

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
SECRETARY OF ADMINISTRATION AND
FINANCE/ DEPARTMENT OF MENTAL
HEALTH

and

ALLIANCE/ AFSCME-SEIU, LOCAL 509

Case Nos.: SUP-23-10315
SUP-23-10042

Date Issued: May 14, 2026

Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Jillian Bertrand, Esq. – Representing SEIU, Local 509

Aezad Aftab, Esq. – Representing the Commonwealth of
Erik Hammarlund, Esq. Massachusetts

HEARING OFFICER'S DECISION

SUMMARY

1 The issues in these cases are whether the Commonwealth of Massachusetts
2 (Commonwealth) violated Sections 10(a)(3), 10(a)(4), and both independently and
3 derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law)
4 by: 1) suspending Jean McClure (McClure) for one day on April 3, 2023; 2) suspending
5 McClure for three days on October 19, 2023; 3) rating McClure's job performance at
6 "below" required standards on her Stage B EPRS for 2023; 4) including certain comments
7 Debra DeMuth (DeMuth), Director of Community Services, said and wrote in McClure's
8 performance evaluation process regarding McClure's union activity; 5) Sue Plasse

1 (Plasse), the Southeast Area Director, informing McClure to refrain from emailing and
2 meeting with others in the workplace; and 6) Ann Looney (Looney), Director of Labor
3 Relations for Department of Mental Health (DMH), suggesting that McClure voluntarily
4 transfer to a different position with less responsibility due to her use of Union time and
5 then stating she could involuntarily transfer McClure. Based on the record and for the
6 reasons explained below, I conclude that the Commonwealth violated Sections 10(a)(3),
7 and both independently and derivatively, 10(a)(1) of the Law as alleged in the Complaint.
8 Also, I conclude that the Commonwealth did not violate Section 10(a)(4) of the Law as
9 alleged in the Complaint.

10 STATEMENT OF THE CASE

11 On May 16, 2023, the Alliance, AFSCME-SEIU, Local 509 (Union) filed a charge
12 with the Department of Labor Relations (DLR) alleging that the Commonwealth had
13 engaged in prohibited practices within the meaning of Section 10(a)(3) and, both
14 independently and derivatively, Section 10(a)(1) of the Law. The DLR docketed this case
15 as SUP-23-10042. On November 13, 2023, a DLR Investigator investigated the charge.
16 On November 21, 2023, the Investigator issued a four-count Complaint of Prohibited
17 Practice (Complaint) and Partial Dismissal alleging that the Commonwealth violated
18 Section 10(a)(3) and, both independently and derivatively, Section 10(a)(1) of the Law.
19 On November 24, 2023, the Commonwealth filed its Answer to the Complaint.

20 On November 3, 2023, the Union filed a charge with the DLR alleging that the
21 Commonwealth had engaged in prohibited practices within the meaning of Sections
22 10(a)(3), 10(a)(4), 10(a)(5) and, both derivatively and independently, Section 10(a)(1) of
23 the Law. The DLR docketed this case as SUP-23-10315. On February 5, 2024, a DLR

1 Investigator investigated the charge. On March 18, 2024, the Investigator issued a three-
2 count Complaint and Partial Dismissal alleging that the Commonwealth violated Sections
3 10(a)(3), 10(a)(4), 10(a)(5) and, both derivatively and independently, Section 10(a)(1) of
4 the Law.¹ On March 25, 2024, the Commonwealth filed its Answer to the Complaint. On
5 November 13, 2024, the Commonwealth and the Union filed a joint motion to consolidate
6 case numbers SUP-23-10042 and SUP-23-10315 for hearing. On or about February 19,
7 2025, the DLR approved the parties' request to consolidate.

8 On April 15, April 25, and June 17, 2025, I conducted a hearing during which the
9 parties received a full opportunity to be heard, to examine and cross-examine witnesses,
10 and to introduce evidence.² On November 10, 2025, the parties filed post-hearing briefs.
11 Based on my review of the record, including my observation of the demeanor of the
12 witnesses, I make the following findings of fact and render the following opinion.

13 Stipulations

- 14 1. The Commonwealth of Massachusetts, acting through the Secretary of Administration
15 and Finance, is a public employer within the meaning of Section 1 of the Law. The
16 Alliance, AFSCME-SEIU, AFL-CIO Alliance is the exclusive bargaining representative for
17 employees in Statewide Bargaining Units 2, 8, and 10.
- 18 2. SEIU Local 509 is the employee organization within the meaning of Section 1 of the
19 [L]aw and represents certain employees of the Department of Mental Health (DMH) in
20 Statewide Bargaining Unit 8.
- 21 3. DMH is a state agency under the Executive Office of Health and Human Services.
22
23

24 FINDINGS OF FACT

Relevant Contract Provisions

¹ At the hearing, the Union withdrew the 10(a)(5) allegation in SUP-23-10315 alleging that the Commonwealth transferred bargaining unit work to non-unit personnel.

² The Union requested, and I granted, a sequestration order for the duration of the hearing.

1 Memorandum of Agreement

2 The Chapter President of Local 509's DMH Chapter shall be permitted 50% of their paid
3 work week for Union business as set forth in Article 5, Section 2 of the January 1, 2020 -
4 December 31, 2022 Collective Bargaining Agreement between the parties, and shall
5 receive 50% reduction in workload for the period of December 13, 2022 - December 31,
6 2023.

7
8 Clinical Social Worker/Mental Health Counselor ("CSW D")
9

10 According to the Form 30, a CSW D employed by DMH assumes leadership
11 responsibility for the administration and supervision of a Partial Hospitalization Program
12 (PHP). Job duties for a CSW D include:

- 13
- 14 1) assur[es] DMH policies and procedures are followed in the program
15 and that the CMS & the Joint Commission standards are adhered;
- 16 2) coordinates the collection of data and preparation of reports related
17 to adverse incidents for review to ensure safety;
- 18 3) performs quality improvement activities such as the preparation of
19 reports, collection and submission of data, quality indicator reviews, and
20 staff education and consumer satisfaction surveys;
- 21 4) ensures proper staffing of the service by approving work schedules,
22 time sheets and managing requests for time off;
- 23 5) meets regularly with the Medical Director of the service to review all
24 aspects of program operations;
- 25 6) Develops the group/activity program for the service in collaboration
26 with the Medical Director to ensure that the clinical needs of the clients
27 are being met;
- 28 7) participates in the on-the-job training, evaluation and discipline of
29 program staff including timely completion of Form 30's and other required
30 performance reviews;
- 31 8) provides assistance to treatment coordinators when special problems
32 arise with management/disposition of patients by participating in
33 treatment planning meetings;
- 34 9) performs ongoing assessment of the program milieu, providing
35 additional support/supervision to staff when difficult patients, staff
36 conflicts or emergencies arise;
- 37 10) meets with other administrators and program directors to maximize
38 coordination with other programs;
- 39 11) assures that staff completes documentation and billing forms properly
40 and in a timely manner;
- 41 12) ensures that thorough evaluation of each program patient is
42 completed and that a program of treatment relevant to the patient's
43 diagnosis, physical and psychological needs is formulated and carried
44 out, evaluated and revised according to the patient's responses and
45 needs through collaboration with the Medical Director:

- 1 13) identifies program training/educational needs and works with Staff
- 2 Development for implementation;
- 3 14) provide[s] supervision to clinical staff regarding the clinical treatment
- 4 of individuals to ensure that the best clinical care is being provided and
- 5 all Joint Commission standards and Medicare regulations are being met;
- 6 15) leads/co-leads treatment groups/psychotherapy groups for Partial
- 7 Hospitalization clients as needed. Groups will have defined goals and
- 8 objectives which address the problems, goals, and objectives of the client
- 9 individualized treatment plan;
- 10 16) interview[s] and evaluates potential referrals to determine the client's
- 11 treatment needs;
- 12 17) assigns tasks, provides supervision and evaluates performance of
- 13 students assigned to the Partial Hospitalization Program to ensure that
- 14 learning objectives are being met and appropriate clinical care is being
- 15 provided;
- 16 18) coordinates Internships with the faculty at the university or college
- 17 regarding the students' performance, and completes written evaluations;
- 18 19) demonstrates the knowledge and skills necessary to provide
- 19 appropriate care to the age related and cultural needs of the
- 20 clients/patients served; and
- 21 20) attends and completes all mandatory trainings.

22 General Background

23 For approximately fifteen years, Jean McClure (McClure) was an employee for

24

25 DMH. In 2018, McClure transferred as a CSW D to the Cape Cod and the Islands Partial

26 Hospitalization Program in Pocasset, Massachusetts (Pocasset PHP). As a CSW D, a

27 position functionally known as a PHP Program Director (Director), McClure reported

28 directly to DeMuth, and DeMuth reported to Plasse. Additionally, in her role as Director,

29 McClure supervised one Clinical Social Worker AB, two Human Service Coordinators,

30 and the registered nurse for the program.

31

32 Since October of 2022, McClure has held the position of DMH Chapter President

33 for the Union, which consists of approximately 900 unit members. As Chapter President,

34 McClure was responsible for providing unit members with information and answering their

35 various questions. Additionally, as Chapter President, McClure filed grievances and

1 attended local labor management meetings, show cause hearings, and contract
2 negotiations.

3 In 2023, McClure’s work schedule was 8:00 a.m. to 4:30 p.m., Monday through
4 Friday. Pursuant to a “back off” agreement with the Union and the Commonwealth,
5 McClure, as the Chapter President, was allowed a 50% reduction in her workload and to
6 utilize 50% of her paid work week to conduct union business.³ Typically, McClure tried to
7 reserve Fridays to conduct union business. However, given the varying needs and
8 meetings, McClure needed to reserve further time throughout the week to conduct union
9 business. If McClure set aside time to conduct union business during the work week, but
10 her meetings were cancelled, she was expected to report to work.

11 Caseload

12 By email dated January 26, 2023, DeMuth informed McClure that she may assign
13 her up to 3 clients for her caseload and asked McClure and Jenn Cunningham
14 (Cunningham), the clerk for the Pocasset PHP, to send her weekly updates on the
15 census.⁴ Immediately after this communication, McClure responded that she was unable
16 to carry a case load. Additionally, McClure stated that the “PHP Director at Corrigan does
17 not carry a case load or do groups due to the immense administrative responsibilities.”
18 Finally, McClure stated that Cunningham already sends the census “on a weekly basis
19 already, so this is duplicative, and therefore micro-managing.”

³ When McClure became Chapter president, Plasse did not discuss with McClure how to achieve a 50% reduction in workload with DMH.

⁴ The census for a PHP refers to the number of clients in the program.

1 Later that same day, DeMuth responded that it was her understanding that
2 McClure carried a caseload based on the program's operational needs, and she found it
3 necessary for McClure to take clients if the census goes above twelve. DeMuth's email
4 message stated: "this issue of caseloads came about when you asked to hold the census
5 because you felt the 2 clinicians could not take on any more clients. As Program Director,
6 the responsibility does lie with you to support the team. As I said previously, we need to
7 utilize all our resources and maximize your 20 hours in a way that is best for the program.
8 In terms of the report, I expect to have that weekly and will work with Jenn."

9 Joint Commission Survey

10 The Joint Commission is the accrediting body that ensures programs are
11 maintaining Center for Medicaid Studies (CMS) standards and expectations.
12 Approximately every three years, the Joint Commission conducts a survey of the
13 Pocasset PHP, and its surveyors meet with staff on site to inspect and assess all aspects
14 of the program. If the program passes the Joint Commission survey, it receives an
15 accreditation.

16 On November 15, 2022, the Joint Commission arrived at the Pocasset PHP to
17 conduct the survey. On that same date, DeMuth went to McClure's office to remind her of
18 the importance of the survey and stated that it was a priority over union work. McClure
19 responded that both her DMH work and her Union work were priorities. During this
20 conversation, McClure informed DeMuth that she was able to reschedule her 3:00 p.m.
21 meeting but was unable to reschedule the 3:30 p.m. meeting.⁵

⁵ Previously, McClure had a 3:00 p.m. meeting scheduled with Looney, but McClure cancelled the meeting citing that she had to be present for the Joint Commission Survey.

1 By text message dated November 15, 2022, DeMuth informed McClure: "Sandra
2 should be back to POC any minute for the PHP survey." McClure responded: "ok but I
3 have a hard stop at 3[:00 p.m.]." DeMuth responded: "have Michelle [Wood] with you from
4 the start and then you can excuse yourself. Don't forget the RAS tool...they are very
5 focused on client feedback." McClure responded "Michelle does not want to be part of the
6 record review- none of the staff do. Let's hope she gets here in time otherwise it will have
7 to be tomorrow." DeMuth responded that "she is only here today. There is no other option.
8 Michelle will have to do it."

9 During the Joint Commission survey, McClure answered questions from the
10 surveyors and provided a tour of the building.⁶ For example, DMH has a "Recovery
11 Assessment Scale" (RAS), which the clients fill out to help assess their progress, and the
12 results of the RAS are included in their treatment plans. As RAS was a relatively new
13 assessment tool, McClure discussed it with the surveyors at the instruction of DeMuth.
14 Since McClure had to leave early on November 15, Wood also met with the surveyors,
15 and she later reported to McClure that the Joint Commission did not have any follow up
16 questions.

17 By email dated November 16, 2022, DeMuth informed staff that the Joint
18 Commission would be conducting day two of the survey and the surveyors would probably

⁶ In the Joint Commission survey findings dated November 17, 2022, the surveyor stated: "[o]bserved in Building Tour at [t]he Commonwealth of Massachusetts (830 County Road, Pocasset, MA) site. The organization had a written risk assessment of the environment in the Partial Hospitalization Program (PHP), but the assessment did not include a risk mitigation plan for the patient bathroom[,] and the plan did not identify the risk presented by the door hinges on all the doors in this area. This finding was confirmed by leadership staff conducting the tour of the PHP."

1 wrap up on the afternoon of November 17. Additionally, DeMuth stated that: “[y]esterday
2 was a great start with Sandra stating that Seawinds and the PHP are both great programs
3 with a tight process, strong assessments and treatment plans. Well done!!”

4 By email dated November 17, 2022, DeMuth informed McClure, Nurse Kaycee
5 Cattabriga (Cattabriga), unit member Michelle Wood (Wood), Cunningham, Patricia
6 Mulligan (Mulligan), and Bernadette McGrail (McGrail)⁷ that “Congrats to all of you! The
7 Joint Commission was very pleased with the survey of the partial program. Special thanks
8 to Michelle for spending time with Sandra, the surveyor! It makes a big difference to have
9 someone who is familiar with the clients, the charts and the program be present. Sandra
10 enjoyed meeting you. I will join your Staff Meeting Tuesday at 2[:00 p.m.] to share the
11 report and go through the results. There were only 2 findings. An excellent survey! Thank
12 you all for hard work! It came through loud and clear.”

13 By letter dated November 30, 2022, Plasse issued McClure a written warning.⁸ In
14 the letter, Plasse stated:

15 You are the Director of the Partial Hospitalization Program. On November
16 15, 2022, at approximately 2:30 PM, you were notified that the Joint
17 Commission surveyor was on her way to the Partial Hospitalization
18 Program[,] and you responded that you had to leave at 3:00 PM for a
19 union meeting. You were informed that someone from the program had
20 to be there. You suggested one of the staff you supervise could take the
21 meeting. That staff member refused. You texted the site director stating
22 that the Joint Commission surveyor will just have to wait until the next
23 day. It was explained to you that the surveyor was only here for that day,
24 November 15th. You were also told as the Director you needed to
25 consider the importance of the visit. You again stated that your union

⁷ Cattabriga, Wood, Cunningham, Mulligan, and McGrail are employees at Pocasset PHP.

⁸ DeMuth brought to Plasse’s attention her concerns about McClure’s absence from the Joint Commission Survey. Plasse relied on DeMuth’s recounting of events to issue the written warning. Additionally, Plasse spoke to Looney to check if the meeting she had with McClure on November 15 had occurred as scheduled.

1 meeting could not be rescheduled. Additionally, you cancelled a union
2 meeting with Ann Looney scheduled for 3:00 pm and still did not remain
3 on site for the surveyor.
4

5 As you are aware, your CSW D Form 30 clearly states, "Assumes
6 leadership responsibility for the administration and supervision of the
7 Partial Hospitalization Program, ensuring safe and effective operation of
8 the service; staff leadership; program development; assessment,
9 planning, implementation, evaluation and documentation." The detailed
10 description of your position states, "Assures that DMH policies &
11 procedures are followed within the program and that CMS & [t]he Joint
12 Commission standards are adhered to", "[p]erforms quality improvement
13 activities such as the preparation of reports, collection and submission of
14 data, quality indicator reviews, and staff education and consumer
15 satisfaction surveys", and "[p]rovide[s] supervision to clinical staff
16 regarding the clinical treatment of individuals to ensure that the best
17 clinical care is being provided and all Joint Commission standards and
18 Medicare regulations are being met". In not remaining for the surveyor
19 and attempting to delegate your responsibility to the program you failed
20 to meet the duties delineated in your Form 30.
21

22 Your behavior is deeply disheartening and your failure to take the
23 responsibilities of your position seriously is of great concern. Your refusal
24 and failure to be an active part of the Joint Commission process is serious
25 and could have a negative impact on client care, the delivery of services
26 and the Joint Commission rating. You are fully trained in and aware of all
27 aspects of your position and the importance of [the] Joint Commission.
28 However, please be advised, continued failure to meet performance
29 expectations may result in further disciplinary action up to and including
30 termination.
31

32 CAT, Leadership Meetings, and Census

33 As part of her job duties, McClure, the Director from Corrigan's Partial
34 Hospitalization Program, and others would meet for "CAT" meetings.⁹ During the
35 meetings, the participants would review electronic medical records and billing. Typically,
36 McClure and others attended CAT meetings on a monthly or bimonthly basis. However,

⁹ The record does not include an explanation for the acronym "CAT".

1 the CAT meetings were often cancelled due to conflicts in all participants' schedules.
2 When the CAT meetings did occur, McClure attended the meetings.

3 On Tuesday mornings, DeMuth hosted "leadership meetings" with all program
4 directors to discuss site-specific issues, high-risk clients, or new initiatives. Due to Union
5 business, McClure often had to miss the leadership meeting on Tuesdays. However,
6 McClure tried not to schedule union-related business on Tuesdays. On average, McClure
7 attended approximately two leadership meetings per month.

8 In 2023, the Pocasset PHP census was low due to several factors. First, the
9 Pocasset PHP did not offer virtual or hybrid meetings like other partial hospitalization
10 programs. Next, MassHealth changed vendors for transportation, and the new vendor
11 would not provide transportation from everywhere. Also, Pocasset does not have access
12 to public transportation on the same level as other program locations such as Springfield.

13 Performance Evaluation

14 McClure, as well as all other unit members, received periodic performance
15 evaluations throughout the fiscal year. Each fiscal year, unit members are evaluated in
16 three stages: Stage A, B, and C. During Stage A, unit members meet with supervisors to
17 discuss goals and their respective job duties. During Stage B, the supervisors meet with
18 unit members, and the supervisors rate the progress of the unit member in certain
19 categories by choosing "Exceeds/Excels," "Meets," or "Below" for each section of the
20 EPRS form. For the Stage C final annual performance review, on the same EPRS form
21 as Stage B, supervisors rate unit members' performance in the same categories with the
22 same option to choose "Exceeds/Excels", "Meets", or "Below". Stage C determines the
23 unit member's eligibility for step raises.

1 On or about February 8, 2023, McClure met in person with DeMuth in the Pocasset
2 office to discuss her Stage B performance evaluation for 2023. Plasse attended the
3 meeting virtually. Unlike in previous evaluations, McClure received a “below” rating for
4 three out of six areas on the performance evaluation. In the performance evaluation
5 notes, DeMuth wrote:

6 It is important to note that Jean has had a 50% reduction in time
7 dedicated to her role as PHP Director at Pocasset during this review
8 period. This led to a decrease in her presence at the program as well as
9 a very limited presence as a member of the leadership team. Jean’s
10 responsibilities to the role are expected to be maintained. As the intent of
11 this mid-year review is to develop a plan of development so that Jean will
12 be able to move forward in meeting expectations by the end of the review
13 period (sic).

14
15 Also, at the performance evaluation meeting, DeMuth informed McClure that her union
16 work was negatively impacting her performance as she was not keeping up with her work.
17 Additionally, DeMuth stated that McClure spending so much time on union work resulted
18 in the census being low for the Pocasset PHP.¹⁰

¹⁰ McClure testified that DeMuth said that her union work was negatively impacting her work performance and that the census was low because she “wasn’t in there” because she spent so much time doing union work. DeMuth did not testify at the hearing, and Plasse testified that neither she nor DeMuth stated that McClure’s union activity was problematic. However, DeMuth specifically referenced on McClure’s EPRS form that McClure’s union work was leading to a decrease in her presence at the program. It is clear from the notes on the EPRS form that DeMuth found the time McClure allotted for union work to be problematic in maintaining her responsibilities as a Director. As such, I credit McClure’s testimony that DeMuth stated the above listed comments about McClure’s union work and performing her job duties as a Director. Also, McClure testified that DeMuth told McClure that she could not be a Director and the Union president at the same time. While McClure may have believed that DeMuth’s comments implied she could not be the Chapter President at the same time as the Director, I do not find that DeMuth made that specific statement.

1 On or about August 7, 2023, McClure received her annual Stage C EPRS for
2 2023.¹¹ In the 2023 yearly performance evaluation, McClure received a “meets” rating in
3 all sections, including those that she had previously received a “below” rating in the Stage
4 B EPRS for 2023. Under the “Duty 1” section on the Stage C portion of the EPRS form,
5 DeMuth wrote: “program closed May 23 due to staffing and low census. Jean was unable
6 to fully work on the needed issues as presented in Stage B.” Under the “Duty 3” section,
7 DeMuth wrote: “program closed due to staffing as well as census challenges. Jean was
8 unable to fully respond to issues presented in Stage B.” Under the “Duty 6” section,
9 DeMuth wrote: “unable to focus on Zero Suicide Caring Contacts initiative due to program
10 closure.”

11 *Bulletin Board*

12 On or about February 6, 2023, McClure took down Joint Commission materials
13 with “expired” dates from a bulletin board to make room for union-related materials.
14 McClure did not request or receive approval from DeMuth to take down the Joint
15 Commission materials. By email dated February 7, 2023, DeMuth informed McClure of
16 the following:

17 We need to determine another location for the union signage/materials
18 you posted in the lobby area. The board that was used is where we post
19 required information for the public. e.g. Joint Commission Accreditation,
20 IPU Visiting hours. Diane will order a new board to be placed in a different
21 location. There is plenty of wall space in the staff lounge and we can have
22 that as a dedicated spot. If there is another location you think is best, let
23 me know your thoughts. But, in the meantime, the material that was
24 posted will need to come down from the public posting board. You can
25 use the open space on the opposite wall where the job postings are for
26 the time being, just a thought.

¹¹ On May 23, 2023, the Pocasset PHP temporarily closed due to low staffing and census. By September of 2023, Pocasset PHP had reopened. The record is unclear if or when Pocasset PHP closed again.

1 By email dated February 8, 2023, McClure responded that the Union bulletin board would
2 need to remain in the lobby.

3 Later that same day, DeMuth responded that:

4 The job board is geared towards staff. The other board is for the public.
5 Why would the union info need to be in the front lobby? I would think the
6 break room is more appropriate and there [could] be a dedicated board.
7 But, if that is where you want to post, I believe Jenn has the key. Please
8 take down the display today since we are out of compliance currently by
9 having our public records covered over.

10
11 McClure responded that the contract allowed the Union to post information in the same
12 location as management. DeMuth responded that same day that the job posting needed
13 to go on that board, therefore McClure should contact Diane Roy (Roy), the Director for
14 administrative staff, if she wanted another board for the Union.

15 That same date, McClure informed DeMuth that “Jenn refused to move some of
16 the job postings when I asked for the key. Would you prefer I use part of the job posting
17 board until the new one comes in or leave the union info where it is for now?” Immediately
18 after, DeMuth responded that Jenn did not have to move any materials, and McClure
19 should move her information to the remaining available space. DeMuth informed McClure
20 that she needed the “public board back the way it was today.”

21 By email dated February 27, 2023, Roy informed DeMuth and McClure that the
22 new bulletin board was hung and “ready to go”. Several minutes later, DeMuth responded
23 to Roy and McClure that: “[j]ust a reminder that AFSCME has requested half the space
24 on the board as well. So, please leave adequate room for their postings as well.” When

1 the new bulletin board was hung, McClure utilized the entire space for Union materials.¹²
2 Thereafter, McClure noticed that some of the material she posted on the new board was
3 missing. McClure asked DeMuth why the materials were taken down, and DeMuth again
4 reminded McClure that the Union had to share the board space with AFSCME.

5 By email dated March 20, 2023, DeMuth again reminded McClure that the new
6 bulletin board was to be utilized by both AFSCME and the Union. By email dated March
7 22, 2023, McClure responded to DeMuth with the following: “Union boards are not the
8 concern of management nor are you the one to issue directives regarding union issues.
9 Each union has [its] own board. If the AFSCME rep has any questions, direct that person
10 to me. Please refrain from engagement in union issues moving forward.”

11 By email dated April 4, 2023, McClure contacted Joseph Pires (Pires), the
12 president for AFSCME, about the bulletin board. By email dated April 5, 2023, Pires
13 confirmed that Kerry Rice (Rice), the Southeast Area Labor Relations Specialist for DMH,
14 informed him in a labor management meeting with AFSCME that the board would be
15 shared between the two unions. Additionally, McClure and Pires spoke on the phone after
16 this incident, and McClure apologized for her mistaken belief that the board was only for
17 SEIU. McClure informed Pires she would be happy to share the board with AFSCME.

18 Sensory Room

19 A “sensory room” is a quiet space where clients can go to calm themselves and
20 feel safe. Prior to October of 2022, the Pocasset PHP had a sensory room which was
21 located at the end of a hallway where staff could not easily view the clients in the room or

¹² McClure testified that she was not aware that DMH wanted the Union and AFSCME to share the board. I do not credit her testimony. It is clear from these emails that DeMuth did inform McClure about sharing the board before McClure utilized the entire board.

1 monitor their safety. In October of 2022, McClure moved the sensory room to another
2 location on the floor. McClure felt that the clients would be safer if the sensory room was
3 not at the far end of the hallway, therefore, she moved the sensory room to an office that
4 a clerk was looking to vacate. Before McClure changed the location of the sensory room,
5 she consulted Travis Sheppard (Sheppard), the Facilities Director for the Pocasset PHP.

6 By email dated November 14, 2022, DeMuth contacted McClure about the location
7 of certain items in the sensory room for storage. DeMuth asked if McClure could account
8 for everything that was moved, including a missing laptop, when she re-purposed the
9 office to a sensory room. DeMuth stated that: “[i]n the future, we need to be coordinating
10 any change in an office space with approval by me and communication with Travis and
11 facilities.”

12 By email dated March 15, 2023, DeMuth informed McClure and others that the
13 sensory room needed to be disassembled for office space. McClure was out sick on March
14 15, 2023. That day, Pat Mulligan (Mulligan), a unit member working at the Pocasset PHP
15 as a clinician, texted McClure stating that everything was being taken out of the sensory
16 room and placed in McClure’s office. Wood, a unit member working the Pocasset PHP as
17 a clinician, then texted McClure asking if she was coming back to work the following day
18 because “things are getting sticky around here and your presence could possibility make
19 it a little less chaotic.”

20 By email dated March 16, 2023, McClure contacted Looney and Rice about her
21 concerns regarding the sensory room.¹³ On March 17, 2023, at 8:12 a.m., Rice responded
22 to McClure’s email stating: “[w]e were scheduled for labor-management today however

¹³ McClure sent this email from her Gmail account.

1 an agenda was not sent and unfortunately no one from SEIU was there. This could have
2 been discussed.”

3 By email dated March 17, 2023, at 9:08 a.m., McClure contacted DeMuth
4 complaining about the dismantling of the sensory room.¹⁴ McClure stated that:

5 Again, the lack of respect and ongoing hostility towards PHP is appalling.
6 Not only was there no conversation prior to this decision being made,
7 there were no preparations for the PHP staff and clients, who utilize this
8 space daily. The sensory room was disassembled during program and
9 was quite disruptive - again, evidence of the complete disregard for PHP
10 and the people who are served by this program. There are vacant spaces
11 in administration, which is where the clinical director has always been.
12 Furthermore, there is an unused space at the end of the PHP hallway
13 that also has a door entering into administration space. The work out
14 equipment in this office, which no one uses, can and should be moved
15 into the gym; which we have requested several times. The PHP doctor[']s
16 office at the end of the conference room hallway is also an option. Your
17 actions constitute a violation of article 6A of the CBA and will be
18 addressed as such.

19
20 In this communication, McClure cc'd Union representatives Courtney Kenney (Kenney)
21 and Scott Bezzini (Bezzini).¹⁵

22 By email dated March 17, 2023, McClure forwarded DeMuth's March 15 email
23 regarding the dismantling of the sensory room and asked "thoughts?" to Wood,
24 Bernadette McGrail (McGrail), Cattabriga, and Bushra Awidi (Awidi).¹⁶ By email dated

¹⁴ McClure sent this email from her Gmail account.

¹⁵ When Plasse was deciding to issue McClure a one-day suspension, DeMuth forwarded her these emails. Plasse testified that she would not have known that McClure was sending these emails as the chapter president. Given that this email cites the CBA and the Union representatives are cc'd on the communication, I do not find Plasse's testimony on this subject credible.

¹⁶ McClure sent these emails from her DMH email account. Generally, McClure used her Gmail account to send union-related emails. However, on occasion, McClure has used her DMH email address to send union-related emails as well.

1 March 17, 2023 at 10:53 a.m., McClure contacted Looney, Rice, Plasse, DeMuth and
2 Rice and stating the following:

3 The PHP met to discuss this concern. PHP clients are not allowed in the
4 DOC space for several reasons; ligature risk being one, and the fact that
5 clients can't be observed due to the wall in there. The DOC also often
6 leaves their things in there. Additionally, housekeeping cleans this space
7 in the morning and this would mean multiple cleanings throughout the
8 day. Dr. Awidi is the DOC Monday- Tuesday, and is agreeable to utilizing
9 the DOC space during her PHP time. The clinical director can move into
10 Dr. Awidi's office (located next door to the conference room). Michelle
11 has been advocating to move her office for some time because when
12 groups are going on in group room 3, she can't leave/enter her office.
13 Therefore, we will put Michelle in the former sensory room and convert
14 her current office into the sensory room.

15
16 McClure cc'd Union representative Kenney in this communication.

17 By email dated March 17, 2023 at 10:58 a.m., Plasse responded to McClure's
18 email stating the following: "There are to be no moves made at this time without the
19 authorization of the Center Director. Please stop meeting with staff and discussing
20 changes immediately. I find this type of conduct to be disruptive and utilizing email in this
21 way is not conducive to productive communication." Plasse included Kennedy on her
22 response.¹⁷

23 By email dated March 17, 2023 at 11:04 a.m., McClure responded to Plasse
24 stating:¹⁸

25 These changes impact the staff and clients, and the staff requested we
26 meet to try and find a solution that fits the overall facility spacing issues
27 and the needs of the program. There has been a serious lack of any kind
28 of communication, despite multiple previous requests to do so. Neither
29 PHP staff nor clients were aware that the sensory room was being
30 disabled until maintenance came during program hours- to do so- which
31 I find disruptive to good clinical practice. Unfortunately, the only way I'm

¹⁷ Plasse sent this email to McClure's DMH account.

¹⁸ McClure sent these emails from her DMH email account.

1 communicated with by the site director is email, so I have taken her lead
2 on this.

3
4 COVID-19 Protocol

5 In 2023, DMH had a COVID-19 protocol for employees returning to work after
6 restricted leave. If an employee had been out sick with COVID-19 or COVID-19 like
7 symptoms, the employee needed to have a test administered by a PHP nurse and receive
8 negative test results before returning to work. The employee would take the test with the
9 nurse in the conference room of the PHP Pocasset. Additionally, the Pocasset PHP had
10 a COVID-19 testing book, where the employee would sign off on the test. Finally, prior to
11 returning to work the employee would be placed on the “IP&C clearance list”.¹⁹

12 On March 15 and 16, 2023, McClure was out of work with COVID-19 like
13 symptoms. On March 17, 2023, McClure had not exhibited COVID-19 symptoms for at
14 least 24 hours. McClure was not scheduled to work on March 17 as she had several
15 meetings for her chapter president duties. However, McClure’s morning meetings for the
16 Union were cancelled, so she instead reported to work. When McClure first arrived,
17 McClure tried to contact Alanna Stanley (Stanley), the infection scontrol nurse at the
18 Pocasset PHP, but when Stanley did not answer, she left a voicemail. Before she started
19 her shift, McClure took an antigen test that Cattabriga witnessed. McClure tested negative
20 for COVID-19. McClure returned to work before being placed on the “IP&C clearance list.”

21 By email dated March 17, 2023, Stanley informed DeMuth of the following:

22 Jean McClure notified IP&C on the morning of Wednesday 3/15 that she
23 was experiencing symptoms that could be consistent with COVID. At that
24 time Jean was work restricted pending resolution of symptoms for a
25 minimum of 24 h[ours] without the use of pain reliever/fever reducer and
26 negative antigen testing on the day of her return. Jean was to notify IP&C

¹⁹ The record does not include an explanation for the acronym “IP&C”.

1 if she tests positive at home or when her symptoms have resolved. Jean
2 reported that she was not scheduled to work at POC on Fridays due to
3 union responsibilities. Jean returned to work today prior to being placed
4 on the IP&C clearance list. It is confirmed that Jean did have a witnessed
5 antigen test upon her return which was negative, her symptoms have
6 been resolved for over 24 h[ours] and she can be considered cleared.

7
8 1-Day Suspension

9 By letter issued April 3, 2023, Plasse issued McClure a one-day suspension. In
10 the suspension letter, Plasse stated that this action was taken because of McClure's
11 "inappropriate and unprofessional conduct, i.e., reporting to work in violation of COVID
12 screening and quarantine protocols, utilizing an entire bulletin board for employee notices
13 that was designated for both SEIU and AFSCME and utterly inappropriate disrespectful
14 and contemptibly unprofessional public behavior toward your Supervisor and Area
15 Director via email." Additionally, Plasse stated that:

16 Specifically, on or about February 6, 2023, you removed information
17 regarding the Joint Commission from the bulletin board and put up SEIU
18 information and decorations without authorization. As you are aware,
19 your collective bargaining agreement, Article 5, section 5 allows, in
20 relevant part, "the Union may post notices on bulletin boards or on an
21 adequate part thereof in places and locations where notices usually are
22 posted by the Employer for employees to read." On February 7, 2023,
23 you were informed that you had to remove the items you placed on that
24 bulletin board that had held the Joint Commission information and a new
25 bulletin board would be purchased for the Unions to use and that this
26 bulletin board was to be split between the SEIU and AFSCME. On
27 February 27, 2023, you were advised that the new bulletin board had
28 come in and been installed in the lobby as you had requested. You were
29 reminded that the board had been purchased for both Unions to use. You
30 took it upon yourself to place notices and decorations over the entire
31 bulletin board leaving little to no space for AFSCME as its Local President
32 discovered. Your supervisor, again, reminded you that the board had
33 been purchased for both SEIU and AFSCME and asked you to move the
34 SEIU notices to one side, you then wrongly accused her of interfering in
35 union business and obstinately refused to move the items to one side
36 and share the bulletin board.

1 This behavior is unacceptable, inappropriate, unprofessional, and
2 insubordinate. The bulletin board was purchased in good faith for both
3 Unions to use and your failure to collaborate with the administration is
4 unconscionable. As the Program Director for the Partial Hospitalization
5 Program (PHP) you should understand the importance of working with
6 all staff, acting in a respectful manner, and respecting the chain of
7 command. Your behavior does not reflect that.

8
9 Further, in October 2022, office moves were discussed with staff due to
10 on-going construction. These were temporary in nature and were
11 occurring throughout the facility in an effort to accommodate a closed
12 wing of offices where the construction was taking place. After this
13 discussion, you created a sensory room in one of the vacated offices
14 without consulting with the Site Director. Subsequently, you were advised
15 via email dated November 14, 2022, that any future room changes
16 should be coordinated with her.

17
18 On March 15, 2023, the Site Director sent an email informing all staff,
19 including you, to move items from the sensory room to allow a temporary
20 staff member to have an office space and that in April 2023, the space
21 would then be used for the new Director of Clinical Services. This email
22 further informed staff that the sensory room could be set up in the on call
23 Doctor space and that items could be easily set up and removed.
24 Additionally, that space is easier for staff to monitor and can be used for
25 PHP clients who want to access it. On March 17, 2023, rather than reach
26 out to your supervisor to discuss this matter, you chose to meet with other
27 PHP staff telling them why you disagreed with office moves and making
28 your own determination of where staff should be located. You then sent
29 out a global response to the Site Director's email, which included site
30 staff, disagreeing with the Site Director's determination of space and
31 office usage and stating your own perspective. In a March 17th email the
32 Area Director advised you that there were "to be no moves made at this
33 time without the authorization of the Center Director. Please stop meeting
34 with staff and discussing changes immediately. I find this type of conduct
35 to be disruptive and utilizing email in this way is not conducive to
36 productive communication. Approximately 5 minutes later you fired off
37 another email. Your behavior in meeting with the PHP staff and then
38 sending out an email to site staff only served, to again, undermine the
39 Site Director. Further, you acted contrary to the Area Director's email
40 which is tantamount to insubordination. Such was inappropriate,
41 unprofessional, and divisive, causing extreme disruption in the
42 workplace. As a Department Director it is expected that you will work with
43 the Site Director, be circumspect in your rhetoric with your reporting staff
44 and contribute to the overall best practices and operation of the PHP. As
45 a professional you have every right to disagree with the efficacy of
46 changes, however there is an appropriate, professional way to do that.

1
2 On March 15, 2023 you reported to the infection control nurse that you
3 were experiencing Covid-like symptoms. At that time, you were advised
4 by infection control that you were restricted from reporting to the work
5 place pending the resolution of symptoms for a minimum of 24 hours
6 without the use of pain reliever/fever reducer and negative antigen
7 testing on the day of your return. Additionally, you were informed that you
8 were to notify infection control if you were to test positive while at home
9 or when your symptoms have resolved.

10
11 On March 17, 2023, although you were not scheduled to report to work,
12 you reported to work for your shift without contacting infection control to
13 be cleared to return to the workplace. You are aware that your actions
14 are against protocol as all PHP staff members, including you, have been
15 educated on multiple occasions over the past two or more years
16 regarding the expectation that those who have reported COVID-like
17 symptoms must obtain clearance from infection control prior to returning
18 to work. You did not.

19
20 Your actions are not only inappropriate and unprofessional but also
21 irresponsible. Every employee is responsible for safety in the workplace.
22 You are well aware that the COVID protocol exists for safety reasons. As
23 a Program Director, you are responsible [for setting] an example for your
24 reporting staff. Your failure to follow the Covid protocol and directive of
25 infection control show a complete lack of responsibility. You are certainly
26 aware of the gravity of the COVID pandemic. The fact that you reported
27 to work without obtaining clearance from infection control, not only
28 created a serious safety issue for both patients and staff but also
29 displayed a disregard for the protocols designed to maintain that safety.
30 It is truly disappointing that, as a director[,] you chose to flagrantly
31 disregard the safety of the patients and staff in your care.

32
33 Prior to April 13, 2023, DeMuth contacted Plasse to express concerns regarding
34 DeMuth's conduct pertaining to issues with a bulletin board, COVID-19 protocols, and the
35 sensory room. In deciding whether to issue McClure discipline, Plasse spoke with DeMuth
36 about her concerns and reviewed the emails that DeMuth provided. In particular, Plasse
37 found concerning the March 17, 2023 email from McClure to DeMuth stating that "we will
38 put Michelle in the former sensory room and convert her current office into the sensory
39 room". Plasse viewed McClure's statement as a challenge to DeMuth's directive.

1 Plasse did not speak with Stanley or Cattabriga in deciding that McClure had
2 violated the COVID-19 protocol. However, Plasse did review the March 17, 2023 email
3 from Stanley to McClure and DeMuth which stated in part: “Jean returned to work today
4 prior to being placed on the IP&C clearance list.” Plasse did not speak with McClure about
5 the issues with the bulletin board, sensory room, or COVID-19 protocols.²⁰

6 Transfer Comment

7 In late April of 2023, McClure met with Looney, Mike Foster (Foster), a coordinator
8 for SEIU, and Jerry Levinsky (Levinsky), the Union representative, for a labor
9 management meeting. During the meeting, Looney informed McClure that she thought
10 McClure would be more successful temporarily transferring to a different CSW D position
11 from her department while she was chapter president. McClure replied that she was not
12 interested in a transfer and did not believe her performance suffered any deficiencies.
13 Looney responded that she could involuntarily transfer McClure under the contract. After
14 the meeting, Looney and DeMuth decided not to involuntarily transfer her, but to see
15 whether McClure succeeded in her dual role of Director and Chapter President. Neither
16 Looney nor DeMuth ever transferred McClure to a new position.

17 PHP Schedule Change

18 During a staff meeting on September 20, 2023, DeMuth discussed changing the
19 hours for the Pocasset PHP to 9:00 a.m. to 2:45 p.m. Previously, the Pocasset PHP
20 program lasted until 1:30 p.m. Additionally, it was discussed that Cunningham would

²⁰ Plasse did not speak with Pires, Wood or Cunningham about any of the issues in the suspension letter. Plasse did not review which documents McClure took down from the bulletin board.

1 provide all referrals to DeMuth for approval. McClure did not attend this meeting. On
2 September 21, 2023, McClure received a copy of the staff meeting minutes.²¹

3 At the start of the morning on September 25, 2023, Cunningham, on the directive
4 of McClure, generated the weekly schedule which listed the last program of the day
5 starting at 12:30 p.m. and ending at 1:30 p.m. for the entire week.²² By email dated
6 September 25, 2023, at 10:49 a.m., McClure asked DeMuth to provide clarification on
7 why referrals were not coming to McClure as the PHP Director. Additionally, in the same
8 communication, McClure informed DeMuth that the clients had asked to start and end
9 early, therefore “we will have the clients start at 9[:00 a.m.] and end at 1:30[p.m.] unless
10 there is any objection.” By email dated September 25, 2023 at 10:59 a.m., DeMuth
11 emailed McClure stating that DeMuth was serving as Center Director and Clinical Director

²¹ The staff meeting notes dated September 20, 2023 state that “it was discussed to change the time of PHP to 9:00 [a.m.] to 2:45 [p.m.]” The Commonwealth did not provide any documentary evidence or testimony demonstrating that DeMuth decided to change the program schedule and communicated that to staff, including McClure. Although McClure’s request to change the schedule on the morning of September 25 demonstrates that she knew Cunningham had changed the schedule for programs to end after 2:00 p.m., McClure still would not have known that the schedule change came from a directive that DeMuth gave, and that McClure could not change the schedule in her role as PHP Director.

²² The Commonwealth alleged that around mid-day on September 25, 2023, McClure instructed Cunningham to change the schedule for the programs to end at 1:30 p.m. Also, the Commonwealth asserted that at 3:00 p.m. on September 25, 2023, Cunningham gave McClure the schedule with the changes. However, the Commonwealth did not produce any evidence to support this assertion. During her testimony, Cunningham did not recall exactly the time and date of this interaction. The Commonwealth did not provide a timestamped document describing what time of day the schedule was changed or any email communications between Cunningham and McClure. Additionally, it would be illogical for McClure to inform Cunningham to change the schedule mid-day to end programs on that same date at 1:30 p.m. As such, I find that McClure asked Cunningham to change the schedule in the morning on September 25, 2023, but before DeMuth informed McClure that she *decided* to have the PHP program schedule run until 2:30 p.m.

1 so she was accepting the admissions and “[r]egarding the start and end time, for now we
2 can adjust to 9[:00a.m.]-2:30[p.m.]”

3 By email dated September 25, 2023, at 12:38 p.m., McClure responded to
4 DeMuth’s earlier communication by expressing her opinion on the merits of ending at 1:30
5 p.m. and concern that she was not handling referrals with DeMuth as it was one of her
6 responsibilities as a Director. At 3:20 p.m., on September 25, 2023, DeMuth responded
7 that she was “not approving a change in hours to 9[:00 a.m.]-1:30[p.m.] at this time. 9[:00
8 a.m.]-2:30[p.m.] was approved by me last week in meeting with the team.”²³ At some point
9 after McClure told Cunningham to change the schedule to 9 a.m. to 1:30 p.m. Cunningham,
10 at the direction of DeMuth, changed the weekly schedule back to the programs ending
11 after 1:30 p.m.

12 On September 25, 2023, according to the “group notes”, which is the electronic
13 medical record used for billing, the first program of the day was “Morning Meeting” led by
14 McClure, which started at 9:30 a.m. and lasted sixty minutes.²⁴ The final program of the

²³ The Commonwealth asserted that DeMuth decided to change the schedule to 9:00 a.m. to 2:30 p.m. at the staff meeting on September 20, 2023, and that McClure was put on notice of that decision. However, the staff meeting notes only state that the topic was discussed. Again, the Commonwealth did not provide any evidence to suggest that DeMuth decided, rather than discussed the schedule changes on September 20, 2023. Moreover, the Commonwealth did not provide any evidence to demonstrate that McClure was aware that DeMuth decided to change the schedule other than the staff meeting notes, which only state that the topic was discussed. Therefore, I find that McClure was not aware that DeMuth decided to end the PHP programs at 2:30 p.m. until the email dated September 25, 2023, at 10:59 a.m.

²⁴ At hearing, the Commonwealth entered into the record the schedule that McClure had Cunningham issue for the week of September 25, 2023, with her requested changes. In that version of the schedule, the first session on September 25 started at 9:00 a.m., and the last session of the day started at 12:30 p.m. and ended at 1:30 p.m. Clearly, McClure’s requested schedule did not impact the schedule for the programs on September 25, 2023.

1 day, Behavioral Activation Group, was led by Cattabriga. It started at 2:15 p.m. and ran
2 for 60 minutes. On September 26, 2023, the group notes stated that Morning Meeting
3 started at 9:00 a.m., was led by Wood, and lasted sixty minutes. Also, the group notes
4 indicate that Cattabriga's group meeting started at 1:00 p.m. and ran for 30 minutes.²⁵
5 However, on September 26, 2023, Cattabriga was scheduled to run a program for more
6 than 30 minutes, but the clients decided to leave early. Neither Cattabriga or McClure
7 instructed or encouraged the clients to leave early on that date.²⁶

8 By email dated September 27, 2023, McClure informed DeMuth that:

9 4 of the 5 clients currently here drive themselves and have made it clear
10 they wish to end earlier in the day. I am happy to tell them management
11 insists they stay until 2:30 if you like. However, we may lose some of
12 them. I'm not sure why the extra hour and a half is necessary given they
13 will receive 4 hours of programming per day, which is more than the
14 minimum required and meets the CMS standard of 20 hours per week. I
15 continue to remain concerned regarding the ongoing hostility, disrespect,
16 and micro-managing of the PHP and the minimization of my duties, which
17 continue to be re-assigned to a clerk.
18

19 According to the group notes, on September 27, 2023, Mulligan started Morning
20 Meeting at 9:00 a.m. and it ran for sixty minutes, and Mulligan ran the last group program

²⁵ In McClure's changed version of the schedule for the week of September 25, 2023, the first session on September 26 started at 9:00 a.m. and ran for 60 minutes, and the last session of the day started at 12:30 p.m. and ended at 1:30 p.m. McClure's requested schedule did not impact the programs on September 26, 2023.

²⁶ The Commonwealth asserted that the clients left early because McClure changed the schedule. However, Cattabriga was the employee who ran the program that ended early on September 26, and she testified that no one from the PHP had instructed her to end the program early on that day. The PHP is a voluntary program, and clients can leave program sessions early if they choose. Unless a staff member believed the client was going to hurt themselves or others, they cannot require a client to stay until a program ends. Additionally, Cattabriga did not testify that her program only ran for 30 minutes due to a schedule change. Given that Cattabriga was the only witness with firsthand knowledge about why her program ended early, I credit her testimony.

1 of the day which started at 1:00 p.m. and ran for sixty minutes.²⁷ On September 28, 2023,
2 Mulligan started Morning Meeting at 9:00 a.m. and it ran for ninety minutes. Mulligan ran
3 the last program of the day which started at 1:00 p.m. and ran for ninety minutes.²⁸ Finally,
4 on September 29, 2023, Wood started the first program at 9:00 a.m. and it ran for sixty
5 minutes, and Mulligan ran the last program of the day which started at 1:00 p.m. and ran
6 for 120 minutes.²⁹

7 By email dated October 3, 2023, Cunningham contacted McClure, Wood,
8 Cattabriga, DeMuth, and Mulligan stating: “[w]ith all the changes with groups going on[...]
9 [o]n 9/26 we ended up with two P groups and Two A groups ...” Later that same day,
10 Mulligan responded to the email asking whether they made a “P group” for 120 minutes
11 on September 26, 2023.³⁰ Also, later that same day, Wood responded to the email stating
12 she did two skill groups that date at 9:00 a.m. for ninety minutes and at 12:00 p.m. for
13 sixty minutes. By email dated October 4, 2023, Cunningham informed the group that:
14 “This is what I have for the day[.] P-Morning Meeting 90 Minutes – Michelle[,] A-Art 60

²⁷ In McClure’s changed version of the schedule for the week of September 25, 2023, the first session on September 27 started at 9:00 a.m. and ran for 60 minutes, and the last session of the day started at 12:30 p.m. and ended at 1:30 p.m. McClure’s requested schedule did not impact the programs on September 27, 2023.

²⁸ In McClure’s changed version of the schedule for the week of September 25, 2023, the first session on September 28 started at 9:00 a.m. and ran for 60 minutes, and the last session of the day started at 12:30 p.m. and ended at 1:30 p.m. McClure’s requested schedule did not impact the programs on September 28, 2023.

²⁹ In McClure’s changed version of the schedule for the week of September 25, 2023, the first session on September 29 started at 9:00 a.m. and ran for 60 minutes, and the last session of the day started at 12:30 p.m. and ended at 1:30 p.m. McClure’s requested schedule did not impact the programs on September 29, 2023.

³⁰ P-groups are psychotherapy and A-groups are activity groups.

1 minutes- Pat[,] P- Skills 60 minutes -Michelle[,] A-Behavioral Activation 60 minutes -
2 Kaycee[.]”

3 Three-Day Suspension

4 By letter dated October 19, 2023, Plasse issued McClure a three-day suspension.
5 Plasse stated that she issued McClure a three-day suspension because she had engaged
6 in inappropriate, unprofessional and insubordinate conduct; i.e. changing the PHP
7 schedule after being directed that the schedule was to remain as written. Plasse wrote
8 that:

9 Specifically, on Wednesday September 20, 2023, there was a team
10 meeting where the hours of patient groups were discussed. It was
11 determined at that time that patient groups would be from 9:00AM to
12 2:45PM. You received a copy of the meeting minutes on Thursday,
13 September 21st at 9:09 [a.m.] You acknowledged receipt of the minutes
14 at 9:23 [a.m.]

15
16 On Monday, September 25, 2023 at 10:49 [a.m.], you had an email
17 exchange with the Center Director regarding a schedule change for the
18 patients in the PHP. You had asked that the group schedule for the patient
19 groups be changed to 9:00 [a.m.] to 1:30 [p.m.]

20
21 At 10:59AM, the Center Director responded, "Regarding the start and
22 end time, for now we can adjust to 9[:00a.m.]-2:30[p.m.]. This is the
23 typical schedule for the other PHPs in our area. And, we can consider
24 looking at alternatives but I would like us to have more time to discuss. A
25 potential option would be to let clients know that they can attend 4 full
26 days vs. 5 if they need one day off for their schedules versus reducing
27 the length of each day."

28
29 At 12:38[p.m.], you responded in part, "We have offered the 4 day option
30 several times, however, the clients have again asked to end the day
31 earlier. As I said in an earlier email, Corrigan offers 4 hours of programing
32 daily and this has helped improve the census. Running from 9[:00 a.m.]
33 -1:30[p.m.] allows us to provide 4 groups and lunch daily."

34
35 Around midday on September 25, 2023, you instructed the unit clerk to
36 change the schedule to end at 1:30[p.m.] At approximately 3:00[p.m.] on
37 September 25, 2023, the unit clerk gave you the schedule with the

1 changes. You understood at the time you spoke to the unit clerk that the
2 schedule change had not been approved.

3
4 At 3:20PM on September 25, 2023, the Center Director again restated,
5 "I am not approving a change in hours to 9[:00 a.m.]-1:30[p.m.] at this
6 time. 9[:00 a.m.] -2:30 [p.m.] was approved by me last week in meeting
7 with the team. I would like to have more discussion and weigh the pros
8 and cons regarding any further modifications to the program."
9

10 After receiving the 3:20[p.m.] response from the Center Director, you did
11 not change the schedule back. As a result of this change, the hour-long
12 P group was cancelled because the patients were scheduled to leave at
13 1:30 [p.m.] an hour earlier than originally scheduled.

14
15 On Wednesday, September 27, 2023, you responded to the Center
16 Director's email arguing, "4 of the 5 clients currently here drive
17 themselves and have made it clear they wish to end earlier in the day. I
18 am happy to tell them management insists they stay until 2:30 if you like.
19 However, we may lose some of them. I'm not sure why the extra hour
20 and a half is necessary given they will receive 4 hours of programming
21 per day, which is more than the minimum required and meets the CMS
22 standard of 20 hours per week. I continue to remain concerned regarding
23 the ongoing hostility, disrespect, and micromanaging of the PHP and the
24 minimization of my duties, which continue to be re-assigned to a clerk."
25

26 On Thursday, October 12, 2023, you met with the Area Director with your
27 Union Representative. When asked about the schedule change from
28 ending at 2:30[p.m.] to 1:30[p.m.] you denied that you had changed it.
29 Even when informed that there was an email that was contrary to your
30 statement you continued to claim that the schedule was never changed
31 and that the clients had asked, and you told them it was a management
32 decision.

33
34 The email exchanges, witness statements and altered schedule suggest
35 that you did change the schedule and you were less than truthful when
36 questioned.

37
38 Your behavior is unacceptable, inappropriate, unprofessional and
39 insubordinate. Your actions were utterly inappropriate, disrespectful and
40 contemptibly unprofessional. Your failure to follow the directive of your
41 supervisor shows your disregard for your supervisor and the program.
42 You are certainly aware of the need for continuity with patients. You
43 should understand the importance of working with all staff, acting in a
44 respectful manner and respecting the chain of command. Your behavior

1 does not display those traits. In April of 2023 you received a one-day
2 suspension for utterly inappropriate, disrespectful and contemptibly
3 unprofessional behavior.
4

5 Prior to issuing the three-day suspension, Plasse spoke with DeMuth and McClure,
6 and consulted the emails and schedule that DeMuth provided. Additionally, Plasse
7 listened to DeMuth describe what Cunningham told her about the events of September 25,
8 2023. Plasse did not actually speak to Cunningham herself, nor did Plasse review any
9 written “witness statements”. When Plasse spoke with McClure, she denied changing the
10 schedule after being instructed by DeMuth not to do so.

11 Opinion

12 10(a)(3)- EPRS

13 Prima Facie Case

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

24 Protected Activity and Employer Knowledge

1 As the Chapter President, McClure engaged in a multitude of protected, concerted
2 activities. In October of 2022, McClure became the Chapter President for the Union.
3 Under the “back off” agreement in the CBA, McClure, with the Commonwealth’s
4 knowledge, reduced her workload by 50% and utilized 50% of her paid work week to
5 conduct union business. Given that DMH was aware about McClure’s usage of the “back
6 off” agreement, DMH also knew when McClure became Chapter President.

7 Adverse Action

8 The Employer argues that it did not take adverse action against McClure. Despite
9 receiving a “below” rating on several components in her Stage B EPRS, the Employer
10 argues that she received a “meets” rating in all aspects in her end of the year Stage C
11 EPRS. Considering that the Stage C EPRS is the only stage used to determine eligibility
12 for step-increases, the Employer argues that her Stage B EPRS did not amount to an
13 adverse action. I disagree.

14 The Commonwealth Employment Relations Commission (CERB) has decided that
15 an employer’s conduct is not an adverse employment action unless it materially
16 disadvantages the affected employee in some way. City of Boston, 35 MLC 289, MUP-
17 04-4077 (May 20, 2009). There is a material disadvantage when objective aspects of the
18 work environment are affected. See King v. City of Boston, 71 Mass. App. Ct. 460, 468
19 (2008) (failing to provide female superior officers with rank-specific locker rooms rises to
20 the level of an adverse action). McClure’s negative evaluation assessment, even in the
21 Stage B EPRS, may negatively impact her promotional opportunities. McClure’s Stage C
22 EPRS is on the exact same form as the Stage B EPRS. Therefore, if McClure’s 2023

1 EPRS was reviewed for a promotion, the reader would clearly see that she received
2 “below” in several categories at Stage B.

3 Moreover, in the Stage C section, DeMuth’s written comments clearly indicate that
4 she did not believe McClure had improved her performance and addressed the concerns
5 DeMuth expressed at Stage B. Rather, DeMuth’s comments reflect that she gave McClure
6 a “meets” rating at the end of the year because the Pocasset PHP closed on May 23,
7 2023. Accordingly, I find that McClure’s negative Stage B EPRS rating materially
8 disadvantaged her future promotional opportunities, therefore rating McClure as “below”
9 in the Stage B EPRS was an adverse action under the Law. City of Holyoke, 35 MLC 153,
10 156, MUP-05-4503 (2009) (citing Town of Dracut, 25 MLC 131, 133, MUP-1397 (February
11 17, 1999)).

12 *Unlawful Motivation*

13 To support a claim of unlawful motivation, the last element of a prima facie case, a
14 charging party may proffer direct or indirect evidence of discrimination. Lawrence School
15 Committee, 33 MLC 90, 97, MUP-02-3631 (December 13, 2006) (citing Town of
16 Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002), aff’d sub nom. Town of
17 Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005)). Direct evidence is
18 evidence that, “if believed, results in an inescapable, or at least a highly probable
19 inference that a forbidden bias was present in the workplace.” Wynn & Wynn, P.C. v.
20 Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (quoting
21 Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)).

22 Unlawful motivation also may be established through circumstantial or indirect
23 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35 MLC

1 29, 48, MUP-03-3894 (June 30, 2008) (citing Town of Brookfield, 28 MLC at 327-
2 328). Several factors may suggest unlawful motivation, including: the timing of the
3 alleged discriminatory act in relation to the protected activity; triviality of reasons, or
4 shifting and inconsistent reasons given by the employer; disparate treatment; an
5 employer's deviation from past practices; or expressions of animus or hostility towards a
6 union or the protected activity. Town of Carver, 35 MLC at 48 (citing Melrose School
7 Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006)); Lawrence School
8 Committee, 33 MLC 90, MUP-02-3631 (December 13, 2006); Cape Cod Regional
9 Technical High School District Committee, 28 MLC 332, 335, MUP-2541 (May 15, 2002).

10 In discrimination cases arising under Section 10(a)(3) of the Law where the
11 charging party has proffered direct evidence of discrimination, the CERB applies the two-
12 step analysis articulated in Wynn & Wynn, P.C. v. Massachusetts Commission Against
13 Discrimination, *supra*, (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989)). In
14 the Wynn & Wynn analysis, a charging party meets its initial burden by proffering direct
15 evidence that proscribed criteria, here, engaging in protected concerted activity, played a
16 motivating part in a respondent's adverse action. Town of Dennis, 29 MLC 79, MUP-01-
17 2976 (October 10, 2002). Stray remarks in the workplace, statements by people without
18 the power to make employment decisions, and statements made by decision makers,
19 unrelated to the decisional process itself, do not suffice to satisfy a charging party's
20 threshold burden. Wynn & Wynn, P.C. at 667 (2000) citing Price Waterhouse v. Hopkins,
21 490 U.S. 228, 277 (1989).

22 It is undisputed that in McClure's EPRS form, DeMuth wrote that McClure "has had
23 a 50% reduction in time dedicated to her role as PHP Director at Pocasset during this

1 review period. This led to a decrease in her presence at the program as well as a very
2 limited presence as a member of the leadership team. Jean's responsibilities to the role
3 are expected to be maintained." It is also not disputed that it was DeMuth's decision to
4 rate McClure "below" in certain categories in McClure's Stage B EPRS.

5 Also, as stated above, at the February 8, 2023 Stage B EPRS meeting, DeMuth
6 informed McClure that her union work was negatively impacting her performance as she
7 was not keeping up with her Director work. These verbal and written statements were not
8 stray comments. Rather, they clearly demonstrate that DeMuth rated McClure as "below"
9 for certain categories in the Stage B EPRS because McClure reduced her workload by
10 50% and utilized 50% of her paid work week to conduct union business.

11 In addition to the content of DeMuth's various verbal and written comments, I
12 consider the timing of the "below" rating on the Stage B EPRS. In October of 2022,
13 McClure became chapter president and started reducing her workload by 50% and using
14 50% of her work week to conduct union business. In February of 2023, McClure received
15 her first below rating on an EPRS.

16 I find that these written and verbal comments show "an inescapable, or at least a
17 highly probable inference that a forbidden bias was present in the workplace." Wynn &
18 Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. at 667
19 (quoting Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)). If McClure
20 had not reduced her workload by 50% and used 50% of her paid work week to conduct
21 union business in accordance with the "back off" agreement, DeMuth would not have
22 rated her performance as "below" in the Stage B EPRS dated February 8, 2023.
23 Therefore, I find that the Union has proffered direct evidence that the Commonwealth's

1 adverse action was unlawfully motivated and has therefore satisfied all elements of its
2 prima facie case as well as its initial burden under Wynn & Wynn.

3 Once a charging party meets its initial burden under the two-step mixed-motive
4 analysis, the burden shifts to the respondent to "show that its legitimate reason, standing
5 alone, would have induced it to make the same decision." Wynn & Wynn 431 Mass. at
6 666, citing Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. at 301. The appropriate
7 question in a mixed-motive case is whether the respondent's proffered legitimate reason
8 also motivated the adverse action and, if so, to what extent. Id.

9 The Commonwealth has not presented any evidence that McClure would have
10 received a "below" rating on any section of her Stage B EPRS if she was not conducting
11 union business. DeMuth's concerns regarding McClure's performance did not stem from
12 the work McClure was completing, but rather, her absence from the department due to
13 her Union responsibilities. For example, DeMuth cited McClure's failure to attend
14 leadership meetings and participate in the Joint Labor Commission survey. It is clear from
15 the record that McClure could not attend the leadership meetings because of Union
16 business and left early on the date of the Joint Commission survey due to a Union
17 meeting. Moreover, DeMuth's stated reasons in the EPRS for giving McClure a "below"
18 on certain areas, were a direct result of conducting union business.

19 Based on the foregoing, the Commonwealth failed to demonstrate that it would
20 have given McClure the "below" rating in her Stage B 2023 EPRS had she not been
21 reducing her workload by 50% or utilizing 50% of her paid work week to conduct to Union
22 business pursuant to the "back off" agreement. Accordingly, I find that the Commonwealth

1 violated Sections 10(a)(3), and derivatively, Section 10(a)(1) of the Law by scoring
2 McClure “below” on several sections of her Stage B 2023 EPRS.

3 **10(a)(1)-EPRS**

4 A public employer violates Section 10(a)(1) of the Law when it engages in conduct
5 that may reasonably be said to interfere with, restrain or coerce employees in the exercise
6 of their rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91,
7 MUP-1986 (December 29, 2000); Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11,
8 1999); Town of Winchester, 19 MLC 1591, 1595, MUP-7514 (December 12,1992);
9 Groton-Dunstable Regional School Committee, 15 MLC 1551, 1555, MUP-6748 (March
10 20, 1989). The focus of a Section 10(a)(1) analysis is the effect of the employer’s conduct
11 on reasonable employees’ exercise of their Section 2 rights. Town of Winchester, 19 MLC
12 at 1596. The CERB does not analyze either the motivation behind the conduct, Town of
13 Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12, 1982), aff’d sub nom., Town of
14 Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct. 1107 (1983), or whether
15 the coercion succeeded or failed. Groton-Dunstable Regional School Committee, 15 MLC
16 at 1555-1556. Proof of illegal employer motivation is not required. Quincy School
17 Committee, 27 MLC at 91.

18 First, the Commonwealth argues that neither DeMuth nor Plasse stated that
19 McClure’s Union activity was “problematic” as alleged in the Complaint. I disagree.
20 DeMuth may not have used the word “problematic,” but she did criticize McClure’s Union
21 activity by stating it was negatively impacting her performance as a Program Director.
22 Next, the Commonwealth argued that DeMuth’s written comments on the EPRS were not
23 demeaning or stated in an angry tone. Also, the Commonwealth argued that DeMuth’s

1 written comments did not disparage, ridicule, or criticize the Union or the employees’
2 exercise of protected rights. I disagree. DeMuth’s verbal and written comments may not
3 have been said in anger, but they nonetheless criticized the amount of time McClure
4 devoted to conducting Union business. Athol-Royalston Regional School District, 25 MLC
5 at 31.

6 Moreover, an employer’s actions, without accompanying disparaging or offensive
7 language, can reasonably be said to interfere with, restrain or coerce employees in the
8 exercise of their rights. In this case, DeMuth did not just comment on the amount of time
9 McClure dedicated to conducting union business but rated her performance as “below”
10 on several sections because of her reduction in time and workload. The totality of the
11 circumstances shows that DeMuth’s verbal and written comments, combined with the
12 negative EPRS rating, would chill a reasonable employee in their Section 2 rights.
13 Therefore, I find that the Commonwealth independently violated Section 10 (a)(1) of the
14 Law in the manner alleged in the Complaint.

15 **Plasse’s Comment**

16 By email dated March 17, 2023, at 10:58 a.m., Plasse responded to McClure’s
17 email stating the following: “There are to be no moves made at this time without the
18 authorization of the Center Director. Please stop meeting with staff and discussing
19 changes immediately. I find this type of conduct to be disruptive and utilizing email in this
20 way is not conducive to productive communication.” The Union argues that Plasse’s
21 comment to McClure violated Section 10(a)(1) of the Law. Conversely, the
22 Commonwealth, noting that McClure was not using her state email address during this
23 exchange, argues that Plasse’s comments did not violate the Law because McClure was

1 not acting as the chapter president during this email exchange. Furthermore, the
2 Commonwealth argues that Plasse was not criticizing or interfering with McClure's union
3 activity but giving her a directive as her supervisor. I disagree.

4 First, McClure testified that she did occasionally use her state email address to
5 conduct union business, and the Commonwealth did not provide any evidence to the
6 contrary. Also, the Commonwealth did not provide any evidence to suggest McClure was
7 prohibited from utilizing her state email address to conduct union business. Most
8 importantly, Plasse's email responds to emails sent by McClure about the sensory room
9 wherein she is clearly acting as the chapter president.

10 For example, the day before Plasse's comment, McClure sent an email to Looney
11 and Rice, who both work in labor relations for DMH, about the sensory room. On March
12 17, 2023, Rice responded to McClure's email stating: "[w]e were scheduled for labor-
13 management today however an agenda was not sent and unfortunately no one from SEIU
14 was there. This could have been discussed." The email communications between Rice
15 and McClure demonstrate that McClure was addressing issues with the sensory room as
16 the chapter president. Next, McClure sent DeMuth an email regarding the sensory room
17 that clearly mentions a violation of the CBA, and she included Union representatives on
18 the email communication.

19 Given that McClure spoke with other unit members about how the changes in the
20 sensory room may impact their working conditions and was using email to communicate
21 with DMH as the chapter president, Plasse's comments were a criticism of McClure's
22 concerted, protected activity. I agree that Plasse's comment: "there are to be no moves
23 made at this time without the authorization of the Center Director" may have been an

1 acceptable directive from a supervisor to a director of a PHP. However, Plasse’s directive
2 for McClure to stop meeting with others to discuss workplace changes and to stop using
3 email to conduct Union business would chill a reasonable employee in their Section 2
4 rights. Therefore, I find that the Commonwealth independently violated Section 10 (a)(1)
5 of the Law in the manner alleged in the Complaint.

6 **One Day Suspension**

7 **Protected Activity, Employer Knowledge, and Adverse Action**

8 As explained above, McClure was engaged in concerted, protected activity when
9 she conducted Union business under the “back-off agreement”, and the Commonwealth
10 knew of this activity. Additionally, McClure engaged in protected, concerted activity when
11 she communicated workplace concerns to DMH, specifically email communications to
12 DeMuth, Rice, and Looney. As explained above, McClure sent emails to DeMuth and Rice
13 as the chapter president, citing contract violations and other concerns about the sensory
14 room. It is clear from the record that McClure engaged in concerted, protected activity on
15 a routine basis and that the Commonwealth knew of McClure’s protected, concerted
16 activity.

17 On April 2, 2023, Plasse issued McClure a one-day suspension. It is undisputed
18 that a suspension is an adverse action under the Law. Quincy School Committee, 27
19 MLC at 92; Town of Clinton, 12 MLC at 1365.

20 **Unlawful Motivation**

21 The Union demonstrated through circumstantial evidence that the one-day
22 suspension was motivated by a desire to penalize or discourage McClure’s protected
23 activity. First, the Union demonstrated that the timing of the suspension indicates unlawful

1 motivation. The Commonwealth did not provide any evidence to suggest that McClure
2 had any job performance or disciplinary issues prior to becoming the chapter president.
3 In October of 2022, McClure became the chapter president and began reducing her
4 workload load and utilizing 50% of her paid work week to conduct Union business. Shortly
5 after becoming the chapter president, McClure received a below on her 2023 Stage B
6 EPRS and a written warning. Both the EPRS and written warning cited her choice to
7 conduct union business over other work duties as the basis for these decisions.³¹
8 However, timing alone is insufficient to establish unlawful motivation. City of Holyoke, 35
9 MLC at 153.

10 In addition to timing, the Union demonstrated that DeMuth expressed animus or
11 hostility towards McClure's concerted, protected activity which infected Plasse's decision
12 to issue the one-day suspension. The CERB has found that in cases where the decision-
13 maker does not make an independent review of the facts and bases the decision to act
14 on the evaluations and recommendations of other supervisors, the motives of the
15 supervisors in a discrimination case will be imputed to the decision-maker. Board of
16 Regents, 12 MLC 1315, 1335, SUP-2758 (October 25, 1985)(See Trustees of Forbes
17 Library, 384 Mass. 559, 569-70 (1981)). In this case, Plasse based her decision to issue
18 McClure a one-day suspension solely on the information that DeMuth provided.

³¹ On November 30, 2022, Plasse issued McClure a written warning for her alleged lack of participation in the Joint Commission Survey. In the written warning letter, Plasse stated: "You again stated that your union meeting could not be rescheduled. Additionally, you cancelled a union meeting with Ann Looney scheduled for 3:00 pm and still did not remain on site for the surveyor."

1 As explained above, DeMuth criticized McClure verbally and in writing for
2 conducting union business under the “back off” agreement. Plasse issued McClure the
3 one-day suspension based solely on the information and concerns DeMuth shared. Thus,
4 it is clear from the record that DeMuth was involved in a meaningful way in Plasse’s
5 decision to issue McClure discipline, and that DeMuth’s conduct infected Plasse’s
6 decision with the anti-union animus that DeMuth harbored.

7 Finally, according to the suspension letter, McClure was disciplined in part for
8 choosing to meet with other PHP staff about the sensory room and using email to
9 communicate with DMH and staff about her disagreement with DeMuth’s decision on the
10 sensory room. As explained above, Plasse made the following chilling remarks in the
11 suspension letter when she stated: “[p]lease stop meeting with staff and discussing
12 changes immediately. I find this type of conduct to be disruptive and utilizing email in this
13 way is not conducive to productive communication.” McClure’s email communications to
14 staff, DeMuth, Rice, and Plasse constituted protected, concerted activity and were sent
15 as the chapter president. I find that a portion of the Commonwealth’s cited reasons for
16 disciplining McClure, i.e. meeting with and emailing management and staff about the
17 sensory room, are trivial. Therefore, the Union has demonstrated that the one-day
18 suspension was motivated by a desire to penalize or discourage protected activity, and it
19 has satisfied the fourth element of the prima facie case of retaliation.

20 *Legitimate, Non-Discriminatory Motive*

21 Under the three-part Trustees of Forbes Library analysis, once a charging party
22 establishes a prima facie case of retaliation, it is the employer’s burden to produce a
23 legitimate, non-discriminatory reason for taking the adverse action. The employer’s

1 burden to produce a legitimate, non-discriminatory reason for taking the adverse action
2 is more than simply stating an unsubstantiated allegation. Commonwealth of
3 Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998). The employer must state
4 a lawful reason for its decision and produce supporting facts indicating that the lawful
5 reason was actually a motive in the decision. Trustees of Forbes Library, 384 Mass. at
6 566; Quincy School Committee, 27 MLC at 92; Commonwealth of Massachusetts, 25
7 MLC at 46.

8 Here, the Commonwealth contends that it issued McClure a one day suspension
9 for the following actions: 1) violating the COVID-19 protocol, 2) using an entire bulletin
10 board for union materials after being instructed to share the board with AFSCME, 3)
11 moving the sensory room without permission, and 4) meeting and emailing with Pocasset
12 PHP staff on March 17 to discuss the sensory room. I find the Commonwealth satisfied
13 its burden to produce credible evidence that it issued McClure a one-day suspension for
14 non-discriminatory reasons.

15 First, as explained above, McClure was informed that the bulletin board would be
16 a shared space for the Union and AFSCME. Despite being issued this clear directive,
17 McClure ignored DeMuth's instructions, utilized the entire space on the board, then
18 refused to remove the content from half the board when instructed to do so. I find that the
19 Commonwealth provided sufficient evidence to support its reasoning behind issuing
20 discipline to McClure for failing to follow instructions regarding the bulletin board.

21 Next, the Commonwealth established that Plasse had a reason to believe that
22 McClure violated the COVID-19 protocol. The protocol for returning to work after
23 experiencing COVID-19 like symptoms included receiving a COVID-19 test administered

1 by a DMH nurse, testing negative, signing off on the test in a COVID-19 test book, and
2 placement on the “IP&C clearance list”. Given Stanley’s email stating that McClure
3 returned to work before being placed on the “IP&C clearance list,” I find that the
4 Commonwealth provided sufficient evidence to support its reasoning behind issuing
5 discipline to McClure for violating the COVID-19 protocol.

6 Finally, I find that the Commonwealth established sufficient evidence to support its
7 reasoning for disciplining McClure for moving the sensory room. In October of 2022,
8 McClure, without seeking permission from DeMuth, moved the sensory room to another
9 location. Therefore, the Commonwealth satisfied its burden to produce credible evidence
10 that it issued McClure a one-day suspension for legitimate, non-discriminatory reasons.

11 *But for Test*

12 Ultimately, the Union proved that but for her protected activity, the Commonwealth
13 would not have issued McClure a one-day suspension. Although McClure may have
14 moved the sensory room without permission, her decision to speak with staff about their
15 concerns on the sensory room and then emailing staff, DeMuth, Plasse, and Rice about
16 the Union’s concerns regarding the sensory room was concerted, protected activity. As
17 explained above, McClure sent those emails to DMH as the chapter president, not the
18 Director of PHP. Also, even though McClure moved the sensory room without permission
19 in October of 2022, the Commonwealth did not issue discipline until after McClure
20 exercised her rights as the chapter president and communicated her concerns about the
21 sensory room to unit members, DeMuth, Rice, and Plasse.

22 The Commonwealth’s delay in addressing McClure’s decision to move the sensory
23 room for months, as well as it specifically citing McClure’s engagement in protected,

1 concerted activities in the suspension letter as a reason for discipline demonstrates that,
2 but for McClure’s concerted, protected activity, the Commonwealth would not have issued
3 McClure a one-day suspension. Therefore, I find that the Commonwealth violated Section
4 10(a)(3) of the Law in the manner alleged in the Complaint.

5 **Looney’s Comment**

6 In late April of 2023, after McClure received the one-day suspension and “below”
7 rating on several sections in her Stage B EPRS, McClure met with Looney. During the
8 meeting, Looney informed McClure that she thought McClure would be more successful
9 temporarily transferring to a different CSW D position within her department while she
10 was chapter president. McClure replied that she was not interested in a transfer and did
11 not believe her performance suffered any deficiencies. Looney responded that she could
12 involuntarily transfer McClure under the contract. The Union argues that Looney’s
13 suggestion that McClure voluntarily transfer to a different position, followed by her
14 comment about a potential involuntary transfer, was a violation of Section 10(a)(1) of the
15 Law.

16 The Commonwealth argues that Looney made the voluntary and involuntary
17 transfer statements because McClure was struggling to adequately meet the job
18 responsibilities of a Program Director. The Commonwealth asserts that Looney’s
19 comments would not interfere with a reasonable employee in the exercise of their rights
20 guaranteed under the Law. I disagree. First, any reasonable employee would perceive
21 Looney’s reference to an involuntarily transfer as a threat – particularly when it
22 immediately followed a refusal to transfer voluntarily to a different position.

1 Additionally, before this conversation with Looney, McClure was given a “below”
2 rating on sections of her EPRS for issues arising out of her engagement in Union
3 business. Also, immediately prior to this conversation with Looney, McClure was issued
4 a one-day suspension in retaliation for her engaging in concerted, protected activity.
5 Given the surrounding circumstances, I find that Looney’s suggestion for McClure to
6 voluntarily transfer and Looney’s statement regarding her right to involuntary transfer
7 McClure would chill a reasonable employee from exercising their Section 2 rights.
8 Therefore, I find that the Commonwealth independently violated Section 10 (a)(1) of the
9 Law in the manner alleged in the Complaint.

10 **10(a)(3)- Three-Day Suspension**

11 **Protected Activity, Employer Knowledge, and Adverse Action**

12 As explained above, McClure was engaged in concerted, protected activity when
13 she reduced her workload by 50% and used 50% of her paid workweek to conduct union
14 business as the chapter president, emailed DMH management about the sensory room,
15 and spoke with fellow unit members about the sensory room. The Commonwealth knew
16 about all of that concerted, protected activity, and it is undisputed that the Commonwealth
17 took adverse action against McClure when it suspended her for three days.

18 **Unlawful Motivation**

19 As explained above, in McClure’s Stage B EPRS, DeMuth verbally and in writing
20 criticized McClure for conducting union business under the “back off” agreement. Plasse
21 issued McClure discipline because of the information and concerns DeMuth shared. It is
22 clear from the record that DeMuth was involved in a meaningful way when Plasse decided
23 to issue McClure a three-day suspension, and thus the Union has established that

1 DeMuth's conduct infected Plasse's decision with the anti-union animus that DeMuth
2 harbored. Board of Regents, 12 MLC 1315, 1335, SUP-2758 (October 25, 1985); see
3 Trustees of Forbes Library, supra. Additionally, Plasse, herself, criticized McClure's
4 protected, concerted activities in the email communication dated March 17, 2023.

5 Given Plasse's criticism of McClure's protected activity, and her reliance on
6 DeMuth who had expressed union animus towards McClure's protected, concerted
7 activity, I find that the Union has demonstrated that the three-day suspension was
8 motivated by a desire to penalize or discourage protected activity, and it has satisfied the
9 fourth element of the prima facie case of retaliation.

10 *Legitimate, Non-Discriminatory Motive*

11 The Commonwealth argued that Plasse issued McClure a three-day suspension
12 because she changed the PHP schedule after being directed that it should remain as
13 written. Despite the Commonwealth's arguments, I do not find that McClure changed the
14 PHP schedule after being directed that it should remain as written. First, the staff meeting
15 notes only noted that the topic of changing the schedule was discussed. The
16 Commonwealth did not provide any evidence that DeMuth had communicated to McClure
17 that she issued a directive for the schedule change prior to the September 25, 2023 dated
18 email at 10:49 a.m. Also, McClure instructed Cunningham to change the schedule for the
19 PHP programs in the morning of September 25, 2023, not mid-day. Most importantly,
20 McClure instructed Cunningham to change the schedule *before* she received DeMuth's
21 email stating that for now the schedule was adjusted to end at 2:30 p.m.

22 In the suspension letter, Plasse noted that after receiving DeMuth's directive on
23 the schedule, McClure did not change the schedule back. However, DeMuth never

1 instructed McClure to change the schedule back. Moreover, the group notes for that week
2 indicate that McClure's requested schedule change did not impact the schedule of the
3 programs for the week of September 25, 2023.

4 Also, in the suspension letter, Plasse stated that McClure's decision to change the
5 schedule resulted in an hour-long P group being cancelled because the patients were
6 scheduled to leave at 1:30 p.m. I disagree. The record does not contain any evidence that
7 McClure's decision to instruct Cunningham to issue a revised schedule on September 25
8 or any other schedule change, caused the patients to leave early on September 26, 2023.
9 For example, McClure's proposed schedule listed the last program of the day on
10 September 26 to start at 12:30 p.m. and run for sixty minutes. However, the group notes
11 establish that Cattabriga's last program of the day did not start until 1:00 p.m. Moreover,
12 Cattabriga, the instructor for the program that ended early on September 26, was not
13 instructed to end the program early.

14 I do not find that McClure changed the PHP schedule after being directed to leave
15 it as written, and I do not find that her actions caused the patients to leave early on
16 September 26. Consequently, the Commonwealth failed to establish that McClure was
17 unprofessional, inappropriate, or otherwise engaged in insubordinate conduct as
18 described in the letter of suspension. Therefore, I do not find insubordinate,
19 unprofessional and inappropriate conduct to be legitimate reasons for discipline.

20 For the aforementioned reasons, the Commonwealth has not satisfied its burden
21 to produce credible evidence that it had reasonable and legitimate reasons for issuing
22 McClure a three-day suspension. Accordingly, I conclude that the Commonwealth failed

1 to satisfy its burden of production and did not demonstrate that legitimate, non-
2 discriminatory reasons motivated its adverse action against McClure.

3 *But For Test*

4 Finally, even if the Commonwealth had demonstrated that legitimate reasons
5 motivated its adverse action, which it did not, the Union proved that but for the protected
6 activity, the Commonwealth would not have issued McClure a three-day suspension.
7 First, within a year of becoming chapter president, McClure received: 1) a written warning
8 for not being available to attend the Joint Commission survey because of a union meeting;
9 2) an adverse performance evaluation in her Stage B EPRS in retaliation for her
10 engagement in protected, concerted activity; and 3) a one-day suspension in retaliation
11 for her engagement in protected, concerted activity.

12 In addition to the closely timed adverse actions taken against McClure upon
13 becoming chapter president, Plasse issued McClure discipline based on the information
14 that DeMuth provided. Plasse did not conduct an independent investigation of the events
15 but relied heavily on DeMuth's rendition of events. As explained above, DeMuth wrote
16 and said comments which showed undeniable animus towards McClure's engagement in
17 protected, concerted activity. As Plasse attended the performance evaluation meeting
18 with DeMuth and McClure, she was aware of DeMuth's verbal and written criticisms of
19 McClure's union business. Therefore, I can reasonably infer that Plasse would not have
20 reached the conclusion that McClure had changed the PHP program schedule after being
21 directed that the schedule was to remain as written without DeMuth's unlawful sentiments.
22 Trustees of Forbes Library, 384 Mass. at 571. For all the above-mentioned reasons, the
23 Commonwealth would not have issued McClure a three-day suspension but for McClure's

1 concerted, protected activity. Therefore, I find that the Commonwealth violated Section
2 10 (a)(3) of the Law in the manner alleged in the Complaint.

3 **10(a)(4)- Three Day Suspension**

4 The elements of proof of a Section 10(a)(4) allegation are the same as those for a
5 Section 10(a)(3) claim, except that the protected behavior is participating in DLR
6 proceedings. Town of Carver, 35 MLC at 47. On May 16, 2023, the Union filed the charge
7 on behalf of McClure in Case No. SUP-23-10042. McClure was named in the charge,
8 which alleged that the Commonwealth violated the Law for issuing her the one-day
9 suspension and various other issues. As such, I find that McClure participated in DLR
10 proceedings. However, I do not find that the Union established employer knowledge of
11 McClure's involvement in SUP-23-10042, before Plasse issued the three-day suspension.

12 In this case, there is no direct evidence that Plasse or anyone at DMH was aware
13 that Union had filed a charge in SUP-23-10042 before issuing McClure a three-day
14 suspension. First, the investigation into SUP-23-10042 occurred in November of 2023
15 and the three-day suspension was issued in October of 2023. Also, neither party asked
16 Plasse if she had knowledge of the charge before issuing the three-day suspension. The
17 record does not contain any testimony that the Commonwealth reached out to Plasse to
18 schedule the investigation into SUP-23-10042 or if Plasse even attended the
19 investigation.

20 Finally, there is no evidence to suggest that the Union's filing of SUP-23-10042
21 was common workplace knowledge. As such, the Union did not provide sufficient direct
22 evidence or indirect evidence that Plasse knew of the charge prior to issuing the
23 suspension. See Fowler v. Labor Relations Commission, 56 Mass. App. Ct. 96 (2002)

1 (using a totality of circumstances to infer employer knowledge rather than requiring
2 employee to produce direct evidence of knowledge). Therefore, the Union has not
3 satisfied the second element of the prima facie case of retaliation.

4 Even if the Union had established employer knowledge, which it did not, the Union
5 failed to establish unlawful motivation.³² While there is ample evidence that Plasse issued
6 McClure a three-day suspension for her involvement in other concerted, protected activity,
7 there is no evidence to support that the Union's filing of SUP-23-10042 was a motivating
8 factor. The record does not contain any testimony that Plasse, DeMuth, or anyone else
9 at DMH commented on the Union's filing of the charge in SUP-23-10042. The record does
10 not contain any documents that demonstrate Plasse was unlawfully motivated by the
11 Union filing the charge in SUP-23-10042. Therefore, I find that the Union has not satisfied
12 the fourth element of the prima facie case of retaliation and that the Commonwealth did
13 not violate Section 10 (a)(4) of the Law in the manner alleged in the Complaint.

14 **CONCLUSION**

15 Based on the record and for the reasons explained above, I find that the
16 Commonwealth independently violated Section 10(a)(1) of the Law when: 1) DeMuth
17 criticized McClure's engagement in protected, concerted activity both verbally and in
18 writing when she completed McClure's Stage B EPRS evaluation in 2023; 2) Plasse
19 directed McClure to stop meeting with others to discuss changes in the workplace and
20 utilizing email to communicate about said changes in the workplace; and 3) Looney
21 suggested that McClure voluntarily transfer to a different position due to her time

³² As explained above, the Union demonstrated that a three-day suspension is an adverse action under the Law.

1 commitments to union business and stated that she could involuntarily transfer McClure
2 to another position. Additionally, I find the Commonwealth violated Section 10(a)(3) of the
3 Law and, derivatively, Section 10(a)(1) of the Law when it: 1) issued McClure an
4 evaluation rating of a “below” in several job duties on her Stage B 2023 EPRS, 2) issued
5 McClure a one-day suspension, and 3) issued McClure a three-day suspension. Finally,
6 I find that the Commonwealth did not violate 10(a)(4) and, derivatively, Section 10(a)(1)
7 of the Law when it issued McClure the three-day suspension.

8 **REMEDY**

9 Section 11 of the Law grants broad authority to fashion the most satisfactory
10 remedy possible under the facts of each case. Labor Relations Commission v. City of
11 Everett, 7 Mass. App. Ct. 826 (1989). The traditional remedy is an order to cease and
12 desist from the unlawful action, an order to post an appropriate notice, and an order to
13 put the charging party in as near a position as they would have been in had they not
14 suffered the unlawful discrimination. See generally, Town of Holbrook, 15 MLC 1221
15 (1988); Labor Relations Commission v. Everett, 7 Mass. App. Ct. 826 (1979).
16 Consequently, I order the Commonwealth to rescind all the comments that DeMuth wrote
17 in McClure’s Stage B 2023 EPRS that violated Section 10(a)(1) of the Law.

18 Where an employer is found to have violated 10(a)(3) of the Law, the appropriate
19 remedy is to rescind the adverse action. Commonwealth of Massachusetts, 24 MLC 116,
20 SUP-4050 (June 10, 1998). I found that the Commonwealth violated Section 10(a)(3) of
21 the Law when it issued McClure a below rating in several sections of her Stage B 2023
22 EPRS. For McClure to be placed in as near a position as she would have been in had
23 she not suffered the unlawful discrimination, the Commonwealth must re-issue McClure’s

1 Stage B 2023 ERPS with “meets” rating for all sections in which she previously received
2 a “below” rating.³³ See generally, Town of Holbrook, supra; Labor Relations Commission
3 v. Everett, supra.

4 As explained above, in the Stage B EPRS for 2023, the Commonwealth did not
5 cite any performance issues that did not stem from McClure’s time commitments to
6 conducting Union business, and DeMuth issued McClure a “meets” in all categories for
7 her 2023 Stage C EPRS, which determined her step-raise eligibility. This remedy would
8 not replace the Commonwealth’s final judgment in McClure’s Stage C 2023 EPRS but
9 merely places her in the position she would have been in if DeMuth had not evaluated
10 her performance unlawfully at Stage B.

11 ORDER

12 WHEREFORE, based upon the foregoing, it is hereby ordered that the
13 Commonwealth shall:

- 14 1) Cease and desist from:
- 15
- 16 a. Disciplining unit members in retaliation for their protected, concerted
17 activity;
 - 18
 - 19 b. Issuing unit members adverse performance evaluations in retaliation for
20 their protected, concerted activity;
 - 21
 - 22 c. In any like manner, interfering with, restraining and coercing its
23 employees in any right guaranteed under the Law.
 - 24
- 25 2) Take the following actions that will effectuate the purposes of the Law:
- 26
 - 27 a. Rescind the one-day and three-day suspensions issued to McClure and
28 make McClure whole for any wages she lost as a result of the suspensions,
29 plus interest on all sums owed at the rate specified in M.G.L. c. 231, Section
30 6I, compounded quarterly;

³³ All other remedies are addressed in the below order.

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- b. Re-issue McClure’s Stage B 2023 EPRS with a “meets” rating for all sections and without the above-described unlawful comments from DeMuth;
- c. Post immediately in all conspicuous places where members of the Union’s bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Commonwealth customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees; and
- d. Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

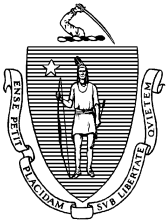
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, ESQ.

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.



NOTICE TO EMPLOYEES

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

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6 A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the
7 Commonwealth of Massachusetts (Commonwealth) violated Sections 10(a)(3), and both
8 independently and derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E
9 (the Law) by issuing Jean McClure (McClure) a one-day suspension, issuing McClure a three-day
10 suspension, issuing McClure a “below” rating on certain sections in her Stage B 2023 EPRS, and
11 criticizing McClure’s engagement in concerted, protected activity both verbally and in writing.

12

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

WE WILL NOT retaliate against McClure for engaging in concerted, protected activities.

WE WILL NOT in any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

WE WILL immediately rescind the one-day suspension and the three-day suspension issued to McClure and make McClure whole for any lost wages as a result of the respective suspensions plus interest on all sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly;

WE WILL immediately re-issue McClure's Stage B 2023 EPRS with "meets" for all sections and without the unlawful comments.

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Commonwealth of Massachusetts

Date