. Brito also explained that she had no concerns with the fact
21 that it was sent to bargaining unit members and to Aguiar.

⁴ Couto and Leccese were originally scheduled to meet at the Taunton MEC on October 11, 2017. This meeting was rescheduled because one of the participants was unavailable.

1 In addition, Leccese asked Brito whether she was pressured to allow Burgess to
2 send the email. Brito responded that she was not pressured. Leccese further asked
3 Brito whether she knew the meaning and purpose of the email and why Burgess wanted
4 to share the email. Brito responded that it came out of a conversation with Burgess, and
5 the email was sent to show support for her situation. After approximately ten minutes,
6 Couto and Leccese concluded the investigation and Brito returned to her workspace.

7 **Questioning of Katie Burgess**

8 Subsequently, at the direction of Couto and Leccese, Arujo-Moniz retrieved
9 Burgess from a training seminar and brought her to the training room. In the training
10 room, Leccese and Couto informed Burgess that she was being investigated for
11 confidentiality concerns and violations of the Commonwealth's Technology Policies
12 because of the email she distributed on September 12, 2017, and that the investigation
13 could result in disciplinary action.⁵

14 Leccese asked Burgess a series of questions regarding the email while Couto
15 took notes. Specifically, Leccese asked Burgess why she sent the email. In response,
16 Burgess stated that as Union Steward, she sent the email as Union business. Leccese
17 asked Burgess several questions about whether she received release time from work to
18 send the email. In response, Burgess explained that as Union Steward, the CBA allows
19 her a certain amount of time each week to conduct Union business during work time,
20 including to communicate with her bargaining unit members via email.

⁵ The Commonwealth's Technology Policies indicate that an employee's failure to comply with the policies could result in disciplinary action, up to and including termination from employment.

At one point during the investigation, after taking a call from another Union representative, Burgess informed Leccese and Couto that she believed her email was protected union activity and any questions asked during the investigation constituted a violation of the Law. Burgess told Leccese that if he continued to ask questions, the Union would file charges of prohibited practice with the DLR. Subsequently, Leccese continued to ask questions for another ten minutes. As the investigation progressed, Burgess became frustrated and agitated with the repetitive questions. After approximately 20 to 25 minutes, Leccese and Couto concluded the investigation and Burgess and Arujo-Moniz returned to their workspaces.

In November of 2017, Leccese issued a findings report summarizing the investigation in which he found no violations of the Commonwealth's Technology Policies. The Commonwealth did not discipline Brito or Burgess based on the results of the investigation.

9

1 employees in the exercise of their rights under Section 2 of the Law. Bristol County
2 Sheriff's Department, 31 MLC 6, 15, MUP-2872 (July 15, 2004) (citing Quincy School
3 Committee, 27 MLC 83, 91, MUP-1986 (Dec. 29, 2000)). Pursuant to Section 2 of the
4 Law, an employee has the right to "engage in lawful, concerted activities for the purpose
5 of collective bargaining or other mutual aid or protection, free from interference,
6 restraint, or coercion."

7 The Commonwealth Employment Relations Board (CERB) does not analyze the
8 motivation behind the conduct or whether the coercion succeeded or failed. Town of
9 Chelmsford, 8 MLC 1913, 1916 (MUP-4620) (March 12, 1982), aff'd sub nom Town of
10 Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct. 1107 (1983). Rather,
11 the focus of a Section 10(a)(1) inquiry is the objective effect that the employer's conduct
12 would have on a reasonable employee. Boston School Committee, 39 MLC 366, MUP-
13 09-5543 (June 6, 2013). The subjective impact that the employer's conduct had on a
14 specific employee is not determinative of a violation. Bristol County Sheriff's
15 Department, 31 MLC at 15. Further, the CERB does not consider the employer's
16 motivation for the conduct and whether it was successful in coercing or restricting
17 employee exercise. Id.

18 **Investigation of September 12, 2017 Email**

19 The Complaint alleges that the Commonwealth independently violated Section
20 10(a)(1) of the Law when it carried out an investigation of Brito and Burgess regarding
21 Burgess's September 12, 2017 email. The record shows that Burgess regularly sent
22 emails to unit members using her EOHHS email account requesting that they wear

1 purple on Wednesdays to show support.⁶ Burgess's September 12, 2017 email differed
2 in that it complained about working conditions, expressing discontent and concern with
3 the fact that Brito was required to take unpaid leave to take care of a sick family
4 member and was disciplined for taking unpaid leave. It is well established that
5 communicating complaints about working conditions that impact the bargaining unit as a
6 whole constitutes protected activity under the Law. City of Boston, 8 MLC 1872, 1875,
7 MUP-3994 (February 25, 1982); Town of Shrewsbury, 5 MLC 1519, 1523, MUP-2999
8 (December 22, 1978). Here, Burgess's email clearly seeks to raise awareness and
9 solicit the support of bargaining unit members over employee leave benefits and the
10 Commonwealth's decision to discipline employees for taking leave without pay.

11 The Commonwealth argues that the email was sent to Aguiar who is not a
12 member of the bargaining unit.⁷ Union communications do not lose protection under
13 Section 2 of the Law solely because they are shared in an email, (see Andover School
14 Committee, 40 MLC 1, MUP-12-2294 (July 2, 2013) (email encouraging union
15 members to picket over a contract dispute was concerted, protected activity under the
16 Law)) or because they are shared to an individual outside of the bargaining unit (see
17 Southeastern Regional School District Committee, 7 MLC 1801, MUP-2970 (February
18 2, 1981) (reasonable public criticism of an employer is protected under the Law)).

19 Further, the Commonwealth argues that the Union communication violated the
20 Commonwealth's Technology Policies because it lacked professionalism, used an

⁶ The Commonwealth does not dispute that Union communications to membership asking they wear purple in support of their negotiations team during the period of contract negotiations constitutes protected activity under the Law.

⁷ The record indicates Aguiar was fully aware of Brito's disciplinary history, payroll status, and medical information.

1 inappropriate tone and conveyed the Commonwealth in a negative light. The CERB
2 applies a balancing test, comparing the rights of employees to engage in concerted
3 activities and the rights of employers to not be subjected to egregious, insubordinate or
4 profane remarks that disrupt the employer business or demean workers or supervisors.
5 City of Boston, 6 MLC 1096, 1097, MUP-2878 (May 23, 1979). Here, the
6 Commonwealth's concerns over the language used in the email do not rise to the level
7 of egregiousness or offensiveness that would exclude the union communication from its
8 protections under Section 2 of the Law. See Westborough School Committee, 38 MLC
9 13, 17, MUP-08-5237 (June 29, 2011) (Association document reporting that teachers
10 distrusted the superintendent was not so egregious or offensive to remove it from
11 Section 2 protections). On this basis, Burgess's September 12, 2017 email complaining
12 about workplace conditions that impact the bargaining unit as a whole constitutes
13 concerted activity protected under Section 2 of the Law.

14 I also find that the Commonwealth unlawfully interfered with union activities by
15 investigating Brito and Burgess regarding the September 12, 2017 email and
16 threatening disciplinary action. The record indicates that Grant directed the investigation
17 to determine if Brito gave Burgess permission to send the email disclosing Brito's
18 personal information. Although the first sentence of the email indicates that Brito gave
19 Burgess permission, it was reasonable for the Commonwealth to seek confirmation from
20 Brito directly regarding whether she consented to the release of her personal
21 information. Here, however, the Commonwealth did more than request a verbal
22 confirmation from Brito. Instead, the record indicates the Commonwealth started a

1 disciplinary investigation into both Brito and Burgess's actions concerning the contents
2 and dissemination of the email.

3 Leccese and Couto conducted a formal investigation in which Leccese asked
4 carefully crafted questions about the concerted, protected activity. These questions
5 exceeded the Commonwealth's intended objective in conducting the investigation.
6 Leccese's questions solicited information regarding the relationship between Brito and
7 Burgess, the purpose for sending the email and whether Burgess pressured Brito into
8 allowing her to share the email. Further, the record indicates that the Commonwealth
9 clearly intended for the investigation to have disciplinary consequences.⁸ The
10 Commonwealth provided no legitimate reason as to why Brito was subject to an
11 investigation that could lead to her disciplinary action. Further, the Commonwealth has
12 failed to identify why the investigation of Burgess was even necessary, after Brito
13 verbally confirmed prior to Burgess's investigation that she gave Burgess permission to
14 send the email.

15 Based on the information provided, I find that a reasonable employee under the
16 circumstances would fear that complaining about employee leave benefits and
17 discipline through email may result in a formal investigation and disciplinary action. In
18 this regard, I find that the Commonwealth's conduct interfered with, restrained and
19 coerced employees in the exercise of their rights guaranteed under Section 2 of the Law
20 in violation of Section 10(a)(1) of the Law.

⁸ The fact that neither Brito nor Burgess were ultimately disciplined is immaterial. See City of Lawrence, 15 MLC 1162, 1167, MUP-6086 (September 13, 1988).

1 Questioning of Brito and Burgess

2 The Complaint further alleges that the Commonwealth independently violated
3 Section 10(a)(1) of the Law when it questioned Brito and Burgess concerning the
4 September 12, 2017 email. An employer who coercively interrogates employees about
5 their union activities violates Section 10(a)(1) of the Law. Lawrence School Committee,
6 33 MLC 90, 99, MUP-02-3631 (December 13, 2006) (citing Plymouth House of
7 Correction, 4 MLC 1555, 1572, MUP-2234, 2429 (December 6, 1977)). The CERB has
8 held that an interrogation that is not threatening does not constitute an unfair labor
9 practice unless it meets certain standards. Id. (citing Bourne v. NLRB, 332 F.2d 47 (2nd
10 Cir. 1964)). In examining whether the interrogation was unlawful, the CERB considers a
11 variety of factors, including: 1) whether there was a history of employer hostility and
12 discrimination; 2) the nature of the information sought, including whether the
13 interrogator appeared to be seeking information on which to base taking action against
14 individual employees; 3) the identity of the questioners, including their position in the
15 employment hierarchy; 4) the place and method of interrogation, including whether the
16 employee was called into the supervisor's office and whether there was an atmosphere
17 of unnatural formality; and 5) the truthfulness of the reply. Lawrence School Committee,
18 33 MLC at 9. The CERB considers the totality of the circumstances and no single factor
19 is determinative. See Rossmore House, 269 NLRB 1176, 1178 (1984).

20 Questioning of Brito

21 I find that the Commonwealth's questioning of Brito constitutes a coercive
22 interrogation in violation of Section 10(a)(1) of the Law. While the record contains no
23 direct evidence of a climate of hostility or discrimination toward Brito, the evidence

1 shows that that Couto and Burgess testified against each other at a DLR proceeding on
2 October 5, 2017 regarding a similar Section 10(a)(1) allegation against the
3 Commonwealth. When assigning the investigation to Couto, Morin did not believe Couto
4 was neutral and specifically asked Couto to bring in Leccese to assist with the
5 investigation. The Commonwealth argues that Couto was not involved in the
6 investigation of Brito and Burgess, except to schedule the date of investigation and take
7 notes. However, the record indicates that both Couto and Leccese engaged in
8 management level discussions regarding the scope of the investigation, and Couto was
9 present for the questioning of both Brito and Burgess.

10 Further, the record indicates that Leccese clearly questioned Brito about her
11 communications with Burgess and Burgess's union activity with the intent to identify
12 misconduct. During the questioning, Leccese repeatedly asked Brito to confirm whether
13 she gave Burgess permission to send the email. While it was reasonable for Leccese to
14 ask Brito to confirm that she gave Burgess permission, his repeated questions had no
15 legitimate purpose. Leccese also asked Brito about her relationship with Burgess,
16 whether she felt pressured by Burgess, and the meaning and purpose of the email.
17 Here, Leccese's questions had the effect of admonishing Brito for her relationship with
18 Burgess and for assisting Burgess in sending the September 12, 2017 email.

19 In addition, the record shows that the investigation was a formal proceeding. The
20 Taunton MEC brought in Couto and Leccese, who were employed by EOHHS in labor
21 relations, specifically to conduct the investigation. Brito was removed from a seminar by
22 a supervisor and brought to the training room where Couto and Leccese intended to
23 conduct the investigation. Leccese and Couto pre-arranged for Arujo-Moniz to be

1 present as Union representation, and Brito was informed that the investigation could
2 lead to her disciplinary action. Further, there is no indication that Brito's responses
3 throughout the investigation were untruthful.

4 Based on the totality of the circumstances, I find that a reasonable person in
5 Brito's circumstances would have felt coerced and restrained from engaging in further
6 union activity, including sending emails complaining about working conditions that affect
7 the bargaining unit as a whole out of fear they would be investigated and disciplined.
8 Thus, I conclude that the Commonwealth violated Section 10(a)(1) of the Law.

9 Questioning of Katie Burgess

10 In applying the five principles of Bourne noted above, I find that Burgess was
11 also coercively interrogated about her union activities in violation of Section 10(a)(1) of
12 the Law. Lawrence School Committee, 33 MLC at 99 (citing Bourne v. NLRB, 332 F.2d
13 47 (2nd Cir. 1964)). As addressed above, the evidence shows Couto and Burgess
14 testified against each other at a DLR proceeding on October 5, 2017 and that Couto
15 was involved in her investigation on October 19, 2017. Further, the record shows that
16 Leccese questioned Burgess about her union activity to seek evidence of misconduct in
17 order to determine disciplinary action. Leccese prefaced the questioning by informing
18 Burgess that he was investigating violations of the Commonwealth Technology Policies,
19 a violation which could result in discipline. However, Leccese already knew the answer
20 to certain questions he posed. At the investigation, Leccese asked Burgess in multiple
21 different ways and at multiple different times if Burgess had permission from Brito to
22 send the email. Just ten minutes prior, Brito unequivocally informed Leccese that she
23 consented to Burgess sending the email. Leccese also asked Burgess if she coerced or

1 pressured Brito into allowing her to send the email, an allegation which was again
2 refuted by Brito just moments earlier. Leccese's questions to Burgess were repetitive
3 and lasted approximately 20 to 25 minutes. Even after Burgess informed Leccese that
4 she believed the questioning violated the Law, Leccese continued his questions. The
5 Commonwealth has not showed that Leccese obtained any information from this line of
6 questioning that it did not already have or that was dispositive in determining whether
7 Burgess engaged in misconduct.

8 Similar to the investigation of Brito, Leccese and Couto, as representatives of
9 Labor Relations for EOHHS, conducted Burgess's investigation. The investigation was a
10 formal proceeding, with pre-arranged union representation present. As to the fifth factor
11 of the Bourne test, there is no evidence to indicate that Burgess was untruthful in her
12 responses to Leccese's questions. Although Burgess may have become less
13 complacent towards the end of the interview, I attributed this to Leccese's repetitive and
14 confusing line of questioning. Based on the totality of the circumstances, after
15 considering the five factors addressed above, I find that Leccese's questioning of
16 Burgess on October 19, 2017 constitutes a coercive interrogation. Thus, the
17 Commonwealth's conduct interfered with, restrained and coerced employees in the
18 exercise of their rights in violation of Section 10(a)(1) of the Law.

19 **Interference, coercion and restraint of Burgess**

20 Lastly, the Complaint alleges that the Commonwealth violated Section 10(a)(1) of
21 the Law by interfering with, coercing, and restraining Burgess in her activities as Union
22 Steward and her participation in a DLR proceeding on October 5, 2017. As discussed
23 above, Burgess's email to bargaining unit members on September 12, 2017

1 complaining about working conditions constitutes protected activity. The record also
2 indicates that Burgess testified on behalf of the Union at a DLR proceeding on October
3 5, 2017 with regard to Pixley's surveillance of union activities at a labor management
4 meeting in which Couto was present. Burgess's participation in the DLR proceeding
5 constitutes concerted activity protected under Section 2 of the Law. See City of Boston,
6 4 MLC 1033, MUP-2345 (June 9, 1977).

7 Here, I find that the Commonwealth unlawfully interfered with, restrained and
8 coerced Burgess in the exercise of protected activities. When Grant initiated the
9 investigation, Morin believed Couto was not neutral and instructed Couto to ask
10 Leccese to assist. The DLR hearing at which both Burgess and Couto testified against
11 each other took place approximately 14 days prior to the Leccese and Couto's
12 investigation of Burgess. The Commonwealth failed to substantiate that it had a
13 legitimate reason to question Burgess. Rather, the record indicates that the questions
14 that Leccese asked did not seek information which he did not already have. Further, I
15 found that Leccese's questioning of Burgess constitutes an unlawful coercive
16 interrogation under the Law. Based on the timing of the investigation, the lack of a
17 legitimate reason for the investigation and the coercive interrogation of Burgess, I find
18 that a reasonable person in the position of Burgess would feel coerced and restrained in
19 the exercise of union activities and admonished for participating in a DLR proceeding. In
20 this regard, I find that the Commonwealth's conduct interfered with, restrained and
21 coerced Burgess in the exercise of her rights under Section 2 of the Law violation of
22 Section 10(a)(1) of the Law.

1 Conclusion

2 Based on the record and for the reasons explained above, I find that the
3 Commonwealth unlawfully interfered with, coerced and restrained its employees in the
4 exercise of protected activities when it conducted an investigation and coercively
5 interrogated Brito and Burgess regarding an email that complained about working
6 conditions that affect the bargaining unit as a whole and soliciting support from
7 bargaining unit members. Through these actions, I further find that the Commonwealth
8 unlawfully interfered with, coerced and restrained Burgess in the exercise of union
9 activity.

10 Order

11 WHEREFORE, based on upon the foregoing, IT IS HEREBY ORDERED that the
12 Commonwealth shall:

13 1. Cease and desist from:

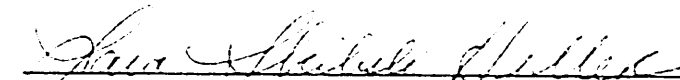
- 14 a. Conducting disciplinary investigations into activities protected under
15 Section 2 of the Law in a manner that would tend to interfere with,
16 restrain and coerce employees in the exercise of any right guaranteed
17 under the Law.
18
19 b. Coercively interrogating employees regarding activities protected
20 under Section 2 of the Law.
21
22 c. Interfering with, restraining or coercing Katie Burgess in the exercise
23 of her rights guaranteed under the Law.
24
25 d. In any like manner, interfering with, restraining or coercing its
26 employees in the exercise of any right guaranteed under the Law.

27 2. Take the following affirmative action that will effectuate the purposes of the Law:

- 28 a. Immediately post signed copies of the attached Notice to Employees
29 in all conspicuous places and where members of the bargaining unit
30 usually congregate and where notices to these employees are usually
31 posted, including electronically if the Commonwealth customarily

- 1 communicates to its employees via intranet or email, and maintain for
2 a period of thirty (30) consecutive days thereafter; and
3
4 b. Notify the DLR in writing of the steps taken to comply with the
5 decision within ten days of receipt of the decision.
- 6 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


SARA SKIBSKI HILLER, 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 Executive Secretary of 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 the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR
RELATIONS**

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Commonwealth of Massachusetts has violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by interfering, restraining and coercing its employees in the exercise of their rights guaranteed under Section 2 of the Law when it conducted an investigation and coercively interrogated employees regarding protected activities.

The Commonwealth posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

- to engage in self-organization; to form, join or assist any union;
- to bargain collectively through representatives of their own choosing;
- to act together for the purpose of collective bargaining or other mutual aid or protection;
- and
- to refrain from all of the above.

WE WILL NOT conduct disciplinary investigations into activities protected under Section 2 of the Law in a manner that would tend to interfere with, restrain and coerce employees in the exercise of any right guaranteed under the Law.

WE WILL NOT coercively interrogate employees regarding activities protected under Section 2 of the Law.

WE WILL NOT interfere with, restrain or coerce Katie Burgess in the exercise of her rights guaranteed under the Law.

WE WILL NOT otherwise interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

COMMONWEALTH OF MASSACHUSETTS

DATE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).