

COMMONWEALTH OF MASSACHUSETT
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
COMMONWEALTH OF MASSACHUSETTS/ * Case No.: SUP-21-8687
SECRETARY OF ADMINISTRATION *
AND FINANCE/ DEPARTMENT OF *
DEVELOPMENTAL SERVICES * Date Issued: November 27, 2023
*
and *
*
AMERICAN FEDERATION OF STATE, *
COUNTY, AND MUNICIPAL EMPLOYEES, *
COUNCIL 93, LOCAL 646 *
*

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

- Carolyn McMememy, Esq. - Representing the Commonwealth of Massachusetts
- Justin Murphy, Esq. - Representing the American Federation of State, County, and Municipal Employees, Council 93, Local 646

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this is case whether the Commonwealth of Massachusetts (Commonwealth)
2 interfered with, restrained, or coerced its employees in violation of Section 10(a)(1) of
3 Massachusetts General Laws, Chapter 150E (the Law) when management officials within the
4 Department of Developmental Services (DDS) met with three bargaining unit employees and
5 made comments to discourage their participation in an upcoming grievance hearing. For the

1 reasons explained below, I find that the Commonwealth did not violate Section 10(a)(1) of the
2 Law as alleged.

3 STATEMENT OF THE CASE

4 The Union filed a charge of prohibited practice (Charge) with the Department of Labor
5 Relations (DLR) alleging that the Commonwealth, through the DDS, engaged in prohibited
6 practices within the meaning of Sections 10(a)(3), 10(a)(2), and, derivatively, Section 10(a)(1) of
7 Massachusetts General Laws, Chapter 150E (the Law). A DLR investigator investigated the
8 charge. At the investigation, the Union amended its Charge to allege an independent Section
9 10(a)(1) violation. On December 6, 2021, the investigator issued a Complaint of Prohibited
10 Practice and Partial Dismissal (Complaint). The Complaint contained one count, alleging that
11 the Commonwealth independently violated Section 10(a)(1) of the Law. The Commonwealth
12 filed an Answer to the Complaint on December 13, 2021.

13 I conducted a hearing by WebEx video conference on February 28, 2023, at which both
14 parties had the opportunity to be heard, to examine and cross-examine witnesses, and to
15 introduce evidence. On May 1, 2023, both parties filed timely post-hearing briefs. Based on the
16 record, which includes witness testimony, stipulations of fact, and documentary exhibits, and my
17 observation of the witnesses' demeanor, in consideration of the parties' arguments, I make the
18 following findings of fact and render the following opinion.

19 STIPULATIONS OF FACT

- 20 1. The Commonwealth of Massachusetts (hereinafter the "Commonwealth"), acting through
21 the Secretary of Administration and Finance, is a public employer within the meaning of
22 Section 1 of the Law.
- 23 2. The Alliance, AFSCME-SEIU (Alliance) is the exclusive representative for employees of
24 the Commonwealth in statewide units 2, 8, and 10. The American Federation of State,
25 County, Municipal Employees, Council 93, Local 646 (Union), a member of the Alliance,
26 is an employee organization within the meaning of Section 1 of the Law and represents

1 employees in statewide bargaining Unit 2 who hold the position of Developmental
2 Services Worker (DSW) and are employed by the Department of Developmental Services
3 (DDS) in its Wrentham, Massachusetts location.

4

5

FINDINGS OF FACT

Background

7 DDS supports individuals with developmental and/or intellectual disabilities who reside in
8 group homes. Rita Nevulis (Nevulis), Director of Residential Support Services for the Metro
9 Residential Services Region, oversees 5 group houses. The events at issue in this matter took
10 place at the Roslindale House (house).¹ The house has two levels with one apartment
11 downstairs and one apartment upstairs. There are four bedrooms in each apartment, housing
12 one resident² per bedroom. Because there is no internal staircase, staff and residents utilize an
13 outdoor stairway to move between floors.

14 Nevulis oversees Jude Felix (Felix), the Residential Supervisor at the house. Felix
15 supervises about 20 employees. Employees on each of the three shifts in a 24-hour day overlap
16 with the employees of the previous shift by 15 minutes so that they can communicate with each
17 other to explain what happened during the previous shift to ensure that the program is running
18 smoothly and that all residents' needs are met. For instance, the outgoing staff informs the
19 incoming staff if there are changes in any resident's medications. The staff communicates both
20 verbally and through a written daily communication log.

¹ At times, witnesses also referred to the house as the Cliffmont House.

² The parties use the term resident or individual interchangeably when referring to those who live in the house.

1 At the end of her shift on January 30, 2021, Developmental Services Worker (DSW) I
2 Judith Nafrere (Nafrere) allegedly directed the only resident on the lower level of the house to
3 use the outdoor stairway to go to the second floor, without assisting him or calling for the staff
4 on the second floor to assist him. All staff are mandated reporters; if an employee believes that
5 a resident is being abused or neglected in any way, the employee is required to report the
6 incident to the Disability Persons Protection Commission (DPPC). Another on-duty staff
7 member, AG,³ who saw the resident walking outside towards the external staircase by himself,
8 contacted Nevulis to report Nafrere's actions. Nevulis separately contacted Metro Services
9 Director Maureen Delaney (Delaney) and Felix to discuss the incident. Felix contacted DPPC to
10 report what AG witnessed. DCCP conducted a review. As part of that review, Nevulis asked the
11 staff on duty on January 30, 2021 to write statements about what they saw or what they believed
12 happened on that day. DPPC did not take any action regarding this incident but referred the
13 matter back to DDS.

14 DDS began disciplinary proceedings against Nafrere as a result of the January 30, 2021
15 incident and scheduled a show cause hearing for February 23, 2021. On February 22, 2021, the
16 Union provided Delaney and a Labor Relations Specialist with documents for Nafrere's show
17 cause hearing the next day, including witness statements provided by Elizabeth Manardy
18 (Manardy), Carmesuze Michaud (Michaud), and Elisabeth Duverger (Duverger), and two other
19 employees, referenced as Sally J and Kallot F.⁴

³ The Commonwealth stated that the employee asked that her name not be used in this proceeding, and all parties agreed to refer to her with her initials.

⁴ Neither party submitted Sally J and Kallot F's statements into evidence in this proceeding.

1 Manardy, a DSW II, submitted the following typed statement, dated February 13, 2021,
2 entitled "House activities":

3 I am writing this letter to say many of the individuals who live at the [redacted in
4 the original] House who have the ability to walk independently including resident
5 (O.P.), are often given opportunities on a regular basis to complete many types of
6 house activities and errands between the two apartments such as taking out the
7 trash, bringing different food items for staff to cook, paper towels, and a box of
8 gloves.

9
10 Individuals are given these different tasks and jobs as an effort [to] continue to
11 work on goals that teaches them basic independence skills while living in the
12 community.

13
14 Michaud, a DSW II, provided the following typed statement, dated February 16, 2021, entitled
15 "Regular house activities":

16
17 The majority of the residents who live at the [redacted in the original] House
18 function at an intermediate to high leve[[]]. Most of them are able to walk
19 independently including (OP) and can perform several tasks as errands which
20 allows them to travel back and forth between the first and second floor. These
21 tasks promote further individual skills reflecting in most of their ISP
22 goals/objectives.

23
24 As a result, the residents are routinely given tasks such as delivering items from
25 the first floor to the second like food products to cook, rolls of paper napkins, box
26 of gloves, in addition to going outside to throw the trash out in larger barrels in the
27 back of the house.

28
29 The residents enjoy doing these opportunities and chores which helps them
30 increase their independence and skills.⁵

31
32 Duverger, DSW-1, provided the following typed statement:

33
34 To: Who it may concern
35 From: Elizabeth Duverger, DSW-1
36 Re: House activities
37 2/16/21

⁵ Both Manardy and Michaud's statements were admitted not for the truth of the statements but as proof that the Union provided these documents to DDS in advance of the show cause hearing. During much of Duverger's testimony, she referred to a singular "letter" from the employees rather than three letters. However, the evidence clearly demonstrates, and I find, that Duverger, Manardy, and Michard each signed separate letters on behalf of Nafriere.

1 I have worked at the [redacted in the original] House for over 10 years and the
2 practice has always been to give residents who can walk independently
3 opportunities to do errands between the first and second floor to help them work
4 on their functioning skills including (O.P).

5
6 These chores have included opportunities for the individuals giving them small jobs
7 like delivering food items, gloves, and throwing out the trash that helps with the
8 further development of residents['] independent skills.

9
10 This has been a normal and on-going practice at the [redacted in the original]
11 house.

12
13 If you have any further questions please let me know.

14
15 Thank you,
16 Elizabeth Duverger

17
18 Under the typed name, Duverger provided her written signature as E Duverger.

19 Duverger, Manardy, and Michard did not testify at the show cause hearing, but Union
20 Vice President Pharamond Conille (Conille) presented their letters of support during the show
21 cause hearing, along with letters of support from at least two other employees. Both AG and
22 Nevulis provided testimony during the show cause hearing.

23 In March 2021, DDS terminated Nafrere's employment. Conille filed a grievance on her
24 behalf, alleging that DDS violated the collective bargaining agreement by terminating Nafrere
25 without just cause.⁶ Conille planned to have Duverger, Manardy, and Michaud testify at the Step
26 III meeting on behalf of Nafrere to explain that certain residents were given the independence to

⁶ The grievance was not submitted into evidence.

1 go from one floor to another on their own.⁷ Duverger agreed to speak on behalf of Nafrere at
2 the Step III proceeding.⁸

3 **Prelude to the April 6 meeting**

4 After Nafrere's termination, Felix noticed that the staff was not communicating with each
5 other during shift changes as they had previously. Some employees began using a "middle
6 person" or conduit to pass on communication. For instance, when AG needed something in an
7 office that Conille was in, she asked Felix to get the item for her rather than enter that office
8 herself. When Felix questioned AG, she explained that certain employees were not talking to
9 her after she reported Nafrere. Another employee, Princess Cohen (Cohen), also informed Felix
10 that some employees stopped talking with her as well.⁹ Both AG and Cohen also expressed
11 their concerns to Nevulis, explaining that certain staff members were making them feel
12 uncomfortable, specifically naming Conille, Duverger, and one other employee.

13 Felix, who speaks with Nevulis on a regular basis, explained to her that there was some
14 tension among the staff in the house after the Nafrere incident. Felix was concerned that
15 insufficient communication among the staff could impact the residents. Therefore, he suggested
16 to Nevulis that they have a meeting with some of the staff in an attempt to ease the tension in

⁷ Conille did not explain why he picked these three employees to speak at the Step III hearing but not the other two employees who also submitted statements on behalf of Nafrere. The Union also did not present any evidence that the Union informed DDS that these three employees would be participating in the Step III hearing. Both Nevulis and Felix provided un rebutted testimony that they were unaware that any of the three had plans to participate in the Step III hearing.

⁸ Neither Manardy or Michaud attended or participated in the ULP proceeding, however, Conille testified that they both also initially agreed to participate in the Step III proceeding.

⁹ Duverger testified that she believes that Cohen reported what she saw on January 30, 2021 and was also involved in some capacity in Nafrere's termination proceedings.

1 the house. Nevulis agreed. They decided to have two separate meetings instead of one group
2 meeting to avoid any confrontation among the employees. They planned to meet first with
3 Manardy, Michaud, and Duverger, who were considered to be the “stronger staff.”¹⁰ After that,
4 Nevulis and Felix planned to meet with Cohen and AG.

5 **Credibility**¹¹

6 The allegation in this matter rests on what Felix and Nevulis said to Duverger, Manardy,
7 and Michaud during the April 6 meeting. Three of the five people who attended the meeting,
8 Duverger, Felix, and Nevulis, testified about the meeting.¹² Felix’s and Nevulis’ testimony align
9 at times, including regarding why the meeting was held and about certain aspects of what was
10 said at the meeting. For other aspects of the meeting, Felix’s testimony diverges from Nevulis’
11 and Duverger’s consistent testimony. Where the three witnesses who attended the meeting
12 disagree about what was said at the meeting, I credit Nevulis’ testimony. I find Nevulis to be the

¹⁰ The parties dispute the reason why Felix and Nevulis chose to meet with Duverger, Manardy, and Michaud. The Union suggests that Nevulis and Felix met with them to discourage their participation in Nafrere’s grievance proceedings. Conversely, Felix and Nevulis testified that they were unaware that the three planned to participate in the grievance proceeding. Instead, Felix and Nevulis testified that they met with the three to ask for their assistance in restoring calm and communication at the house. Felix testified that the other employees listen to these three employees. Nevulis concurred, explaining that she and Felix believed that Duverger, Manardy, and Michaud could help them to calm things in the house and have everyone start working together again. Felix further testified that he delegates his job to these three when he is out. He selects people based on their ability to do what he asks rather than on seniority. Similarly, Nevulis testified that when Felix is away, she depends on these three employees to assist her. Although Duverger denied that Felix delegated some of his job duties to her when he was out, when counsel asked her if Felix ever asked her to help out around the houses when he’s not there, she replied “[i]t’s regarding the individuals [who live in the house]. Yeah.” When counsel asked Duverger if Felix viewed her as a leader among the staff, she replied “[y]es, I think, I think he thinks that I’m one of the person (sic) that, that will calm the situation down if it gets worse.”

¹¹ The witnesses were sequestered during the hearing.

¹² As previously noted, neither Manardy nor Michaud participated in the instant hearing.

1 most credible witness based on her overall demeanor and her more even-handed testimony.
2 Although Nevulis did not have 100% recall of the events, she had the best independent recall of
3 the events without being prompted by an attorney. I do not credit much of Felix's testimony about
4 what transpired during the April 6 meeting;¹³ I only credit those aspects of the testimony that are
5 corroborated by Nevulis. Similarly, although I credit some of Duverger's testimony, including
6 certain testimony consistent with Nevulis' testimony, I do not find other parts of her testimony
7 credible.¹⁴

8 **April 6, 2021 meeting**

9 Felix and Nevulis met Duverger, Manardy, and Michaud on the first floor of the house
10 around the time of the afternoon shift change. The meeting lasted between 5 and 15 minutes.¹⁵

¹³ For instance, as explained more fully in my subsequent factual findings, Felix testified that Duverger did not speak during the April 6 meeting, and he denied that Nevulis addressed the employees' letters of support for Nafrere. Both Duverger and Nevulis contradicted this testimony. Moreover, although Felix testified that Nevulis did not bring up Nafrere in any context, he contradicted himself by saying that "we told them to let the process play out." Felix attempted to explain that inconsistency by stating they did not refer to Nafrere by name but briefly referenced the situation with Nafrere when he told the three employees to "let the process play out" and "it is not up to me to decide what's going to happen. They have to let the process play out because I need peace in the house..." Although Felix testified that Nevulis did not comment on that, Nevulis testified she said words to the same effect, as explained in footnote 22.

¹⁴See Town of Weymouth, 19 MLC 1126 MUP-6839 (August 4, 1992) (A hearing officer may believe parts of a witness' testimony and disbelieve other parts). Here, I do not credit Duverger's testimony regarding the length of the meeting, which I further address in the next footnote. I also do not credit that she typed both her letter of support for Nafrere and her summary of the April 6 meeting, which I address in more detail in footnote 26. Given Duverger's demeanor and my conclusions that her testimony was not fully accurate, along with the fact that she only testified about the most coercive comments Nevulis allegedly made in response to leading questions, which I address more in footnote 23, I resolve credibility disputes in favor of Nevulis.

¹⁵ Felix testified that the meeting lasted less than 10 minutes, and Nevulis testified that the meeting lasted between 5 to 15 minutes. In contrast, Duverger testified that the meeting lasted about an hour. Duverger further testified that Nevulis and Felix addressed the employees' letters on behalf of Nafrere for about 55 minutes, and only spent about 5 minutes at the end of the meeting addressing the "chaos" in the house. There were no other topics discussed. Given that,

1 Felix took the lead during the meeting although Nevulis did speak at times.¹⁶ Felix began by
2 noting that there was tension in the house, with certain staff members not speaking with other
3 staff members.¹⁷ He asked the three employees to help ease the tension in the house so that
4 all could deliver better care to the residents.¹⁸

5 Although the purpose of the meeting was to address the tension in the house, Nevulis did
6 address the witness statements that she had seen in support of Nafrere.¹⁹ The staff brought up
7 that they were upset that Nafrere had been fired. Nevulis also said she felt bad about Nafrere's

I do not find it plausible that the meeting took an hour and therefore I do not credit Duverger's testimony on this matter. Instead, I credit Nevulis' and Felix's consistent testimony about the length of the meeting. I also do not credit Duverger's testimony that Nevulis and Felix devoted 55 minutes addressing the letters the employees wrote on behalf of Nafrere. Instead, I credit Nevulis' and Felix's consistent testimony that the bulk of the short meeting addressed the tension in the house.

¹⁶ Duverger testified that Nevulis led the meeting and did most of the talking, however, I credit Felix and Nevulis' consistent testimony that Felix led the meeting that was aimed at directing his staff, with Nevulis lending her support to Felix.

¹⁷ Duverger testified that the main subject of the meeting was Nafrere's termination and the employees' letter(s) on Nafrere's behalf. Duverger testified that Nevulis started the meeting by saying that they were meeting to discuss the letter the staff had written in support of Nafrere. According to Duverger, Nevulis stated that the letter "doesn't have any effect. So, we can't – we—so that they—everything is all set. She's [Nafrere] de-terminated. So, we don't have no needs to continue to write any letter." I find Nevulis and Felix's consistent testimony about the reason for the meeting, to restore harmony into the home for the wellbeing of the residents, is more credible. Additionally, if the meeting was to discuss the letters and/or discourage participating in Nafrere's proceeding, the Union did not provide a rationale for why Nevulis and Felix did not include all employees who wrote letters on behalf of Nafrere in the meeting.

¹⁸ Nevulis agreed that Felix began the meeting by asking the three employees, as "strong ladies in the house," to help calm the waters in the home and have everyone "start communicating again with each other, and to work together, as a team, again." Although Duverger disagreed that this was the main impetus for the meeting, she agreed that Nevulis and Felix asked her, Manardy, and Michaud to help calm the chaos in the house.

¹⁹ In this regard, I credit Nevulis and Duverger's testimony, but do not credit Felix's testimony denying that Nevulis commented on the employees' written statements.

1 termination but indicated that was not the reason for the meeting; she and Felix were trying to
2 bring some peace to the house. Nevertheless, after the employees broached the topic of
3 Nafrere's termination, Nevulis informed them that she had seen their statements written in
4 support of Nafrere and noted that they all looked very similar, as if one person had written all of
5 them.²⁰ Duverger felt insulted by Nevulis' statement. Duverger asked whether Nevulis thought
6 that she [Duverger] could write her own statement.²¹ Nevulis reiterated that they were meeting
7 to ask Duverger, Manardy, and Michaud to be the leaders of the house and help bring some
8 peace to the home, not to discuss Nafrere's situation. Nevulis went on to say words to the effect
9 that the process was out of her hands or out of everybody's hands and they needed to let the

²⁰ Nevulis admitted saying that "we had the statements and that because we had the statements, we were not discussing anything about the hearing. And that all we wanted to do was discuss the tension that was in the house, and to allow the process with Judith's next hearing to proceed." Duverger first testified that Nevulis asked if they wrote the letter(s), however she then clarified that Nevulis did not ask, but rather said "I know you guys didn't write that letter." Duverger also testified that Nevulis said that she "doesn't feel that we were the one that wrote it" or that perhaps the Union helped write it. Nevulis admitted saying that the statements appeared very similar but denied that she said that she knew that the three employees did not write their statements. Nevulis testified that she was "trying to make light of the situation. And I just kind of was saying, well, you know, geez, they all look like they were written by the same person. I said it was just kind of weird. That was all I said." When Union counsel asked Nevulis if she thought that it was appropriate to say to the employees that she felt that their statements all looked alike while there was a pending grievance, Nevulis replied, "well, I'm not sure if it was appropriate or not appropriate. It was said and that's what I'm telling you I said."

²¹ Nevulis testified that she "assured [Duverger] that I definitely knew that she could write her own statement. And that was not the reason I was there. I did not want to discuss statements or anything."

- 1 process move on as scheduled.²² Neither Nevulis nor Felix told Duverger and the others to stay
2 out of Nafrere's grievance proceedings.²³

²² Nevulis testified that after briefly referencing the employees' written statements she said, "there was just nothing that I could do, that they were there, that the statements were made, and that it was out of everybody's hands, that we just needed the process to move forward." She explained that by saying it was out of our hands, she meant "that the process now needed to move forward to the process of the hearings and whatnot, and that they would move forward. I mean, there's, there's nothing else I could say." Nevulis recounted the conversation numerous times in response to questions. Her responses were similar but not identical. Nevulis testified that although she could not recall her exact words, she had said, "something to the effect that, you know, it's out of our hands right now, and that we need to move forward. We need to take care of the folks that are in the house. And the way that the staff are with each other is inappropriate, and that we need to start working together to ... take care of [the residents]." Nevulis also testified that "I said that I really am out of the picture at this point, that it really is out of my hands. That I really was not going to be the person making any decisions in the matter of Judith." At another point, Nevulis testified that she said that "this process is out of my hands, and we just need to let the process move on, as, as scheduled." Although Nevulis stated that she did not recall her exact words, she was clear that she did not say that nothing was going to change Nafrere's termination. Duverger concurred that Nevulis said the matter was out of her [Nevulis'] hands. However, Duverger also testified that Nevulis said that the case was over and Nafrere was fired so "we don't need to, to continue of – with that letter thing." Duverger further testified that Felix said "just reminding you guys the case is over. So, there is nothing you can do. The letter will not be ... helping in the case." I do not credit Duverger's testimony that Nevulis or Felix said that Nafrere's case was over. Duverger's testimony was unclear about whether she believed that Nafrere's case was over, saying at one point that Nevulis said the case was over "[s]o I was, like, okay. So it's, it's over" but immediately before that, and again later, Duverger testified that she understood that Nafrere's case was not over and that there was another meeting scheduled. Moreover, Nevulis, Felix, and Duverger all testified that Nevulis and Felix said that they needed to let the process play out. These comments refute the idea that Nevulis or Felix said that Nafrere's case is over as it is not logical to say that the process needed to play out if the process was over.

I note here that there was some testimony presented regarding what Duverger said in this regard at the investigative conference. As a policy matter, I find it inappropriate to consider what was said during the investigation, and further, it is not necessary here as I am able to make my credibility determinations based on testimony provided during the hearing.

²³ Duverger did not testify that Nevulis or Felix told her and the others to "stay out of it" until prompted by the Union's counsel to use those words. On direct examination, Duverger testified that Nevulis explained that "the case was over and she [Nafrere] was fired. So everything is all set, though. So I don't – we don't need to, to continue of – with that letter thing." The Union's counsel then asked "[d]id she say anything else. Did she tell you to stay out of it?" Duverger replied "yes, she said don't - - stay out of it because it's not, it's not our concern to worry about

1 **After the April 6th meeting**

2 Immediately after their meeting with Duverger, Manardy and Michaud, Nevulis and Felix
3 met in the same room with AG and Cohen. The meeting was very short. Felix took the lead and
4 explained that he was aware of their concerns and was working to address those concerns. He
5 informed them that after meeting with three other employees in the house, he hoped that
6 everything would calm down and that the staff would start to communicate directly again so that
7 everyone could return to working together.

it." On redirect examination, Union counsel asked Duverger if she remembered Nevulis' exact words. Duverger testified that "[s]he says she saw the letters...and it's not going to do anything for Judith, because we already – the case is over." Union counsel and Duverger had the following exchange:

Q: Did she [Nevulis] ever say anything like it's out of our hands, or out of your hands, or anything?

A It just is it was out of her hands. So don't worry about it. Everything is done already.

Q Okay. And did she tell you to stay out of it?

A Yes.

Q Did she say those exact words, "Stay out of it"?

A Well, it's -- she said it's not our concern now, because the case is over.

Q So, well, about -- what about stay out of it?

A Yeah, that's what I, I meant. Stay out of it because the case is over.

Q Okay. She said the words, "Stay out of it"?

A Yes.

Q You're sure?

A Yes.

Both Nevulis and Felix denied that they told Duverger or the others to stay out of Nafriere's grievance process. They also testified that they were unaware that Duverger or the others planned to participate in the Step III hearing. No evidence was presented that the Union informed anyone at DDS who would be participating in the Step III meeting by April 6, 2021.

1 Subsequently, Duverger told Conille about what had taken place during the April 6
2 meeting and he asked her to write up a statement about the meeting.²⁴ Duverger provided the
3 following typed letter to Conille:

4 To: Local 646
5 From: Elizabeth Duverger, DSW-1 Rosindale House
6 Re: Intimidation of manager
7 Date: April 19, 2021
8

9 On April 6, 2021 I was asked to join a meeting with two other staff by Manager Rita
10 Nevulis at the Rosindale House around the change of shift approx. 3:15PM.

11
12 In an intimidating tone, Ms. Nevulis stated she new (sic) about the statements all
13 three of us wrote regarding the Judith Nafrere step 1 hearing for the union, and it's
14 not going to change anything about the results, she has been terminated already,
15 and we should just stay out of it.

16
17 Ms. Nevulis also said she didn't believe the statements were even written by any
18 of us, and thinks it was written for us by someone in the union. I replied why does
19 she think we are not able to write a statement on our own? She replied again, we
20 should just keep out of the case.

21
22 After this meeting, I felt a little intimidated and fearful from retaliation and
23 retribution. As a result I did not want to speak as a witness at the Step-3 hearing
24 on behalf of Judith when I was asked to by the union scheduled for April 14, 2021.²⁵

25
26 Sincerely,
27 Elizabeth Duverger²⁶

²⁴ Conille testified that Duverger, Manardy, and Michaud individually declined to testify at the Step III proceeding, expressing that they were uncomfortable and fearful of possible retaliation. He asked all three to write about what took place during the April 6 meeting. All three submitted statements but shortly thereafter, Manardy and Michaud asked to withdraw their letters. The Union did not submit Manardy's or Michaud's letters into evidence in this proceeding.

²⁵ Duverger testified that the April 6 meeting made her feel targeted and retaliated against. She did not fear any specific type of retaliation but feared retaliation in general. She expressed that one fear was that she might not be promoted sometime in the future.

²⁶ I find that Duverger did not type this letter. As in Duverger's previous letter, her full name is typed and she signed her name as E Duverger. Duverger's first name, Elisabeth, is misspelt as Elizabeth each time it appears in both letters. In her testimony, Duverger explained that "I misspell my, my name, because I was so terrible with computer." I do not credit that Duverger misspelt her name twice in the letter because she is bad with computers. There are no other

1 Although Conille planned to use Duverger, Michaud, and Manardy as witnesses at
2 Nafrere's Step III hearing to explain that her actions were not out of the ordinary, all three
3 declined to participate after the April 6 meeting. On April 13, 2021, the Union President submitted
4 the Union's evidence for the Step III grievance hearing to Delaney, including witness statements
5 by Michaud, Duverger, Manardy, and 6 other people, including at least two other employees.

6 During the remote Step III meeting on April 14, 2021, the Union did not use any oral
7 testimony from Duverger, Manardy, or Michaud, or anyone else.²⁷ The Union submitted the
8 witness statements that had been previously submitted for the show cause hearing.²⁸

typing errors, or misspellings, other than the use of "new" instead of "knew." Although it's certainly possible to misspell any word, even your own name, I do not find it plausible that someone would misspell her own name all four times that her name appears in two separate letters, especially where the letters are not replete with other typing errors.

²⁷ After Duverger, Manardy, and Michaud declined to participate in the Step III proceeding, Conille testified that he asked two other employees who had written statements to testify, but they declined, because they were not comfortable participating after learning about what Nevulis and Felix said during the April 6 meeting. Conille testified that "as far as how they felt in terms of being insulted that you didn't write anything and you need to keep out of it. And the, the, the feelings was that this was retaliatory kind of language ... and nobody really wanted to get involved." He further explained that people talked about what happened, and he thought there was a "feeling of fear throughout...I got to watch my back as well."

²⁸ Duverger testified that she feared that DDS may retaliate against her if she participated in the grievance hearing but she was comfortable with the Union using her written statement on behalf of Nafrere. Conille originally testified that Michaud and Manardy not only declined to speak at the Step III proceeding but also asked him not to use their statements due to fear of retaliation. Subsequently he clarified his testimony, stating that they were comfortable with him using their written statements in the Step III proceeding but did not want their written statements about the April 6 meeting to be used in any proceeding.

1 not analyze the motivation behind the conduct. Town of Chelmsford, 8 MLC 1913, 1916, MUP-
2 4620 (March 12, 1982), aff'd sub nom. Town of Chelmsford v. Labor Relations Commission, 15
3 Mass. App. Ct. 1107 (1983). The Law prohibits any employer action that reasonably could have
4 a chilling effect on the exercise of employee rights, including the expression of employer anger,
5 criticism, or ridicule directed to an employee's protected activity. Groton-Dunstable Regional
6 School Committee, 15 MLC 1551, 1557, MUP-6748 (March 20, 1989); See also Athol-Royalston
7 Regional School District, 26 MLC 55, 56, MUP-1832 (November 2, 1999)(an employer's
8 disparaging or critical comments about an employee's protected activity, even without direct
9 threats of adverse consequences, are unlawful if the remarks tend to reasonably interfere with,
10 restrain, or coerce employees in the exercise of their Section 2 rights). It is not pertinent whether
11 the coercion succeeded or failed. Groton-Dunstable Regional School Committee, 15 MLC at
12 1556.

13 Duverger, Manardy, and Michaud engaged in concerted protected activity when they
14 wrote statements in support of Nafreere. If the facts supported a finding that Nevulis ordered
15 Duverger, Manardy, and Michaud to "stay out of it" or words to that effect, referencing Nafreere's
16 grievance hearing, I would find a violation of Section 10(a)(1) of the Law because participating
17 in a grievance proceeding is concerted protected activity. City of Boston, 26 MLC 80, 83, MUP-
18 1478 (January 6, 2000).³⁰ However, based on my credibility determinations, I do not find that

³⁰ The Commonwealth argues that even if Nevulis had told unit members to "stay out" of Nafreere's grievance "such a request, taken in the broader context of a request to quell infighting amongst staff in the wake of the termination, would not have created a chilling effect on a reasonable employee..." I disagree, but given my conclusion that neither Nevulis nor Felix made such a comment, no further analysis on the Commonwealth's argument is necessary. Additionally, given my conclusion, I need not take an adverse inference due to the Union's failure to call Manardy and Michaud as witnesses, as the Commonwealth urges. Moreover, because Manardy's and Michaud's testimony could have been favorable to either party, but neither party

1 Nevulis or Felix told the three employees to “stay out of it,” or words to that effect and thus there
2 is no evidence that the Commonwealth violated the Law as alleged.

3 The Union made several arguments in its brief in an effort to establish that the
4 Commonwealth violated the Law. I address each in turn.

5 **The Union challenges Felix’s and Nevulis’ credibility**

6 The Union challenges Felix’s credibility because he said that he never brought up
7 Nafre’s termination but admitted “we told them to let the process play out.” Additionally, Felix
8 testified that neither he nor Nevulis discussed the witness statements during the April 6 meeting
9 although Nevulis admitted that she did. Accordingly, the Union argues that Felix testimony
10 should not be given any weight. As previously noted, I agree that Felix’s testimony that nothing
11 was said about the witness statements or Nafre’s proceeding is belied by Duverger’s and
12 Nevulis’ contrary testimony and is not credible. Accordingly, I have not relied on his testimony
13 where it differs from the testimony of both Nevulis and Duverger.

14 The Union asserts that there are problems with Nevulis’ testimony as well. The Union
15 argues that Nevulis refused to answer if she thought it was appropriate for her to bring up the
16 witness statements during the April 6 meeting. Nevulis answered “well, I’m not sure if it was
17 appropriate or not appropriate. It was said and that’s what I’m telling you I said.” In contrast with
18 the Union, I find that this makes Nevulis’ testimony more credible, not less. Even if she believes
19 her comments may not have been “appropriate”, she admitted that she said it because she did
20 say it.

called them as witnesses, I find that no adverse inference is warranted. Commonwealth v. O'Rourke, 311 Mass 213, 222 (1942).

1 The Union further observed that Nevulis testified at one point that she could not recall the
2 exact words she used. The Union therefore argues that I should not credit Nevulis' denial that
3 she said that Duverger and the others should stay out of Nafrere's proceedings because
4 Duverger remembered the incident clearly. I disagree. Although Nevulis could not recall her
5 exact words, I found that her comments were to the effect that Nafrere's situation was out of her
6 hands and they needed to let the grievance process play out, not that the employees should
7 stay out of it.

8 **The reason for the April 6 meeting is not dispositive.**

9 The Union claims that the April 6 meeting was not called to address the tension in the
10 house, but rather to discuss Nafrere's termination and upcoming grievance meeting.³¹ The Union
11 argues that it is suspicious that Felix and Nevulis would choose to just meet with Duverger,
12 Manardy, and Michaud, rather than all the staff if their intent was to address tension in the house.
13 Moreover, the Union highlighted that Duverger disputed Felix's testimony that part of the reason
14 he wanted to meet with Duverger, Manardy, and Michaud was because he delegated his job
15 duties to them. However, despite denying that Felix assigned her his duties when he was out,
16 Duverger replied in the affirmative when asked if Felix ever asked her to help out around the
17 houses when he was not present. Felix and Nevulis also noted that they wanted to meet with

³¹ The Union infers that the true purpose of the meeting was to intimidate the three employees. The Union did not provide any rationale to explain why Felix and Nevulis would not include all the employees who wrote statements in support of Nafrere in the April 6 meeting if the intent was to prevent their further participation in Nafrere's proceedings. The Union also did not provide any evidence that it made DDS aware that it planned to call Duverger, Manardy, and Michaud to testify at the Step III meeting, nor did it challenge Felix's testimony and Nevulis' testimony that they were not aware of who, if anyone, would be participating in the Step III meeting. The Union only provided its evidence for the Step III meeting, including various witness statements, to DDS on April 13, *after* the April 6 meeting.

1 Duverger, Manardy, and Michaud because they were “strong” members and other employees
2 followed their leadership. The Union seemingly tries to challenge that notion by highlighting that
3 Duverger was only a DS I and not a DS II. However, in response to a question about whether
4 Felix viewed her as a leader among the staff, Duverger agreed that he thought that she was one
5 of the people who could calm the situation. Lastly, the Union further questions why Nevulis would
6 have said anything about Nafrere’s grievance or the written statements if the meeting was about
7 tension in the house. As Nevulis explained, the employees brought up Nafrere so she addressed
8 the situation briefly. Although I find that the intent of the meeting was to address the tension in
9 the house, as the Union correctly notes in it’s brief, the intent of the meeting is not dispositive. I
10 determined that a DDS representative told the three employees to stay out of the Step III
11 hearing, implying that there would be negative consequences if they participated, the original
12 intent for the April 6 meeting would be irrelevant to my determination of whether the comments
13 violated the Law. However, I have found that neither Nevulis nor Felix told Duverger, Manardy,
14 and Michaud to stay out of Nafrere’s grievance proceedings or made any other unlawful coercive
15 statement.

16 **The Union’s contentions that the Commonwealth committed other violations of Section**
17 **10(a)(1) are not meritorious.**

18
19 Although the Complaint in this case alleged only that the Commonwealth violated Section
20 10(a)(1) when “Nevulis ordered the bargaining unit employees... to “stay out of it,” or words to
21 that effect, referencing the grievance hearings...” in its post-hearing brief, the Union also
22 maintains that the Commonwealth violated Section 10(a)(1) when Nevulis and Felix told
23 Duverger, Manardy, and Michaud to “let the process play out” and when Nevulis commented
24 that the three employees’ statements on behalf of Nafrere looked the same, as if one person
25 wrote them all. Allegations not pled in the complaint will only be considered and decided if the

1 conduct relates to the general subject matter of the complaint and the issue has been fully
2 litigated. Town of Norwell, 18 MLC 1263, 1264, MUP-6962 (January 22, 1992). A newly raised
3 allegation is not considered fully litigated when a charging party does not seek to amend the
4 complaint prior to the time the record closes. City of Boston, 46 MLC 191, 197-198, MUP-17-
5 6211, MUP-18-6629 (March 31, 2020). Here, the record was closed on February 28, 2023, but
6 the Union first alleged that these additional comments independently violated Section 10(a)(1)
7 in its May 1, 2023 brief. The Commonwealth's brief does not reference Nevulis' comments about
8 the similarity of Duverger's, Manardy's, and Michaud's witness statements on behalf of Nafreere,
9 nor does it address whether such a comment would independently violate Section 10(a)(1). Id.
10 at 198 (absence of argument in employer's post-hearing brief about newly raised allegations
11 evinces its lack of notice that those allegations were the subject of litigation). I find that the
12 Commonwealth was not on notice during the hearing that Nevulis' comment about the witness
13 statements was in dispute, and, accordingly, I decline to consider whether her comment about
14 the similarity of the three witness statements violated the Law.

15 The Complaint also did not allege, and the Union did not seek to amend the Complaint to
16 allege, that Nevulis' and Felix's comments about allowing the grievance process to play out
17 violated the Law. However, because the Commonwealth did address those comments in its brief,
18 by noting that "given the context of the entire conversation, any comments made by Nevulis or
19 Felix requesting that the union members let [Nafreere's] grievance process play out, without any
20 accompanying threat of future discipline, would not have chilled a reasonable person," I address
21 this allegation. The Union asserts that these comments violate Section 10(a)(1) of the Law but
22 fails to provide a rationale for finding a violation. Both Nevulis and Felix said words to the effect
23 that they all needed to allow Nafreere's grievance process to play out. I fail to see how these

1 comments are tantamount to telling the employees that they should not participate in the process
2 or otherwise interfere with anyone's right to participate in the grievance process. Accordingly, I
3 agree with the Commonwealth that the comments would not chill a reasonable person and do
4 not violate the Law.³²

5 **The April 6 meeting was not a coercive interrogation.**

6 The Union argues that the April 6 meeting was a coercive interrogation regarding Union
7 activities, and this context makes Nevulis' and Felix's statements even more troubling. I find no
8 merit to this argument. There was no interrogation during the April 6 meeting. The case cited by
9 the Union, Lawrence School Committee, 33 MLC 90, MUP-02-3631 (December 13, 2006)
10 involved high level management officials questioning bargaining unit employees whether they
11 signed union authorizations or were involved in a union's organizing campaign. Here, neither
12 Nevulis nor Felix asked any questions at all. Although Duverger at one point testified that Nevulis
13 asked if she, Manardy, and Michaud wrote the letters in support of Nafrere, Duverger then
14 clarified that Nevulis did not ask, but rather said "I know you guys didn't write that letter."
15 Therefore, the Union's assertion that Nevulis and Felix questioned members about their written
16 statements is not supported by the facts.

17 **Bargaining unit employees' decision not to testify at the grievance proceeding does not**
18 **establish a violation of Law.**

19
20 The Union urges me to consider the fact that after the April 6 meeting, the three bargaining
21 unit members opted not to testify at the Step III proceeding. However, that fact, standing on its

³² Although the Union does not also contend that Nevulis' comment that the case is over so that there was nothing that she or they could do was a stand-alone 10(a)(1) violation, the Union does assert that this comment implied that the bargaining unit members' efforts were in vain and contributed to the employees' fear, which prevented them from testifying in Nafrere's grievance proceeding. However, I have not found that Nevulis made any such comment.

1 own, does not warrant a finding of a violation. Conille’s testimony that Duverger, Manardy, and
 2 Michaud were going to testify on behalf of Nafriere before they attended the April 6 meeting but
 3 declined to do so after the meeting is unrefuted. The Union attributes this to the coercive
 4 comments Felix and Nevulis made during the meeting. However, because I have found that
 5 neither Nevulis nor Felix made objectively coercive comments, such as that Duverger, Manardy
 6 and Michaud should stay out of Nafriere’s grievance proceeding, the fact that Duverger and the
 7 others may have felt subjectively coerced by what Felix and Nevulis said during the meeting
 8 does not make those comments unlawful. For instance, if Duverger subjectively felt coerced due
 9 to the managers saying that Nafriere’s proceedings should proceed, that subjective feeling does
 10 not convert the benign comments into coercive comments. Her subjective feelings are “not the
 11 yardstick against which the employer’s conduct must be measured,” and does not satisfy the
 12 objective test of whether a reasonable employee would be deterred from engaging in future
 13 protected concerted activity due to the comments. Town of Winchester, 19 MLC 1591, 1598,
 14 MUP-7514 (December 22, 1992).

CONCLUSION

16 Based on the record and for the reasons stated above, I find that the Commonwealth did
 17 not violate Section 10(a)(1) of the Law as alleged in the Complaint. Accordingly, I dismiss the
 18 Complaint.

19 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



GAIL SOROKOFF, 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 no 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.