COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

STOUGHTON SCHOOL COMMITTEE

Case No. MUP-17-5762

and

STOUGHTON TEACHERS ASSOCIATION

Date Issued: October 2, 2018

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Hearing Officer:
Kerry Bonner, Esq.

Appearances:

Joseph A. Emerson, Jr., Esq.: Representing the Stoughton School Committee

Mark A. Hickernell, Esq.: Representing the Stoughton Teachers Association

HEARING OFFICER'S DECISION

Summary

1. The issue in this case is whether the Stoughton School Committee (School Committee) violated Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by ordering bargaining unit members at Stoughton High School to remove buttons which stated "I Support Stoughton Teachers." Based on the record and for the reasons explained below, I conclude that the School Committee violated the Law as alleged.
Statement of the Case

On January 30, 2017, the Stoughton Teachers Association (Association) filed a Charge of Prohibited Practice with the Department of Labor Relations (DLR) alleging that the School Committee had engaged in prohibited practices within the meaning of Section 10(a)(1) of the Law. On May 3, 2017, a DLR investigator issued a Complaint of Prohibited Practice (Complaint). On May 15, 2017, the School Committee filed an Answer to the Complaint. On May 8, 2018, the Association filed a Motion to Exclude the Testimony of Mark Schaefer and an Arbitration Decision (Motion). The School Committee filed an Opposition to the Motion, in which it advised that it no longer intended to call Mark Schaefer as a witness. On May 17, 2018, I issued my ruling allowing the School Committee's Motion to exclude an arbitration decision. I conducted a hearing on June 20, 2018. Following the hearing, the Association and School Committee each timely filed post-hearing briefs. On the entire record, including my observation of the demeanor of witnesses, I make the following findings.

Stipulations of Fact

1. The Association is an employee organization within the meaning of the Law.
2. The Town of Stoughton (Town) is an employer within the meaning of the Law.
3. The [School] Committee is the Town's representative for the purpose of collective bargaining with school employees.
4. The Association is the exclusive bargaining representative for certain employees employed by the [School] Committee, including teachers and professional employees of the Stoughton Public Schools.
5. On or about January 17, 2017, certain bargaining unit employees at Stoughton High School wore buttons to work which stated “I Support Stoughton Teachers.”

6. On or about January 17, 2017, Stoughton High School Principal Juliette Miller (Miller) directed those employees wearing buttons referenced in paragraph 5, supra, to remove and not wear those buttons.

7. On or about January 19, 2017, Stoughton Public Schools Superintendent Marguerite Rizzi (Rizzi) held an emergency faculty meeting at the High School at which she reiterated the directive described in paragraph 6, supra.

8. At all relevant times, Miller and Rizzi acted as agents of the [School] Committee.

9. The employees wearing buttons referenced in paragraph 5, supra, complied with Miller’s and Rizzi’s directive.

Findings of Fact

On January 11, 2017, Rizzi disciplined three teachers at Stoughton High School, SM, JR, and HM,¹ in connection with complaints that they had bullied a student after an incident for which the student was disciplined.² The letter to SM states, in relevant part:

This is a letter of reprimand which shall be placed in your personnel file for violating the Stoughton Public Schools’ Employee Handbook. The Handbook provides that “As leaders and educators in the Stoughton Public Schools, we are committed to providing an educational climate that is conducive to student engagement and learning.”

The reason for this action is that an investigation into a bullying complaint that was filed against you revealed that while you did not engage in bullying toward the student, you engaged in a lengthy discussion about the student with the students in your English class and commented on the extent of the discipline he received from the administration. In doing so, you failed to

¹ The parties agreed to use pseudonyms for these three teachers, and for the student at issue, who will be referred to as Student F.

² Additional details regarding Student F’s conduct, which involved the use of a swastika, is provided in statements read to the School Committee by Association leaders reprinted below.
provide an educational climate conducive to student engagement and learning. When the students discussed rumors regarding the student and the discipline imposed, the educational environment was disrupted and you should have intervened to stop the behavior, not join the disruptive behavior.

Therefore, I have concluded that you failed to perform the roles and responsibilities of a teacher as defined in the Handbook. This did not advance a culture of learning for anyone; rather, it was unprofessional and was disruptive to the educational process for the students in your class.

It is well established that public school teachers hold a position of special public trust. They are responsible for more than teaching basic academic skills and the students must be able to rely on their teachers to exercise sound judgment and maintain appropriate boundaries, even when they themselves may be unable to do so. I have concluded that you failed to exercise sound judgment when you engaged in behavior, discussing the appropriateness of a student’s discipline and conduct, with students.

It is for these reasons that I am placing this letter of reprimand in your personnel file.

Rizzi also issued JR a written reprimand. The letter of reprimand is substantially similar as the letter to SM, with the disciplined conduct described as the following, in relevant part:

Specifically, you failed to perform the roles and responsibilities of a teacher as defined in the Handbook when you pulled a student aside during class to make inquiry about the discipline that was imposed on another student. This did not advance a culture of learning for anyone; rather, it was unprofessional and was disruptive to the educational process for the students in your class. In addition, you had unnecessary communications with colleagues about a student and the consequences imposed for his discipline.

Lastly, the disciplinary letter to SM states, in relevant part:

This is to inform you that in accordance with Massachusetts General Laws Chapter 71, Section 42D, it is my intention to suspend you for twenty (20) days. This suspension shall begin on January 25, 2017.
The reasons for this action are that you violated the Stoughton Public Schools Employee Handbook, state law and the basic principles of teaching by engaging in bullying behavior toward a student, by acting unbecoming of a teacher, and by being untruthful during the investigation of a civilian complaint that you bullied a student. The specifics are as follows:

1. You engaged in bullying behavior toward a student in violation of the Bullying Prevention and Intervention Plan set forth in the Stoughton Public Schools' Employee Handbook and defined by state law. This is supported by the investigation into the bullying complaint.

   - Specifically, your repeated communication to students and to teachers targeted a student who had been disciplined for conduct about which you did not have direct knowledge nor did you have direct knowledge of the actual discipline imposed. As a result of your actions, the student did not want to attend school and was emotionally distraught to the level that Principal Miller and his mother expressed concern about his emotional well-being.

   - In addition, by contacting and reporting to the college to which he applied that this student had a disciplinary infraction and recklessly reporting inaccurate information, you unnecessarily targeted the student. You had the option of simply removing your recommendation from Naviance, but you chose to make direct contact for the purpose of interfering with the student's future without knowing any of the specifics of his discipline.

   - In addition, these actions amounted to bullying but they also are in violation of the Stoughton Public Schools' Employee Handbook and are blatantly contrary to the mission of the school. Specifically, you communicated unnecessarily with teachers and students about the student and contacted the college misrepresenting the facts relating to his discipline. The student learned of your communications and became upset and did not want to go to school. By acting contrary to the mission of the school, you exhibited behavior unbecoming of a teacher.

For these reasons, I intend to suspend you for ten (10) days for bullying the student and ten (10) days for violating the Handbook by acting in a manner contrary to the mission of Stoughton High School and demonstrating conduct unbecoming of a teacher. You shall serve these 10 day
suspensions concurrently. This conduct fundamentally disrupts the trust and nurturing relationships necessary to achieve any school’s mission. It is critical that all students be treated fairly and civilly when they are in the hands of their educators. Your actions targeted the student and caused him to suffer emotionally. This behavior has no place in the educational process.

I intend to suspend you for an additional ten (10) days for being intentionally untruthful during the investigation of this matter. The integrity and efficiency of an investigation is of paramount importance for Stoughton Public Schools to be accountable to itself and to the public it serves. By deliberately being untruthful when answering questions at your interview with the investigator, you shattered the integrity of the investigation.

On January 12, 2017, Melanie Ingrao (Ingrao), Association Grievance and Negotiation Chair, and Mollie O’Connell (O’Connell), a member of the Association’s Grievance and Negotiation Committee, discussed what actions the Association could take in response to the disciplinary actions described above. After considering various options, they decided to suggest that members wear buttons with the statement “I Support Stoughton Teachers.”

On January 13, 2017, the Association held a meeting at which approximately 50-60 high school teachers attended. O’Connell and Ingrao began the meeting by explaining the discipline that had been given to the three teachers referenced above. The unit

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3 The Association also filed grievances in connection with the discipline.

4 Teachers had worn buttons with this message in the past during contract negotiations, which were also ongoing at this time. The message had also been displayed on signs that were posted on front lawns. The administration had never prohibited teachers from wearing such buttons. O’Connell and Ingrao also considered, and then decided against, including the statement, “I am an Upstander” on the buttons, as they felt it had a direct connection to a disciplined teacher who was teaching about upstanding during the Holocaust.
members were asked about wearing the buttons as support, and the overwhelming response was in favor of wearing the buttons. At this meeting, the unit members discussed the fact that they felt the teachers were disciplined unfairly for conduct that every teacher has engaged in, specifically, discussing a student with other students and teachers. When unit members asked what they should say if students asked why they were wearing buttons, O'Connell and Ingrao advised them to simply say that the buttons are a message of support for their fellow teachers.

Following the meeting described above, the buttons were made and distributed, and high school teachers wore them to school on January 17, 2017. When asked about the buttons by students, Ingrao advised the students that she was wearing her button to show her support for all her fellow teachers in the high school, but she did not reference any particular teacher or student.\(^5\)

That same day, Student F's mother told Rizzi that Student F was extremely upset and intimidated by the teachers wearing buttons because everyone knew that they were supporting the teacher who had bullied him. Student F’s mother advised Rizzi that Student F felt he could not come to school anymore.\(^6\) In response to this conversation, Rizzi contacted Joseph Emerson, Jr. (Emerson), counsel for the School Committee, and

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\(^5\) Ingrao also credibly testified that students did not ask her any follow-up questions, and she did not observe any students to be fearful or confused.

\(^6\) Although I allowed this totem pole hearsay testimony of Rizzi over the objections of the Association, I am not finding that Student F was intimidated or refused to come to school because of the buttons, as he himself did not testify. Rather, my findings are limited to the fact that Student F’s mother reported this to Rizzi.
asked him to contact Joshua Levit (Levit), Massachusetts Teachers Association field
representative, because she believed that once the Association knew about Student F’s
reaction they would want to stop wearing the buttons.  

On the evening of January 17th, Emerson sent a text message to Levit, asking if
the high school teachers would voluntarily stop wearing the buttons because they were
making Student F uncomfortable. Emerson also advised Levit that if the teachers did
not voluntarily stop wearing the buttons, the administration would instruct the teachers to
stop wearing them. After Levit consulted with his manager and Association members,
they concluded that the Association would not direct the teachers to stop wearing the
buttons. Later that evening, Levit advised Emerson that the teachers would not voluntarily
stop wearing the buttons, but that they would comply with a directive from the school
administration.

Upon learning that the teachers would not stop wearing the buttons, Rizzi asked
Miller to direct the teachers to stop. By email on the evening of January 17, 2017, Miller

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7 Neither Rizzi nor Miller spoke to Student F prior to Rizzi contacting Emerson, or prior to
the directive that teachers stop wearing the buttons, described below.

8 Emerson also acknowledged that the School Committee was aware that teachers
typically have the right to wear such buttons, but felt that they could be prohibited given
the circumstances here.

9 Rizzi testified that she and the school district had a legal obligation to do this, because
if she allowed the bullying of a student, there would be potential liability for her and the
district. However, she provided no specific legal support for this statement, nor did the
School Committee address it in its post-hearing brief. I therefore do not find this to be a
credible reason that Rizzi made the decision to direct the teachers to stop wearing the
buttons.
advised faculty and staff, "You are directed by Superintendent, Dr. Rizzi, to remove and
not wear items which contain the message 'I support Stoughton Teachers.'" Unit
members complied with this directive and instead wore black and orange clothing as a
show of support for fellow teachers.\(^1\) No one in the administration ordered them to stop
wearing black and orange, although Rizzi was aware of the reason that the teachers were
wearing the colors.\(^1\)

Following the directive to stop wearing buttons, Rizzi met with teachers on January
19, 2017 to help them understand her decision. She explained that the privacy of students
is of paramount concern.\(^2\)

\(^{10}\) The School Committee and Union witnesses disagreed as to whether teachers typically
wore black and orange every Friday. Although Rizzi testified that it was customary for
them to do so, and therefore this action would not have stood out, O'Connell testified that
it was not customary to wear black and orange, and that she even had to buy black and
orange clothing to take part in the action. I credit O'Connell's testimony based on her
specific memory of the events and the fact that it is unlikely that the Association would
ask its members to wear black and orange as a statement if it is something that they
already do regularly.

\(^{11}\) Some students also wore buttons similar to the Association's buttons, but were not
instructed to stop wearing them. Other students told Miller that they wanted to wear
something in support of Student F, but ultimately did not do so. The School Committee
argues in its brief that the students who wore buttons in support of the teachers "were
manipulated to wear the buttons because the teachers could not." However, there is no
evidence as to what prompted the students to wear buttons.

\(^{12}\) Miller also testified about discussions she had with Student F's mother and Student F
after the teachers were ordered to stop wearing the buttons. Because these discussions
occurred after Rizzi and Miller directed the teachers to stop wearing buttons, they are not
relevant to my analysis of whether the School Committee violated the Law by issuing its
directive on January 17, 2017. Similarly, Miller's testimony about her discussions with
Student F prior to the wearing of buttons by teachers on January 17, 2017 is not relevant.
On January 24, 2017, John Gunning (Gunning), a 7th grade teacher in Stoughton and the President of the Association, read the following statement at a School Committee meeting, which he prepared with Andrea Pires (Pires), the Association Vice-President, the prior day.

Good evening Chairwoman Pina-Enokian, School Committee Members Cochran, Hill, McDonough, and Soares, Superintendent Rizzi, and Deputy Superintendent Ford:

My name is John Gunning, President of the Stoughton Teachers Association, and I am with Vice-President Andrea Pires to speak to you on behalf of all the members of the STA regarding a matter of grave concern to the STA.

Starting just before the week of Thanksgiving, there were multiple incidents of anti-Semitic speech that occurred among students at Stoughton High School. The High School Administration’s immediate response was woefully inadequate, especially when compared to the responses that occurred in other school districts when similar instances occurred. School Administration failed to fully address the first instance involving a swastika despite the concerns voiced by teachers. Educators requested a meeting with administrators to discuss what they viewed as a growing problem. The Administration responded by scheduling an optional meeting for faculty and staff. During this optional meeting staff urged the principal to: take the lead and send a letter to the community; bring in the Anti-Defamation League for an educational program; and to make an announcement on the school news program. This did not happen.

Following a subsequent incident involving the use of swastikas, educators brought the issue to administrators again, but still no communication was sent to the school community or community at large. By ignoring the requests of the faculty, the SHS administration denied students and teachers a safe space to discuss the severity of these incidents and denied parents the right to have these important discussions at their own dinner tables. Unwilling to ignore the presence of hateful anti-Semitic speech in their school, teachers used their best professional judgment to address the issue with their colleagues and in some instances with their students. Regrettably, some teachers are now facing disciplinary action by the
Stoughton Public Schools for addressing the problem of abhorrent anti-Semitic speech in Stoughton High School.

On February 14, 2017, Gunning and Pires read the following statement to the School Committee, which they had prepared with input from teachers and the Association negotiating team:\textsuperscript{13}

On Tuesday, January 24, I, John Gunning, and Andrea Pires, read a statement to you regarding the complete mishandling of multiple incidents involving swastikas at Stoughton High School and their aftermath. Tonight, we would like to illustrate by comparison, how the Stoughton Public Schools should have handled and should handle such egregious acts when they occur in our community.

In Sharon, in the wake of the Presidential Election, swastikas were drawn on students' papers at Sharon Middle School. After a brief investigation the Principal of the school issued a letter to parents and guardians stating “We want to make sure that everyone knows that any form of hate has no place in our school system. We take great pride in the diversity of our school and we value every effort our students and staff make to maintain a safe, welcoming environment for all.” In addition, the Superintendent of Sharon Public Schools issued a heartfelt letter thanking teachers and their union for the support they had given students, concluding the letter with the famous and moving “First they came for Socialists” poem by Martin Neimoller.\textsuperscript{14}

Around the same time as the incident in Sharon, a swastika was painted on a rock outside a school in Harvard. The Superintendent of Harvard Public Schools issued a statement condemning the graffiti, and asked the Harvard police to investigate. Her statement also spoke of “tolerance” and

\textsuperscript{13} The footnotes within the below statement were included in the written statement, with different numbering, which the School Committee introduced as an exhibit.

\textsuperscript{14} Sharon Public Schools, Office of the Superintendent. \textit{Memo to Staff}. 30 Nov. 2016. Print.
intensifying “efforts to assure the safety of all students and families from minority and marginalized groups.”

In early December, multiple swastikas and hateful words were found drawn in boys’ bathrooms at Cambridge Rindge and Latin School over the course of three days. In a letter home to parents written during the pending investigation, the Principal astutely stated: “The Symbol and language are provocative and upsetting. Its history as a signal for racist, anti-Semitic, and hateful speech and actions is well known. It is intended to make people feel unsafe and unwelcome. I am deeply saddened that this symbol and language has been displayed in our community.” The Superintendent also reported the incidents to the Attorney General’s hotline on hate crimes and other biased conduct; and a “safe space” was set up in the cafeteria for students to discuss the incidents.

In Brookline, in early December, a swastika was drawn on a middle school chalkboard next to the word “Trump”. A statement released by the Superintendent in the very same week outlines how, on the day following the incident, the Principal of William H. Lincoln School held a meeting to “clearly and emphatically explain the gravity of what occurred,” and stating that “We know that symbols and language of hate can have devastating impacts on individuals and communities...We must respond to any such incident immediately and decisively.” Two days after the incident, middle school students wrote and shared “messages of peace, inclusion and tolerance.”

Right before winter recess in Milton, when swastikas were found drawn in a bathroom at Pierce Middle School, the Principal swiftly issued a letter within days to parents stating that this was: “extremely troubling and highly inconsistent with the inclusive culture that we are committed to creating at the Pierce Middle School” and that “I and the entire staff are firmly committed to fostering a safe, supportive, and welcoming environment for every member of our community. To that end, this type of behavior will not

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be tolerated at the Pierce Middle School." The letter also stated that
"educational next steps" were being explored and that counseling would be
available for all students if they wished to discuss the matter further.\footnote{18}
In Natick, also prior to winter recess, while an investigation of the heinous
act was underway, the Principal of Wilson Middle School confirmed in a
letter to parents what she described as "a hateful and unacceptable act" in
that anti-Semitic graffiti was written on a school wall."\footnote{19}

The Stoughton Teachers Association is going on the record and letting it be
known that during an optional faculty meeting, held on December 1\textsuperscript{st}, at the
request of the teachers at Stoughton High School the following requests
were made: that a statement go out to the school community decrying the
heinous and hateful speech that occurred during the week of Thanksgiving,
that the Anti-Defamation League be contacted, and that the Principal go on
the morning news program at the High School to make students aware of
the incidents. Only one of these three items was acted upon, and nearly
two months after the incidents occurred. We must reiterate that when
teachers tried to do the right thing as public educators and help our students
through these troubled times, some were disciplined for just that. In fact,
we are presenting to you today with statements from teachers and retirees
about the necessity of having conversations like the ones our members
were disciplined for. We want to be part of the solution going forward. From
the outset, the STA's primary objective has been to see to it that all of our
students and staff feel safe in Stoughton Public Schools; and, that when
students graduate from Stoughton High School they have the core set of
values needed to make the world a better place. Accordingly, we
respectfully request that the School Committee direct the Superintendent to
do the following:

1. Provide an educational program from a third party for all students at
   Stoughton High School in the immediate future.

2. Hold Principal Miller accountable for her mishandling, trivialization and
   sanitization of hateful acts at her school through disciplinary
   proceedings and the issuance of a public apology to the School
   Community as a whole.


3. Work with the STA to establish a District-wide protocol for dealing with incidents of hate, hateful, racist, sexist, homophobic speech or any other speech directed to and intended to denigrate a marginalized group. This may include, but is not limited to, notifying school parents/guardians of incidents, and creating “safe spaces” for students to discuss these issues.

4. Have a third party train all Stoughton Public Schools staff on how to deal with such incidents and their ilk in one training session or set of sessions that all attend.

5. Overturn any discipline issued to staff due to their actions in response to the hate speech that occurred during the week of Thanksgiving, and remove the discipline from their personnel files along with any referencing documents, including investigatory reports.

We also request that the School Committee hold Superintendent Rizzi accountable in the same manner as Principal Miller outlined above. We would like an answer, in writing, to each of our requests no later than February 28, 2017.

We leave you with this thought: If the drawing of swastikas is hate speech enough to release statements to the public and take other remedial action in the immediate wake of such incidents in Sharon, Harvard, Cambridge, Brookline, Milton and Natick, then shouldn't we be treating it as such at taking the same proactive approaches in Stoughton?

**Opinion**

The Association alleges that the School Committee violated Section 10(a)(1) of the Law when it directed unit members to stop wearing buttons that contained the message, “I Support Stoughton Teachers.” A public employer violates Section 10(a)(1) when it engages in conduct that tends to restrain, coerce, or interfere with employees in the free exercise of their rights under the Law. *City of Fitchburg, 22 MLC 1286, MUP-9483* (November 28, 1995). A finding of illegal motivation is not generally required. *Town
of Winchester, 19 MLC 1591, 1596, MUP-7154 (December 22, 1992). Rather, the focus of the inquiry is the effect of the employer’s conduct on a reasonable employee. Boston School Committee, 39 MLC 366, MUP-09-5543 (June 6, 2013).

The School Committee acknowledges that employees generally have a protected right under Section 1 of the Law to wear union insignia, including buttons, in the workplace. However, it argues that special circumstances existed here that warranted Rizzi’s January 17, 2017 order that teachers stop wearing the buttons, specifically, the effect that the buttons were having on Student F.

The Commonwealth Employment Relations Board (CERB) noted in City of Boston, 6 MLC 1096, MUP-2878 (May 23, 1979):

The fact that speech takes place within the context of protected activities does not preclude an inquiry into the nature of the statements made. Instead, a balance must be struck in each case between the rights of employees to engage in concerted activities and the rights of employers not to be subjected to egregious, insubordinate, or profane remarks which disrupt the employer’s business or demean workers or supervisors.

The facts here do not rise to the level of speech that the CERB has found to be unprotected. For example, in City of Boston, the CERB held that “On balance, profane and personally abusive remarks to individuals not in a position to redress an employee’s complaint will rarely be found to be protected speech.” 6 MLC at 1097. In contrast, the Stoughton teachers’ buttons did not contain any profane or personally abusive remarks, but rather an innocuous statement of support directed toward all Stoughton teachers. Dighton School Committee, 8 MLC 1305, MUP-4233 (August 26, 1981), also involves teachers wearing buttons at their school. The building principal ordered the
teachers to stop wearing buttons that said, "S.O.S.," an acronym for "Save Our Services."
The teachers wore the buttons as part of a Massachusetts Teachers Association response to Proposition 2 ½ in an attempt to save school services. In finding that no special circumstances existed to justify the prohibition on wearing the buttons, the CERB noted that, "the wearing of the S.O.S. button had none of the characteristics that can make otherwise protected activity unprotected. For example, the message communicated was not profane. Nor was there any proof that the button was egregious or that wearing it disrupted the educational process."20

Similarly, the buttons worn by the Stoughton teachers had none of the characteristics that would make them unprotected. Although the School Committee argues that Student F’s feelings of intimidation justified its actions, there is no credible evidence that Student F himself was actually intimidated because he did not testify at the hearing, and neither Rizzi nor Miller spoke to him directly prior to issuing the directive that teachers stop wearing the buttons. Further, even if the School Committee had been able to establish that Student F felt intimidated, or that he would not come to school because of the buttons, he reacted unreasonably sensitively to a message that had no explicit link to him as the buttons contained only a generic message of support.

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20 The Appeals Court cites Dighton School Committee when recognizing that “Special circumstances’ rarely, if ever, are found in the absence of a comprehensive ban on all nonstandard adornments.” Sheriff of Worcester County v. Labor Relations Commission, 60 Mass. App. Ct. 632, 642 (2004). Here, the School Committee presented no evidence that it prohibits the wearing of any other non-union buttons or adornment.
As in Dighton School Committee, where the CERB noted that “the evidence does not support the School Committee's contention that the subject was so controversial among Dighton students,” there is no evidence here that any other students were disturbed by the buttons, or that the wearing of them caused any disruption in any classrooms. 8 MLC at 1307. There is also no evidence that any teachers told any students that the buttons were directed against Student F or in any way connected to him. Rather, the buttons contained the same message of support that the teachers had worn on buttons in prior contract years, just as this was a contract year. When asked by students what the buttons meant, the teachers responded that they were a show of support for their fellow teachers, and there is no evidence that any students were troubled by this response.\(^2\) Even if Student F chose not to come to school because of the buttons, one student making this decision because of such an inoffensive message cannot be considered “disruptive to the educational process” and does not outweigh the unit members’ interest in supporting their fellow teachers who they believed had been unfairly disciplined.

The School Committee also argues that the Association misled unit members as to the reason why the teachers were disciplined, intending to convince unit members to

\(^2\) According to the School Committee, the Union’s witnesses could not confirm that all of the teachers gave this response to students. However, the School Committee did not present any evidence that any teachers told any students that the buttons were directed against Student F, or even that they were worn in support of the disciplined teachers specifically. Instead, the School Committee could only speculate that “[Student F] knew why they were being worn because friends told him and they could have only learned this from teachers.”
blame the student for the teachers’ actions. According to the School Committee, the
Association advised unit members that the teachers were disciplined for engaging in
discussions with students about the Holocaust and how the swastika remains a symbol
of hate. As evidence, the School Committee points to the statements made by Gunning
at School Committee meetings, where he stated that teachers had been disciplined for
“addressing the problem of abhorrent anti-Semitic speech…” and for trying “to do the right
thing as public educators and help our students through these troubled times, some were
disciplined for just that.” In fact, according to the School Committee, the disciplinary
letters made clear that the teachers were disciplined for other reasons; specifically, they
were disciplined for failing to follow the rules and responsibilities of a teacher by allowing
students to discuss rumors about a student and engaging in a discussion about the
student’s discipline; by speaking to another student about the disciplined student;
engaging in unnecessary communications with colleagues about the student and the
consequences for his actions; and by bullying the student.

I do not find any merit to the School Committee’s argument, as O’Connell credibly
testified that prior to wearing the buttons, the unit members discussed that the teachers
had been disciplined for conduct that any of the teachers could have engaged in, such as
discussing a student with other students and teachers. This rationale is consistent with
the conduct for which the teachers were disciplined according to their disciplinary letters.
Moreover, the School Committee has offered no support for its implied contention that
unions are not permitted to characterize an employer’s action differently than the
employer itself would characterize it, and that an employer can then prohibit protected
activity that occurs because of the perceived mischaracterization. And notably, even if
the statements made by Association members at School Committee meetings were
relevant to my analysis, they took place after the teachers were prohibited from wearing
the buttons and therefore do not factor into my determination of whether special
circumstances existed at the time the teachers were told not to wear them.22

Conclusion

Based on the record and for the reasons explained above, I find that the School
Committee violated Section 10(a)(1) of the Law when it ordered unit members to stop
wearing Association buttons on January 17, 2017.

Order

WHEREFORE, based upon the foregoing, it is hereby ordered that the Stoughton
Committee shall:

1. Cease and desist from:

   a) Prohibiting unit members from wearing “I Support Stoughton Teachers”
      buttons; and

   b) Otherwise interfering with, restraining or coercing employees in the exercise
      of their rights guaranteed under the Law.

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

   a) Rescind the directive prohibiting teachers from wearing “I Support
      Stoughton Teachers” buttons;

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22 Although the School Committee uses these statements to show that this must the same
information the Association gave to its members on January 13, 2017 when deciding
whether to wear the buttons, there is no actual evidence of this.
b) Post immediately in all conspicuous places where members of the Association's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the School Committee customarily communicates to its employees via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and

c) Notify the DLR in writing of the steps taken to comply with this decision within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

[Signature]

KERRY BONNER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.
THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES
POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Stoughton School Committee has violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by directing members of the Stoughton Teachers Association at Stoughton High School to remove buttons which stated, “I Support Stoughton Teachers.”

The Stoughton School Committee posts this Notice to Employees in compliance with the hearing officer’s order.

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

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

WE WILL NOT prohibit unit members from wearing “I Support Stoughton Teachers” buttons.

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

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Rescind the directive prohibiting teachers from wearing “I Support Stoughton Teachers” buttons.

STOUGHTON SCHOOL COMMITTEE       DATE

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

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