

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

BOARD OF TRUSTEES OF THE
UNIVERSITY OF MASSACHUSETTS

and

JOINT COORDINATING COUNCIL,
FSU/MTA/NEA

Case Number: SUP-22-9224

Date Issued: December 16, 2024

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Ethan Mutschler, Esq. - Representing Board of Trustees of the
University of Massachusetts

Quesiyah Ali, Esq. - Representing Joint Coordinating Council,
FSU/MTA/NEA

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Board of Trustees of the University of
2 Massachusetts (Board or Employer) violated Section 10(a)(1) of Massachusetts General
3 Laws, Chapter 150E (the Law) when administrators at the University of Massachusetts,
4 Boston (University) published a February 10, 2022 statement to the University community
5 that condemned the actions of certain bargaining unit members. Based on the record,
6 and for the reasons explained below, I find that the Board did not violate the Law.

STATEMENT OF CASE

1 On April 5, 2022, the Joint Coordinating Council, FSU/MTA/NEA (Union) filed a
2 charge of prohibited practice (Charge) with the Department of Labor Relations (DLR). On
3 June 30, 2022, a DLR investigator investigated the Charge. On October 19, 2022, the
4 investigator issued a Complaint of Prohibited Practice (Complaint), alleging that the Board
5 violated Section 10(a)(1) of the Law when University administrators published a February
6 10, 2022 statement to the University community that condemned the actions of certain
7 bargaining unit members. On October 31, 2022, the Employer filed its Answer to the
8 Complaint. On December 14, 2023, I conducted an in-person hearing, during which the
9 parties received a full opportunity to be heard, to examine and cross-examine witnesses,
10 and to present evidence.¹ On March 12, 2024, the parties filed post-hearing briefs. Based
11 on the record, I make the following findings of fact and render the following opinion.

12 STIPULATIONS OF FACT

- 13 1. The Board is a public employer within the meaning of Section 1 of the Law.
14
15 2. The Union is an employee organization within the meaning of Section 1 of the
16 Law.
17

¹ At the outset of the hearing, the Union withdrew its November 13, 2023 Motion to Amend Complaint. During the hearing, the Union moved to amend paragraph 8 of the Complaint to state: "Around February 7, 2022, Melnik questioned Berger regarding the criteria and processes UMass used to interview and select the deans referenced in paragraph 7." Because I concluded that the Union's second motion to amend the Complaint would not resolve the ambiguities contained in the Complaint, I declined to amend the Complaint. I did, however, state the following on the record to resolve the Union's motion:

There's no question that February 7th is part of this case. It's part of the dispute. Everybody is in agreement on that. Ultimately, I have to decide whether this February 10th statement rose to a violation of Section 10(a)(1) of the Law. And it's clear and it's understood by everybody in the room that February 7th and this council meeting and the statements that were made are part of the context of that February 10th letter, correct?

Counsel for both the Union and Employer answered affirmatively.

3. The Union is the exclusive bargaining representative for a unit comprised of faculty and librarians employed by UMass at its Boston campus.
4. At all relevant times, Jeffrey Melnick was employed as a full-time, tenured professor, and was a member of the bargaining unit described in paragraph 3. Melnick also served as the Union's Communications Director.
5. Melnick is a member of the Faculty Council.
6. Around December 20, 2021, the Faculty Council ("FC") Executive Committee wrote a letter to Provost Joseph Berger critical of the criteria and processes UMass used to interview and select new deans for certain colleges within the University of Massachusetts at Boston.
7. In December of 2021 and February of 2022 Professor Jeff Melnick was a member of the Faculty Council but not a member of the Faculty Council Executive Committee.

FINDINGS OF FACT

General Background

Marcelo Suárez-Orozco (Orozco) is the University's Chancellor. Joseph B. Berger (Berger) has been the University's Provost and Vice Chancellor for Academic Affairs since early 2021. Prior to holding his current position, Berger was the Dean of the College of Education and Human Development for three and a half years.² Before coming to the University, he worked at the University of Massachusetts, Amherst for approximately 18 years. In his current position, Berger has responsibility for overseeing all Dean searches, including populating Dean search committees, which are chaired by another Dean. Berger has also participated in successor contract negotiations with the Union.

The Union's bargaining unit consists of approximately 800 employees. Steve Striffler (Striffler), a professor of anthropology and director of the Labor Resource Center,

² Deans lead the various colleges throughout the University and, among other things, directly supervise faculty.

1 was the Union's President during the relevant period. Department Chairs are not included
2 in the Union's bargaining unit.

3 On or around September 20, 2021, Tyson King-Meadows (King-Meadows) was
4 appointed as Dean of the College of Liberal Arts and Professor of Political Science. King-
5 Meadows was an external candidate for the position. King-Meadows is African American.

6 Jeffrey Melnik has been employed at the University as a professor of American
7 Studies in the College of Liberal Arts since 2010. From approximately 2018 – 2022 Melnik
8 was the Union's Communications Director. During successor negotiations in 2020 – 2021,
9 Melnik regularly used a personal social media to comment on the course of bargaining.³
10 From approximately 2018 – the spring of 2022, Melnik was also a member of the Faculty
11 Council, serving as an at-large member from the College of Liberal Arts. Melnik was an
12 active member of the Faculty Council and would frequently communicate the Union's
13 position on various issues that overlapped with the Faculty Council.⁴

14 The Faculty Council

³ On October 25, 2021, the parties agreed that no participant or observer would communicate outside the bargaining table regarding any aspect of the substance or process of the bargaining session while the session was in progress. Successor negotiations for the parties 2020 – 2023 collective bargaining agreement concluded in or around the spring of 2022.

⁴ Melnik testified that he "very often spoke from the FSU position... or I'd be asked by a member of the executive committee if there's an issue in front of us, does the union... have a position on this." Melnik further testified that, "then in the other direction, I would also take what happened at Faculty Council and very often write about it in my union e-mail blast because so many of the concerns were concerns that kind of crossed between Faculty Council wheelhouse and union wheelhouse."

1 The Faculty Council is the highest governing body of the faculty on the University's
2 Campus.⁵ The Faculty Council participates with the administration in shared governance
3 of the University.⁶ During the relevant period, Heike Schotten (Schotten), a professor of
4 political science, was the Chair of the Faculty Council. Other members of the Faculty
5 Council Executive Committee included: Eduardo Siqueira, Associate Chair; Betsy Sweet;
6 Kiran Verma; and Kevin Wozniak.

7 According to its Constitution, which is approved by the Board, the Faculty Council
8 is a 37-member organization⁷ that has the following purposes: to ensure the
9 representation and participation of members of the faculty in the governance of the
10 Campus and of the University as a whole; to ensure the effective coordination of actions
11 taken by the governance units of the individual colleges as they affect the Campus and
12 the University as a whole; to ensure the transparent maintenance of academic and
13 procedural standards; and to discuss and recommend policies and procedures affecting
14 the Campus as a whole.⁸

⁵ Each school or college also has a local governing body, usually referred to as a senate.

⁶ Berger described shared governance as "one of the pillars of American higher education." Shared governance "lays out where the primary responsibilities are for the faculty and for the administration."

⁷ Schotten testified that during the relevant period, the Faculty Council was limited to tenure stream faculty and had 28 members. Both statements conflict with the Council's Constitution, which states that it "shall" have 37 members. The Constitution also contains eligibility requirements for membership, but they do not include being on a tenure track or stream. I note that during the relevant period, the Faculty Council included certain Department Chairs, who are not in the Union's bargaining unit.

⁸ The Faculty Council derives its authority from the actions of the Board, as provided in M.G.L. Chapter 75, Section 3.

1 The Faculty Council has jurisdiction over “matters of educational policy that have
2 Campus-wide effect or that require coordination between colleges, schools, or programs.”
3 Additionally, the Faculty Council has the power to make certain recommendations. For
4 example, the Faculty Council has the power to: “Consult with and make recommendations
5 to the Chancellor and other appropriate governance and administrative bodies concerning
6 the charge and composition of a search committee for Provost, Vice Chancellors,
7 academic Deans, Directors of Institutes, and the Director of the University Library.”

8 The Faculty Council has regular, monthly meetings. The President of the Union is
9 a representative to the Faculty Council and functions in a non-voting capacity; the Union
10 is regularly given a slot to make a report to the Faculty Council during meetings.⁹
11 Representatives of the administration also frequently give reports at these meetings;
12 Berger regularly attends. During the relevant period, the Faculty Council’s meetings were
13 conducted via Zoom and open to all faculty to attend. Certain students are also welcome
14 to attend the meetings.

15 December 20, 2021 Letter from Faculty Council

16 In late 2021, members of the Faculty Council were unhappy with the outcome of
17 two recent Dean searches, including the one that resulted in King-Meadows being

⁹ Striffler testified regarding overlap between the Union and Faculty Council that both “deal with anything the faculty are bringing to us during that period.” He identified health and safety concerns during the COVID-19 pandemic as an overlapping issue. He also identified questions of academic freedom. He also testified that the hiring of Deans was “super important” for the Union’s working conditions because a dean is “our boss.” Schotten added that there is overlap with the Union on certain issues related to technology.

1 appointed. By letter dated December 20, 2021, the Faculty Council Executive
2 Committee¹⁰ wrote, via email, to Provost Berger that:

3 We write to you with significant concern regarding the outcomes of the Dean
4 searches for both the College of Liberal Arts and the College of Management. In
5 both cases, the faculty of each college communicated to you their very strong,
6 even near-unanimous support and preference that the internal finalist candidates
7 (Rajini Srikanth and Arindam Bandopadhyaya, respectively) be hired as
8 permanent deans. In both cases, you chose to exercise your administrative
9 prerogative and disregard the expressed will of the faculty.¹¹

10
11 The fact that this has happened not once, but twice, has caused a significant
12 erosion of faculty trust and, we fear, is setting a worrisome trend. We wonder on
13 what basis you find it justifiable to dismiss the popular mandates these internal
14 candidates have had with the faculty whom they would oversee. We worry that this
15 is establishing a performative precedent for shared governance – a model in which
16 faculty are merely allowed to voice their opinions, but where faculty and
17 administration have divergent preferences, administration's preference takes
18 precedence. In our view, true shared governance requires that administration
19 sometimes accept the will of the faculty even if it does not reflect administration's
20 top preference. We believe that this question is particularly acute in regard to the
21 choosing of a college unit's leadership because it has profound implications for
22 faculty trust in administration. After all, deans are the bridge between the faculty
23 and senior administration.

24
25 It is with serious concerns in mind that we request that, in continuing the search
26 for the CM Dean, Arindam Bandopadhyaya be considered a candidate for this
27 position without needing to re-apply. Dr. Bandopadhyaya has successfully been
28 doing the job as interim dean for *four years*¹² (emphasis in original). The assertion
29 that he is suddenly unqualified is not tenable.

¹⁰ This letter was joined by the College of Liberal Arts [Senate] Executive Committee, the College of Science and Mathematics Executive Committee, the Chair of the College of Management, the College of Education and Human Development Senate Executive Committee, the Manning College of Nursing and Health Sciences Senate, the McCormack Graduate School Department Chairs, the faculty of the School for the Environment, and the faculty members of the Honors College Governing Council.

¹¹ In or around November 2021, Berger decided to extend the search for the Dean of the College of Management rather than hire one of the initial finalists because of what he described as "very mixed results on all of them."

¹² The letter here contains a footnote that reads:

1 By email on December 23, 2021, Berger acknowledged receipt of the Faculty
2 Council Executive Committee's December 20 letter. He wrote, in relevant part that:

3 I reiterate that I have the utmost respect for faculty, their voice and shared
4 governance. I am also dedicated to the integrity of my role that requires me to
5 consider the input from all key stakeholders. I also deeply respect the significance
6 of making important decisions, such as the selection of deans, through the
7 consideration of evidence-based facts. In fact, there were divergent faculty views
8 and input provided that informed both of my decisions that you cite. I will continue
9 to appropriately consider and utilize all such input as we go forward.

10
11 February 7, 2022 Faculty Council Meeting

12 On January 28, 2022, Berger and Orozco met with the Faculty Council Executive
13 Committee to discuss the upcoming February 7 Faculty Council meeting. The Faculty
14 Council Executive Committee wanted Berger to address the December 20, 2021 letter
15 and his response in more depth. Berger asked the Faculty Council to focus on his
16 decision-making and not on King-Meadows being in the role.¹³ The Faculty Council

Our present critique bears no targeted ill-will toward CLA Dean King-Meadows, whose hiring is complete. We hope that he will become a trusted and successful member of the CLA community over time. We object to the fact that you selected him *in spite of* (emphasis in original) expressed preference of the CLA faculty for their longstanding, well-known, and well-respected colleague, Dr. Srikanth.

On cross-examination, Schotten, who had not met King-Meadows at the time and did not participate in his interview, testified that this letter was "based on the provost not doing what he should have done, not listening to the faculty."

¹³ Berger testified:

I did have one significant concern with the letter and... I tried to be careful about how I communicated it.... Now, on one hand, I appreciate there's no ill will towards [King-Meadows], but that I was very concerned that he was being named in particular about... concerns with him having been appointed dean when... it was a legitimate process. He was duly appointed and he was very qualified to be a dean, and that... we needed to be... very cautious and concerned that we not name him as somehow not being appropriate to be dean. And that... could be very difficult for him.

1 notified the various colleges about the agenda for this meeting because it wanted a large
2 turnout.

3 In January 2022, Melnik used his personal social media account to publicly criticize
4 the administration for its hiring practices. On January 20, 2022, Melnik wrote that, "In the
5 past two years my university has hired a new chancellor, provost, and dean of the college
6 of liberal arts and they are all men and this seems like what Raymond Williams called
7 'residual culture.'" On January 28, 2022, he criticized Berger over the composition of the
8 search committee for a Dean of University Libraries because "of the 14(!) people on the
9 search committee 2 (!) are faculty members."

10 By email on February 7, 2022, Berger wrote to the Campus Community "to
11 announce the launch of the search to fill the position of Dean of the College of Education
12 and Human Development." The email announced that King-Meadows would chair the
13 search committee to fill the position.

14 Later on February 7, Berger addressed a Zoom meeting of the Faculty Council,
15 which faculty, administrators, including King-Meadows, and students attended. During his
16 remarks, Berger stated, in relevant part, that he had become increasingly aware of
17 concerns with the "dean searches in particular, but also broader issues of communication
18 and transparency and understandings of shared governance." Berger then stated that,
19 "This is important. It is important for all of us, and it is certainly important to me that in

And in higher education... which has been historically a very exclusive enterprise, and given institutional-aged racism to say that one dean that was appointed, who was a black male that we just... I would prefer, and I think it would be wise that he not being brought into the conversation, that all of the... focus be on me and my decision-making, but not on Tyson being in the role.

1 reality and perception that we find better ways to work together on these issues and if we
2 are going to improve that starts with me.”

3 After Berger addressed the Faculty Council and answered certain questions from
4 members of the Faculty Council, Melnik, who attended the meeting, stated the following
5 to Berger:

6 Thanks, um I really appreciate your comments and I want to give you an
7 opportunity to be more transparent tha[n] is currently unfolding which is that I
8 noticed you just named the search committee for the Ed. School Dean, uh position,
9 and the Chair of that search is the current CLA Dean which is a matter of some
10 controversy in terms of CLA faculty and what kind of input you got from CLA faculty,
11 so I'm just wondering if given that the Dean of CLA is fairly new on campus and
12 hasn't really had a chance to build good will, uh, with um, the faculty, I'm just
13 wondering if you could speak to what you[r] process was on that.

14
15 Berger responded:

16
17 So first, let me say, I am confident in all of our deans. It is typically a Dean who
18 chairs those searches. Um, it is also a good way for a Dean to get to know others
19 across campus. Um, and, we have many dean searches, and we're trying to
20 distribute you know who is providing leadership for the different searches. And I
21 think that, uh, we all have to work together right, as new people come into our
22 community. It is not up to any one person to generate good will. Certainly all Deans
23 have the responsibility to bring faculty along with them... I have confidence that
24 the, again it is chaired by a Dean but all of the committee contributes and that this
25 will be a very strong committee. I mean clearly, CEHD is very near and dear to my
26 heart and I want to make sure it is a successful search and I am confident that it
27 will be.

28
29 Melnik then continued:

30
31 But, I guess that is exactly my question, that is given your own investment in
32 CEHD, how do you bring in a brand new Dean who came in under some fairly
33 intense and I'll just say it, you know, stressful circumstances, I guess, how are we,
34 how do you want us to receive that as faculty in terms of the fact that we haven't
35 really worked out the feelings about that last search.¹⁴

¹⁴ Melnik testified that his follow-up question to Berger was “an incredibly inarticulate attempt by me to just try to get him to sort of say more about how this could fill the promise of transparency and he answered.” On cross-examination, Melnik testified that he only sought to clarify Berger's decision-making process and denied that he was suggesting that an alternate be appointed to chair the search committee, rather than King-Meadows.

1 Berger responded:

2
3 So, I think that it is very important, right, and I'm concerned that we make it difficult
4 for any new person coming in, faculty, Dean or otherwise, um, if we don't allow
5 them to fully fulfill their roles. And, um, you know, and so I believe that, right, that
6 this is a way that the, uh, Tyson can fully fulfill his role and again working with an
7 entire committee, that this can be very positive and constructive for everybody
8 involved.¹⁵

9
10 Melnik was not the only member of the Faculty Council who spoke about Dean
11 searches at the meeting, but he was the only member of the Faculty Council who openly
12 questioned King-Meadows' appointment to chair a search. Before the meeting ended,
13 King-Meadows contacted Berger via text message. After the meeting, Berger and King-

I do not credit Melnik's testimony on this point. The totality of his statements, including that King-Meadows was appointed to chair the search committee, that King-Meadows did not have "goodwill," and Melnik's words "how do you bring in a brand new Dean" and "how do you want us to receive that" imply that Melnik was suggesting that King-Meadows should not chair the search committee.

¹⁵ Berger testified regarding this exchange that:

I was taken aback given the previous conversation I'd had with the regular committee that again, that it would be brought up... publicly to... to say that Tyson was a controversial choice as CLA dean and that... he hasn't had a chance to build... somehow he had to reach a different standard than other people who come in to the deanship. I felt like it was wholly inappropriate and unnecessary to call him into question in this manner. And again, particularly given that... you have the fact that here we bring in an African-American male... he gets questioned whether... it's controversial to hire him, to bring him on the role. I was just probably... I was a little taken aback, but I also wanted them to respond... to try to talk broadly.... I did not want to draw more attention to the fact that he had been singled out in this way.

Berger further testified that he was "surprised," and did not want to respond to Melnik's comments right away. "I did not want to make the situation worse without having time to think through it and make sure that my immediate visceral reaction was warranted."

1 Meadows spoke by phone. King-Meadows was very upset.¹⁶ Within the next day, Berger
2 heard from multiple people – administrators and faculty – who were distressed about what
3 had occurred at the Faculty Council meeting. Berger then spoke with Orozco, consulted
4 with other senior members of the administration, including the Chief Diversity Officer, and
5 spoke further with King-Meadows. A decision was reached that these public statements
6 required a public response. Berger and Orozco wanted the community and also King-
7 Meadows to know that they supported King-Meadows. Berger and Orozco drafted a
8 response over the next three days, making sure that their response was “purposeful and
9 intentional.”

10 Joint Statement from Chancellor and Provost

11 By letter, via email, to the campus community on February 10, 2022, Orozco and
12 Berger issued a Joint Statement (Joint Statement).¹⁷ It reads:

13 We are stunned and troubled by the racially charged treatment by members of the
14 Faculty Council publicly calling into question the appointment of our new
15 distinguished dean of the College of Liberal Arts, Dr. Tyson King-Meadows, as
16 chair of the search committee for the dean of the College of Education and Human
17 Development.¹⁸ His role and responsibilities as the chair of a search committee

¹⁶ Berger testified that King-Meadows contacted him “almost instantly.” Berger described King-Meadows as “so hurt, traumatized, felt very targeted, vulnerable. He was really upset.”

¹⁷ The campus community includes faculty, staff, and students. This statement also inadvertently went out to alumni. The record contains unsubstantiated assertions that retirees also received the communication.

¹⁸ Berger testified that they intentionally chose racially “charged” instead of “motivated.” He also testified that they intentionally wrote “members” instead of “member” because they were disappointed with the Faculty Council and did not want to single out any individuals; Melnik inaccurately testified that the Joint Statement personally identified him. Additionally, Berger testified that, “where we saw something very troubling, that we had the responsibility to name it as such.” Berger added that higher education has a history of challenging the qualifications of under-represented groups as not being “up to the same standards” as traditionally hired individuals.

1 are being scrutinized and challenged in ways that no other dean has experienced
2 at UMass Boston.

3
4 There is no room for this behavior on our highly diverse campus, especially one
5 that aspires to be the leading antiracist, health-promoting public research
6 university. We stand in solidarity with Dean King-Meadows and all our African
7 American and Black colleagues at the university. And let us be perfectly clear: We
8 have full confidence in Dean King-Meadows' to lead this search. [sic]

9
10 In a month when we are commemorating Black history, we should be
11 acknowledging the monumental and essential contributions of our African and
12 Black communities, rather than trafficking in the racial stereotypes and tropes that
13 unfortunately still exist, even within our campus community.

14
15 If UMass Boston is to be true to its mission, cognizant of our values, and just in our
16 actions, we will not be bystanders to racism.¹⁹ We condemn the activity against
17 Dean King-Meadows and welcome his many talents and gifts to UMass Boston.

18
19 Black Faculty, Staff and Student Association Executive Committee Statement on
20 February 7 Faculty Council Meeting

21
22 By email on February 14, 2022, the Black Faculty, Staff, and Student Association
23 Executive Committee sent a statement to Orozco, Berger, and other administrators in
24 response to the February 7, 2022 Faculty Council meeting. It states:

25 We are writing to express our discontent with statements by members of the
26 Faculty Council during the Monday, February 7 public meeting regarding BIPOC
27 leadership generally and Dean Tyson King-Meadows specifically. We the
28 undersigned have full confidence in Dean King-Meadows' qualifications for his
29 current position, his capacity to make valuable and transformative contributions as
30 our Dean of the College of Liberal Arts and his suitability to chair the search
31 committee for the dean of the College of Education and Human Development. We
32 stand in solidarity with Dean King[-]Meadows and all our BIPOC colleagues and
33 students. We will continue to work diligently with colleagues and students to
34 embody anti-racism and health promotion throughout our campus community.

35
36 Faculty Council Response to Joint Statement

¹⁹ Berger testified regarding "structural racism" that "when we see something that feeds into and plays into... those institutionalized mental models, assumptions that we can't just be bystanders.... So... we feel like we had a responsibility to say something."

1 By letter to the Chancellor and Provost, dated February 14, 2022, and distributed
2 to the faculty of the University, the Faculty Council responded to the Joint Statement that:

3 We write in response to your 2/10/2022 Joint Statement. If we understand
4 correctly, it seems that this joint statement was distributed not simply to the entire
5 faculty, but also to students, staff, as well as UMass Boston alumni and retired
6 faculty and staff. In this Joint Statement, you allege that the Faculty Council called
7 into question the appointment of Dean Tyson King-Meadows as chair of the search
8 committee for a new Dean of the College of Education and Human Development
9 in a “racially charged” manner and that we “traffic[ked]” in “racial stereotypes and
10 tropes.”

11
12 We were surprised and dismayed to read these allegations, which we take very
13 seriously. There was no indication you believed or felt this way in the 2/7/2022
14 meeting. You also did not specify which comments were problematic in the Joint
15 Statement itself. We feel it is incumbent that, as the highest leadership of this
16 university, leveling such significant charges against your own faculty governance
17 body in such a public manner, you should provide the evidence you are relying on
18 to make these allegations. Moreover, we find ourselves unable to adequately
19 respond to these charges – which again, to be clear, we take seriously – without
20 knowing the exact substance of the allegations.

21
22 Could you please share which comments you object to and evidence as to why
23 you judged these comments to be “racially charged” or to be “traffic[king]” in “racial
24 stereotypes and tropes”? This will help us understand and more fully engage with
25 your concerns.

26
27 By email dated February 18, 2022, the Executive Committee of the Faculty Council
28 wrote to the Faculty Council²⁰ that:

29 We write to report that the Chancellor and Provost have not responded to our
30 2/14/22 letter asking them to substantiate their charges, in a 2/10/2022 Joint
31 Statement emailed to faculty, staff, students, alumni, and retirees, that the Faculty
32 Council questioned the appointment of Dean Tyson King-Meadows as chair of the
33 CEHD Dean Search Committee in a “racially charged” manner and that we
34 “traffic[ked]” in “racial stereotypes and tropes.” In the meantime, we have heard
35 from numerous of our faculty colleagues and constituents requesting clarification
36 about the events in question. In our role as representatives of the faculty, we write
37 now to provide that clarification.
38

²⁰ Schotten testified that this email was intended to be sent to all University faculty, but some may not have received it due to an issue with how the email was distributed.

1 First, the Faculty Council Executive Committee has prepared a transcript of the
2 relevant section of the 2/7/22 FC meeting, which we attach here for consideration
3 by the campus community.²¹
4

5 Second we would like to provide some context for understanding the Chancellor
6 and Provost's Joint Statement, which did not emerge solely as the result of the
7 events of the 2/7/22 FC meeting, but rather are the outcome of a much longer
8 process of discussion and disagreement between the FC and the Provost.
9

10 You may recall that, in December 2021, the Faculty Council Executive Committee
11 sent a letter to the Provost, signed by virtually every college governance body in
12 the university, objecting to what we saw as a pattern of lack of transparency,
13 shared governance, and due consideration of faculty feedback in the process of
14 Dean searches and appointments. (We shared that letter with all faculty; we attach
15 it for you here again.) The Provost's response to this letter was minimal, consisting
16 of a one-paragraph email (attached here as well).
17

18 In January, the FC EC met with the Provost and Chancellor and indicated that this
19 one-paragraph response was insufficient. We expressed our concerns that that the
20 Provost has compromised the faculty's trust across campus, that faculty have
21 reservations about serving on Dean search committees, and are skeptical that their
22 views and service work would be respected by the Provost. We asked that the
23 Provost report on this matter at the February Faculty Council meeting by publicly
24 acknowledging receipt of the December letter and sharing what concrete steps he
25 planned to implement to assure faculty that future Dean searches would not unfold
26 in the same way as the previous Dean searches in CLA and CM. We also invited
27 the heads of the college governance bodies who signed the December letter to
28 attend the FC meeting to hear the Provost's report.
29

30 This is the important context of the conversation that transpired at the 2/7/22 FC
31 meeting. In our view, the transcript speaks for itself, and does not reveal anything
32 "racially charged" nor any FC member "traffic[king]" in "racial stereotypes and
33 tropes." We believe that the Chancellor and Provost's Joint Statement
34 misrepresents criticism of administration's decision-making process regarding
35 senior administration searches and instead casts it as a criticism of a specific
36 administrator, Dean Tyson King-Meadows, because of his race. We do not believe
37 this was the substance of the questions asked at the Faculty Council meeting.
38

39 However, we recognize that there may be divergent views on what has happened
40 in recent weeks on campus, which is why we submit these materials to you now.
41 We invite all members of the UMB community to read through, consider, and weigh
42 the evidence for yourselves.
43

²¹ The Faculty Council attached the February 7 transcript.

1 Union Response to Joint Statement

2 By email on February 18, 2022, to the members of the bargaining unit, the Union's
3 Executive Committee, which included Melnik, issued a Response to the Joint
4 Statement.²² The response states:

5 We write in response to the Joint Statement by Chancellor Suárez-Orozco and
6 Provost Berger on February 10, 2022. Like many of you, we were troubled by the
7 allegations that members of the Faculty Council had acted in a "racially charged"
8 manner and had trafficked in "racial stereotypes and tropes" in calling into question
9 the administration's handling of a Dean's search.

10
11 We were troubled because these are serious charges and should be taken
12 seriously. But we were also troubled because the Joint Statement was sent by the
13 Chancellor and Provost to the entire campus community, including students and
14 alumni, most of whom were not at the meeting and had no context for
15 understanding a vague statement with unsubstantiated allegations. Finally, we
16 ultimately felt that we could not remain silent any longer once we confirmed that
17 these allegations are entirely false. They are designed to silence faculty while
18 obscuring the administration's own failure to practice the shared governance they
19 so often preach.

20
21 No member of the Faculty Council said anything that was racially charged or
22 trafficked in racial stereotypes at the meeting on February 7th. Not only is it clear
23 from the transcript of the meeting (attached), but the false nature of this allegation
24 helps explain why no one objected during the meeting itself and why people who
25 were at the meeting were dumbfounded when the Chancellor and Provost released
26 the Joint Statement containing such serious allegations.

27
28 The conversation at that Faculty Council meeting was part of an ongoing
29 discussion, criticism, and objection by the Faculty Council – and faculty
30 governance across the campus – around a pattern of lack of transparency and
31 shared governance on the part of the administration, especially around Dean
32 searches (see the attached letter from the Faculty Council from December). The
33 FSU knows this pattern all too well.
34

²² Striffler testified that he drafted the Union's original response, which was then discussed and modified within the Executive Committee. Melnik testified that he did not participate in drafting this response, but his name appears as a signatory from the Union's Executive Committee. The Union Response attached the December 20, 2021 letter from the Faculty Council and the Faculty Council's transcript from the February 7, 2022 meeting.

1 Given this, it is hard not to read the allegations by the Chancellor and Provost as
2 an effort to silence faculty and obscure the fact that they have not lived up to their
3 own rhetoric of transparency and shared governance – something the Faculty
4 Council has been right to challenge them on. Faculty should not be threatened or
5 vilified for doing so.
6

7 These false charges were leveled at Jeff Melnick, an active member of both the
8 Faculty Council and the Faculty Staff Union. As FSU Communications Director,
9 Jeff is often in the line of fire and this is not the first time the administration has
10 attempted to silence him. We believe, however, that these false allegations are a
11 threat to faculty governance more broadly and the ability of all faculty to speak
12 freely. It is impossible to trust administrators who false accuse faculty of racism in
13 an effort to silence them and consolidate their own power by obscuring how their
14 actions rarely live up to their rhetoric.
15

16 The fact that the Chancellor and Provost attempted to silence faculty by
17 weaponizing anti-racism makes it all the more egregious because it undermines
18 real and ongoing efforts to combat racism on our campus (from entities like the
19 Africana Studies Department, the Cypher, the Undoing Racism Assembly, and
20 many others). Indeed, it is becoming increasingly evident that the failure of these
21 administrators to live up to their rhetoric of shared governance is matched by their
22 failure to combine a rhetoric of anti-racism with meaningful, concrete, action – and
23 they are now shamefully employing anti-racism against faculty who are critical of
24 their authoritarian decision-making and ineffectiveness thus far in addressing
25 structural racism on campus.
26

27 The Chancellor and Provost owe the Faculty Council a public apology and full
28 retraction. They also need to admit the truth so evident in the attached transcript –
29 that Professor Melnick's question was solely about the Provost's own decision
30 making. They also owe all faculty, and particularly Black faculty, an apology for the
31 divisions their lies have caused.
32

33 If they are committed to shared governance, they should stop and listen to faculty
34 about how this can be achieved. If they are committed to undoing racism on
35 campus, they should stop and listen to faculty, staff, and students, many of whom
36 have provided important leadership in this area and have been telling the
37 Administration for years how to address systemic racism (only to be ignored).
38

39 Other Responses to Joint Statement

40 On or around February 21, 2022, 10 faculty members, which included several
41 interim deans, issued a Response to Faculty Council Executive Committee Statements
42 About New CLA Dean. In relevant part, this document "register[s] our dismay with a

1 pattern of actions and statements on the part of members of our Faculty Council (FC)
2 executive committee that have contributed to a hostile climate of reception for our new
3 Dean... King-Meadows.” This statement asserted that the “FC executive committee
4 members do not recognize the racially insensitive impact of their statements,” and opined
5 that the removal of King-Meadows from chairing the search committee could have been
6 perceived “as an act of discrimination.” The statement called on Melnik, the Faculty
7 Council Executive Committee and the “entire Faculty Council to apologize to the CLA
8 Dean for the remarks made on behalf of UMB faculty especially if the remarks harbored
9 no ill intent.” This statement was also critical of the Faculty Council executive committee’s
10 December 20, 2021 letter criticizing the administration, where it noted, in relevant part,
11 that, “We assume that the FC executive committee members know that search
12 committees are constituted to make recommendations of viable candidates, not to appoint
13 candidates of their choosing.”

14 By email on February 21, 2022, the Union distributed to the bargaining unit
15 members a statement from the graduate student union, the GEO, which stated, in relevant
16 part, that the Joint Statement’s “charge of racism was levied to shield themselves from
17 criticisms of their leadership practices. In doing so, they used racist tropes to discourage
18 faculty from speaking out about leadership decisions.” According to the GEO, “this
19 statement itself exhibits racist character and perpetuates racist tropes.” The GEO further
20 stated that the Chancellors and Provosts “obstruct efforts of the University community to
21 become more anti-racist,” and that the Joint Statement “reveals their disdain for the anti-
22 racist efforts of faculty.”

On March 7, 2022, the Faculty Council Executive Committee, Berger, and Orozco issued a joint statement to inform the campus community they had agreed to “engage in dialogue facilitated by an external mediator” and “address recent incidents.” Their desired outcomes included, among other things, “moving from conversations to actions regarding both shared governance and combating systemic racism on our campus.”

On April 8, 2022, the Boston Globe published an article entitled, “Allegations of racism roil UMass Boston campus, new dean.” The article detailed the controversy related to the February 7 Faculty Council meeting and Joint Statement, and also discussed the “long history of friction between faculty and senior campus leadership.” The article identified Melnik by name.²³

On April 25, 2022, the Faculty Council Executive Committee and the administration issued an update to the campus community that stated that they were “working diligently to move the campus forward constructively.” On May 23, 2022, they issued an update “on the successful conclusion of the mediation process that we began together in April,” which included five action items that had been agreed to.

OPINION

The issue is whether the Board violated Section 10(a)(1) of the Law when administrators at the University published a February 10, 2022 statement to the University community that condemned the actions of certain bargaining unit members. Specifically, the issue is whether the Board violated the Law when Orozco and Berger issued the Joint

²³ Melnik testified that the February 7th incident was also reported in the student newspaper, on WGHB radio, and in the Daily Mail, but he could not recall the dates of such reporting. He was interviewed by the student newspaper and the Daily Mail. The administration declined to speak to the press about the incident.

1 Statement in response to Melnik's comments at the February 7 Faculty Council meeting.
2 Section 2 of the Law gives employees the right to "engage in lawful, concerted activities
3 for the purpose of collective bargaining or other mutual aid or protection, free from
4 interference, restrain, or coercion." I first consider whether Section 2 of the Law protects
5 Melnik's comments. I then address whether the Joint Statement would reasonably tend
6 to interfere with the free exercise of rights under Section 2.

7 Concerted Activity Protected under Section 2

8 For an employee's activity to be concerted, the employee must be engaged in an
9 activity with other employees or the employee must be acting on their authority. Town of
10 Southborough, 21 MLC 1242, 1249-1250, MUP-8521 (August, 29, 1994). An employee's
11 activity is protected if it focuses on generally applicable terms and conditions of
12 employment that impact the collective bargaining unit as a whole. City of Newton, 32 MLC
13 37, 47-48, MUP-2849 (June 29, 2005).

14 Here, the Board argues that Melnik's comments are not concerted activity because
15 he was expressing a personal opinion rather than speaking with or on the authority of
16 other employees. I disagree. Melnik made his comments as a member of the Faculty
17 Council during the discussion session of a meeting of the Faculty Council. Several other
18 members of the Faculty Council also asked questions during this portion of the meeting.
19 Although Melnik's comments deviated from the general line of discussion and are
20 arguably at odds with the position that the Faculty Council Executive Committee adopted
21 in its December 20, 2021 letter stating that King-Meadows' "hiring is complete," he was
22 still speaking as a member of the Faculty Council during a meeting of the Faculty Council.
23 Accordingly, he was acting with other employees and engaged in concerted activity.

1 The Board next argues that Melnik's comments are not protected because they do
2 not pertain to the working conditions of the bargaining unit. According to the Board,
3 Melnik's comments pertained to the Faculty Council, an entity that exists independent
4 from the bargaining unit. I again disagree. Questions of shared governance can overlap
5 with issues relating to terms and conditions of employment. Melnik's comments pertained
6 to the appointment of King-Meadows to chair a dean search. Deans directly supervise the
7 faculty, and their qualifications directly pertain to working conditions for members of the
8 bargaining unit. See Athol-Royalston Regional School Committee, 28 MLC 204, 213,
9 MUP-2279 (January 14, 2002) (Section 2 of the Law protects union president's concern
10 with whom School Committee chose to fill vacant principal position where principals have
11 the authority to affect working conditions by hiring, firing, and evaluating employees).
12 Accordingly, I conclude that Section 2 of the Law protects Melnik's concerted activity.

13 Interference, Restraint, or Coercion

14 An employer violates Section 10(a)(1) of the Law if it engages in conduct that may
15 reasonably be said to tend to interfere with, restrain, or coerce employees in the exercise
16 of their rights under Section 2 of the Law. Town of Bolton, 32 MLC 13, MUP-01-3255
17 (June 27, 2005). Even without a direct threat of adverse consequences, the
18 Commonwealth Employment Relations Board (CERB) has found a violation when the
19 employer makes disparaging remarks toward a union or the exercise of protected
20 activities. Groton-Dunstable Regional School Committee, 19 MLC 1194, 1197, MUP-
21 7995 (August 17, 1992). The CERB applies an objective test focusing on the impact the
22 employer's conduct would have on a reasonable employee under the circumstances,
23 rather than the subjective impact of the employer's conduct on the actual employee

involved. Quincy School Committee, 27 MLC 83, 91, MUP-1986 (December 29, 2000);
City of Lowell, 29 MLC, 30, 32, MUP-2423 (July 31, 2022).

Here, Melnik is a tenured professor who faces no possibility of discipline for the “inarticulate” public comments he made in a meeting concerning shared governance. Moreover, and contrary to Melnik’s assertion at the hearing, the Joint Statement did not identify him; the Faculty Council identified Melnik on February 18 by distributing the transcript of the February 7 Faculty Council meeting, and the Union identified him, also on February 18, by distributing the transcript and naming him in their email communication. In fact, the Joint Statement gave Melnik cover by referring to “members” of the Faculty Council, even though the Joint Statement only addressed Melnik’s comments about appointing King-Meadows to chair a Dean search, not the Faculty Council’s ongoing criticism of what it perceived to be a failure of the administration to sincerely embrace shared governance. Melnik also amplified the issue by speaking to the press, whereas the administration remained silent. The Joint Statement addressed the substance of Melnik’s comments and their effect on other members of the campus community, which it reasonably deemed troubling, without targeting the speaker. It did so in a measured tone that while critical of the substance of the speech, did not take issue with criticism of the administration, threatened no adverse consequences, expressed no anger, did not disparage anyone specifically, and did not criticize collective bargaining. Accordingly, I do not conclude that this measured response from the administration pushing back on Melnik’s inarticulate comments would chill a reasonable employee under the circumstances. See Town of Winchester, 19 MLC 1591, 1596-1597, MUP-7514 (December 22 ,1992) (Selectmen’s public criticism of Union’s public statements did not

1 violate the Law where criticism expressed personal opinion of selectmen and did not
2 express anger or demean Union President or Union).

3 The Union argues that the Joint Statement was completely out of bounds because
4 it mischaracterized Melnik's statements as racially charged. Yet, the administration must
5 be able to address what Berger described as structural or institutional racism where it
6 sees it within the academic community, especially where opinions within the community
7 diverge about what constitutes such racism. On this point, I agree with the Employer that
8 the Joint Statement responding to a public statement targeting a newly hired minority
9 administrator's suitability to perform a basic job duty would not chill a reasonable
10 employee in Melnik's position. To hold otherwise would interfere with the administration's
11 ability to lead and govern the University. See City of Lowell, 29 MLC at 33 (The prohibition
12 against making statements that would tend to interfere with employees in the exercise of
13 their rights under the Law does not impose a broad "gag rule" that prohibits employers
14 from publicly expressing their opinion about matters of public concern).

15 I conclude that the Joint Statement would not chill a reasonable employee under
16 the circumstances from the free exercise of rights that Section 2 of the Law protects. The
17 Employer did not violate the Law when it issued the Joint Statement.

18 CONCLUSION

19 The Board did not violate Section 10(a)(1) of the Law when administrators at the
20 University published the Joint Statement to the University community that condemned the
21 actions of certain bargaining unit members. Accordingly, I dismiss the Complaint.

22 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

A handwritten signature in black ink, appearing to read "James Sunkenberg", written in a cursive style.

JAMES SUNKENBERG, 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.