

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of

STOUGHTON SCHOOL COMMITTEE

and

STOUGHTON TEACHERS ASSOCIATION

\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No.: MUP-15-4617

Date Issued:

September 30, 2016

\*\*\*\*\*

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Mark Hickernell, Esq.

-

Representing the Stoughton Teachers  
Association

Joe Emerson, Esq.

-

Representing the Stoughton School  
Committee

**HEARING OFFICER'S DECISION**

**SUMMARY**

1        There are two issues in this case. The first is whether the Stoughton School  
2        Committee (Committee) failed to bargain in good faith with the Stoughton Teachers  
3        Association (Association) by dealing directly with unit members at a staff meeting on  
4        January 14, 2015 by discussing when to schedule a "Spirit Day" event, in violation of  
5        Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws,  
6        Chapter 150E (the Law). The second issue is whether the Committee interfered,  
7        restrained and coerced employees in the exercise of their rights guaranteed under  
8        Section 2 of the Law by denying unit members the opportunity to consult the collective  
9        bargaining agreement (Agreement) during the January 14, 2015 staff meeting, in

1 violation of Section 10(a)(1) of the Law.

2 For the reasons explained below, I find that the Committee violated Section  
3 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it discussed with unit  
4 members when to schedule a Spirit Day event at the January 14, 2015 staff meeting. I  
5 also find that the Committee violated Section 10(a)(1) of the Law by denying unit  
6 members the opportunity to consult the Agreement during the January 14, 2015 staff  
7 meeting.

8 STATEMENT OF THE CASE

9 On June 4, 2015, the Association filed a Charge of Prohibited Practice with the  
10 Department of Labor Relations (DLR) alleging that the Committee had engaged in  
11 prohibited practices within the meaning of Sections 10(a)(5) and Section 10(a)(1) of the  
12 Law. On September 15, 2015, a DLR Investigator issued a Complaint of Prohibited  
13 Practice (Complaint), Partial Dismissal and Notice of Partial Deferral,<sup>1</sup> alleging that the  
14 Committee had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law  
15 by dealing directly with unit members at the January 14, 2015 staff meeting by  
16 discussing times and dates to schedule a Spirit Day event. The Complaint also alleged  
17 that the Committee had violated Section 10(a)(1) of the Law by denying unit members  
18 the right to consult the Agreement during the January 14, 2015 staff meeting. On  
19 September 25, 2015, the Committee filed its Answer to the Complaint.

---

<sup>1</sup> The Investigator deferred to Arbitration the Union's allegation that the Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by repudiating the parties' collective bargaining agreement.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34

5

6

- 7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

<sup>2</sup> Spirit Day is a school event where parents, students and staff come together outside of school hours to improve parent engagement.

ADMISSION OF FACTS

In its Answer, the Committee admitted to the following fact:

1. Linda Nobil (Nobil) and Sue McCabe (McCabe) are teachers in the bargaining unit.

FINDINGS OF FACT

**The Collective Bargaining Agreement**

Article VIII of the parties' Agreement covers "Teacher's Duties" and states, in pertinent part:

Section I. The starting and dismissal time for teachers will be as follows:

**Elementary Schools**

8:15 am – 3:30 pm Tuesday, Wednesday and Thursday

8:15 am – 3:00 pm Monday and Friday....

On one Wednesday per month, the principal may schedule an after school staff meeting which will end thirty (30) minutes after the normal teacher dismissal time. During that week, the normal teacher dismissal time shall be as follows:

**Elementary Schools**

8:15 am – 3:00 pm Monday and Friday

8:15 am – 4:00 pm Wednesday

8:15 am – 3:15 pm Tuesday and Thursday....

The Wednesday afternoon staff meeting schedule shall be distributed by the principal to the teachers no later than the first Friday after Labor Day.

Article IX, Section VIII of the Agreement covers "Required Events Beyond Regularly Scheduled Work" and states, in pertinent part:

A. Duration of Required Events Beyond Work Hours – any event scheduled beyond regularly scheduled work hours shall not exceed 1 ½ hours' duration, and may be scheduled anytime after work hours ending no later than 8:30 p.m.

1 B. General Requirement – all teachers are required to attend three (3)  
2 events scheduled outside regularly scheduled work hours, as specifically  
3 set forth below:  
4

5 1. Core Academic Teachers – Core academic teachers and/or  
6 elementary homeroom teachers, shall attend three events  
7 scheduled outside regularly scheduled work hours as determined  
8 by administration. A minimum of two (2) such events shall be  
9 parent conferences.  
10

11 2. All Other Teachers – Teachers who are not core academic  
12 teachers and/or elementary homeroom teachers, shall attend three  
13 events scheduled outside regularly scheduled work hours as  
14 determined by administration....  
15

16 **The 2013-2014 Spirit Day**

17 Parent-teacher conferences and back-to-school nights are social events at Dawe  
18 Elementary School where Principal Barner can require teacher attendance. By the  
19 winter of the 2013-2014 school year, Barner had already scheduled two parent teacher  
20 conferences but decided not to have a back-to-school night. This decision left open a  
21 third social event that he was required to fill pursuant to Article IX, Section VIII (B) of the  
22 Agreement.

23 In lieu of not having a back-to-school night, Barner met with staff to determine  
24 how best to fill the open slot. After brainstorming ideas at a staff meeting in March of  
25 2014, Barner conducted a vote where a majority of staff favored holding a "Spirit Day"  
26 event. He eventually communicated the decision to the Parent-Teacher Organization  
27 (PTO), whose members assisted with event funding and other resources. At some  
28 point on a Friday in May of 2014, Dawe held its first Spirit Day which lasted for 90  
29 minutes.

**1 The Staff Meeting Schedule and Agenda**

2 In early September of 2014, Barner distributed to unit members a staff meeting  
3 schedule for the 2014-2015 school year. Included on that schedule were two staff  
4 meetings to be held on January 14 and May 13, 2015. During these meetings, Barner  
5 covers various agenda items, which can include: housekeeping matters, Apple Awards<sup>3</sup>  
6 announcements, a review of various educational data, introducing guest speakers, and  
7 facilitating wellness activities such as yoga and Zumba. Open discussion among staff  
8 members and voting-by-hand on certain topics are typical during many of these  
9 meetings.

**10 The January 14, 2015 Staff Meeting**

11 At all relevant times Nobil, McCabe, Jennifer Jacobs (Jacobs), Katherine Lewis  
12 (Lewis) and Matthew Bell (Bell) were teachers at Dawe Elementary School. On January  
13 14, 2015, Barner conducted a staff meeting, which Nobil, McCabe, Jacobs, Lewis and  
14 Bell attended. At that meeting, Barner initiated discussion by addressing various  
15 issues, such as the Apple Award, the late submission of student projects and the new  
16 sample/practice tests released by the Commonwealth. Immediately following the  
17 discussion of those issues, Barner informed the staff that while the bulk of the meeting

---

<sup>3</sup> The Apple Awards recognize various achievements by teachers and staff at the Dawe School.

1 would cover Qualitative Reading Inventory (QRI) training, he first wanted to discuss  
2 having a second Spirit Day event for the 2014-2015 school year.<sup>4</sup>

3 Barner proceeded to brief new staff about the history of Spirit Day and asked  
4 whether anyone was interested in holding a second Spirit Day event. By a show of  
5 hands staff members voted in favor of having the event, with none voting against it.  
6 After tallying the vote, Barner next asked the staff when to schedule the event. Opening  
7 the discussion, he reminded staff that because the previous Spirit Day occurred on a  
8 Friday, the PTO might like to keep the event on that day. At that point Jacobs spoke,  
9 stating that Friday was not “a great day” because many teachers have things to do after  
10 school at 3:00 p.m.

11 Responding to Jacobs, Barner suggested scheduling the Spirit Day event on a  
12 Wednesday during the upcoming school staff meeting on May 13, 2015. Nobil then  
13 spoke, reminding Barner that the Agreement required teachers to attend three social  
14 events. She also stated that Dawe did not have a third event time-slot available for the  
15 2014-2015 school year because—unlike the 2013-2014 school year when Spirit Day  
16 took the place of back-to-school night as the last social event—the parties had already  
17 scheduled their three contractual events (i.e., one back-to-school night and two parent-  
18 teacher conferences in October and January).

19 Acknowledging Nobil’s concerns, Barner reiterated his suggestion that merging  
20 the 2014-2015 Spirit Day event with the upcoming staff meeting on Wednesday May 13,

---

<sup>4</sup> The entire duration of the staff’s discussion over the Spirit Day topic was approximately two or three minutes. The record is unclear about how long the discussion lasted for other agenda topics.

1 2015, might be the best possible solution; however, he also conceded that he was not  
2 sure if he could move the staff meeting from a Wednesday to a Friday to accommodate  
3 the Spirit Day event.

4 **1. McCabe's Requests to Check the Contract**

5 At this point in the discussion, McCabe asked Barner if she could consult the  
6 Agreement before he made any decisions about when to schedule the Spirit Day event.  
7 Barner responded that it "would be great" for her to check the Agreement at some point  
8 after the meeting, but only if he needed to change the day of the event.<sup>5</sup> He then stated  
9 that there may not be a scheduling problem if the staff could reach consensus on the  
10 issue. McCabe then reiterated her request to check the Agreement; but, Barner failed  
11 to respond because Nobil had interjected at that point.

12 **2. Nobil's Requests to Check the Contract**

13 Before Barner could respond to McCabe's second request, Nobil added that  
14 there might be a scheduling conflict based on the contractual starting and dismissal  
15 times for teachers on Tuesday, Wednesday and Thursday (i.e., 8:15 a.m. – 3:30 p.m.)  
16 and on Monday and Friday (i.e., 8:15 a.m. – 3:00 p.m.). Specifically, Nobil pointed to  
17 the shorter work days that occurred during the weeks when staff meetings were  
18 scheduled. She also explained that the Agreement did not permit Barner to schedule

---

<sup>5</sup> When asked on cross-examination to clarify exactly how Barner responded to McCabe's request to check the Agreement, Barner testified that, "I don't remember the exact sentence but it was something along the lines of 'if we decide on changing the day, we'll have to check the contract.'" Based on Barner's testimony, I conclude that he was opposed to checking the Agreement during the staff meeting on January 14, 2015, but was open to checking it after the meeting, if necessary.

1 an after school staff meeting that extended beyond 3:30 p.m. on Friday. Nobil  
2 explained further how staff could leave 15 minutes early on Tuesdays and Thursdays  
3 (i.e., at 3:15 p.m.), but not on Mondays (i.e., at 2:45 p.m.) because students would still  
4 be in the building.

5 In response to Nobil's point, Barner suggested carrying over the additional 15  
6 minutes into the following work week if the event was held on a Friday, to which Nobil  
7 replied with doubt based on Monday being a shorter work day. Attempting to assuage  
8 her doubts, Barner asserted that his idea to hold the event in May during the upcoming  
9 staff meeting could work as long as there was "consensus" and everyone voted.  
10 Unassuaged, Nobil stated that she first wanted to check the contract language before  
11 taking a vote.<sup>6</sup> Barner then stated that the discussion was "getting way too  
12 complicated," and ignored Nobil's request by asking "All those in favor" to vote by  
13 raising their hands on whether to schedule the Spirit Day event during the staff meeting  
14 on Wednesday, May 13, 2015. Nobil and McCabe abstained from voting. Barner tallied  
15 the votes and determined that a majority of staff members had voted in favor of his  
16 proposal.

17 At some point during or after the tally, Nobil told Barner that she had a copy of  
18 the Agreement upstairs in her classroom closet. She urged him, again, to allow her to  
19 check the contract; but, by that time Barner responded that, "it's already done; the

---

<sup>6</sup> Nobil testified that she specifically recalled asking Barner to check the contract at this point during the staff meeting. Barner testified that he could not recall whether Nobil asked to check the contract before taking the vote. Because Nobil had a more specific recollection of this event, I credit her testimony on this issue.

- 1 vote's already been taken.”<sup>7</sup> He then turned over the staff meeting to Barbara Landon  
2 who conducted the QRI training; after which, the meeting ended.

---

<sup>7</sup> On direct examination, Barner testified that he never told Nobil that it was too late to check the Agreement because “the vote’s already been taken.” On this issue, Lewis could not specifically recall this part of the discussion, while Bell and Jacob could only testify to their general recollection of these events. In contrast, Nobil and McCabe testified that they specifically recalled Barner saying, “Nope. It’s already done; the vote’s already been taken.” Based on their specific recollections of Barner’s disputed comments, I credit both Nobil’s and McCabe’s testimony on this point.

On direct examination, Nobil also testified that when Barner made these comments, his tone was “demeaning, dismissive and disrespectful.” Barner testified that despite Nobil being visibly “angry” during the staff meeting, he never raised his voice or disrespected her during their discussion. Based on the totality of the evidence, I credit Barner’s testimony that his tone toward Nobil was not “demeaning” or “disrespectful.” First, Barner testified that he never raised his voice when he spoke to Nobil, and the Association did not provide any evidence to rebut this claim. Next, other witnesses, including McCabe, corroborated Barner’s testimony by conceding that Barner is not a loud person and does not get loud during staff meetings. Jacobs also provided un rebutted testimony that Barner is “not really ever loud or mean” and that his demeanor at the January 14, 2015 staff meeting was “nice.” Testifying further, Lewis stated that during the staff meeting Barner was “professional” while Bell testified that Barner’s demeanor was “calm.” Finally, nothing in the record shows that Barner made other statements or took any other physical action(s) during the staff meeting that demonstrated demeaning or disrespectful conduct. Based on this evidence, I credit Barner’s testimony that he did not demean or disrespect Nobil at the staff meeting.

However, I do not credit Barner’s testimony on whether his remarks toward Nobil at that meeting were “dismissive.” The facts show that on four occasions during the January 14, 2015 staff meeting—and within a span of two or three minutes—Barner either ignored or denied all requests made by Nobil and McCabe to check the Agreement. Both Nobil and McCabe testified that the purpose of their requests was to prevent staff members from making uninformed votes about when to schedule the Spirit Day event. Additionally, Barner testified that the discussion over when to schedule Spirit Day had become “too complicated” and even conceded that it “would be great” to check the contract (albeit, after the staff meeting, and only if necessary). Despite these facts, Barner ignored Nobil’s first request by conducting the vote, and then dismissed her second request as untimely because by that point the vote had “already been taken.” Based on this evidence, I credit Nobil’s testimony that Barner’s actions toward her were dismissive.

**1   Nobil's Post-Staff Meeting Discussions**

2           Immediately after the staff meeting, Nobil walked down the hallway and entered  
3   McCabe's classroom where McCabe told Nobil that she was sorry for the way that  
4   Barner spoke to her during the meeting. Nobil told McCabe that she had nothing for  
5   which to be sorry, and then went home where she drafted an e-mail summary of the  
6   staff meeting to send to Association Representative Donna Bartlett (Bartlett) and  
7   Association President John Gunning (Gunning). That same evening, when Nobil  
8   finished her draft, she sent a copy to McCabe by e-mail, which stated, in pertinent part:

9           Donna and John,

10           A couple of issues came up at our staff meeting today.

11  
12           [First], on the agenda, under "Other", David Barner brought up this: He  
13   said that the PTO really liked what we did last year for a "Social Event",  
14   and would like us to do it again this year. (Remember, last year, we did  
15   NOT have a Back-to-School Night so we had to do another "night" by  
16   contract? So, the Dawe School Staff ended up having...a social gathering  
17   on the playground after school from 3:00 – 4:30 PM to cover the  
18   contractual obligation of 1 ½ hours past contract time).... I reminded him  
19   that the reason we did it last year was because it was our third night by  
20   contract, but this year we already did Back-to-School Night, Parent  
21   Teacher Conferences in October, and will be doing Parent-Teacher  
22   Conferences again at the end of this month. He said he knew that.... He  
23   said he wasn't sure of what our contract says, but he thinks we could do  
24   that. Sue McCabe politely said that she'd like to check the contract  
25   language before we make any decisions. Someone said they doubted  
26   that the PTO would want to do it on a Wednesday; they'd probably want a  
27   Friday again. He said he knew that the contract states Staff Meeting  
28   would be on Wednesdays, but if the PTO preferred a different day "we  
29   could just move May's Staff Meeting to a different day as long as we had a  
30   week's notice." He thought "we could just vote on it, and if we have a  
31   consensus on it, we could do it." Sue McCabe again stated that she'd like  
32   to check the contract language before we vote on anything.... I reminded  
33   David [Barner] that Staff Meetings are 30 minutes past the usual teacher  
34   dismissal time, so if we did this on a Friday it would have to end at 3:30  
35

1 not 4:00. He disagreed and said if we were to do it on a Friday, we could  
2 just leave 15 minutes earlier every day that week instead of just 15  
3 minutes earlier on just Tuesday and Thursday. I said that wouldn't work  
4 because no one would be able to leave at 2:45 on Monday because the  
5 students wouldn't all be gone at 2:45. So he said, "We could carry that 15  
6 minutes over into the next week, and you could leave 15 minutes earlier  
7 one day the following week...." I said I didn't think that could be done. He  
8 said, "Sure it can, if we have a consensus. So let's take a vote." I said I'd  
9 like to check the contract before we take a vote. He ignored me and  
10 proceeded to take a vote. Sue McCabe and I did not vote. I spoke up and  
11 said, "I have a copy of the contract upstairs. May I go get it so we can  
12 check the language?" He rudely responded, "Nope. It's already done.  
13 The vote's already been taken...."  
14

15 I would like an STA representative to address this issue with him, please,  
16 since we don't have our Building Rep. available to speak to David [Barner]  
17 about this. First, I don't believe a Staff Meeting can be used for a  
18 combined Staff and PTO social event. I have spoken to David [Barner]  
19 about the purpose of staff meeting in the past when I was Building Rep,  
20 and so has Sue McCabe when she was our Building Rep. He chose to  
21 ignore this again. Second, I read page 10 of the contract and there is  
22 nothing in there that allows this even with a "consensus vote." Third, he  
23 did not allow me (or Sue McCabe) to check the contract before the vote  
24 was taken by the staff, so our members were making an uninformed vote.  
25 I do not want to confront David [Barner] on this right now.... Yet, at the  
26 same time, I feel very strongly that this needs to be addressed. The Dawe  
27 School Staff, and as a result the STA, will be in serious trouble when I  
28 retire because no one wants to be our Building Rep and deal with him.  
29 They're all afraid. John [Gunning], will you, please step in and help with  
30 this?

31 About an hour later that evening, McCabe replied to Nobil at 8:28 p.m., stating

32 "Perfectly said!"

### 33 **The 2014-15 Spirit Day**

34 On Wednesday, May 13, 2015, the Spirit Day event occurred, starting at 3:00  
35 p.m. and ending at 4:30 p.m. At about five minutes to 4:00 p.m. on that date, the Spirit  
36 Day disc jockey (DJ) announced that teachers could leave the event at 4:00 p.m. After

1 the DJ's announcement, the event continued until 4:30 p.m. with some teachers leaving  
2 at 4:00 p.m.

3 OPINION

4 **Direct Dealing**

5 Section 10(a)(5) of the Law requires employers to bargain in good faith with their  
6 employees' exclusive bargaining representative. The duty to bargain collectively with  
7 the employees' exclusive representative prohibits an employer from circumventing the  
8 union by dealing directly with bargaining unit members on mandatory subjects of  
9 bargaining. Town of Ludlow, 28 MLC 365, 367, MUP-2422 (May 17, 2002); Service  
10 Employees International Union (SEIU), AFL-CIO, Local 509 v. Labor Relations  
11 Commission, 431 Mass. 710, 715 (2000); Trustees of the University of Massachusetts  
12 Medical Center, 26 MLC 149, 160, SUP-4392 and SUP-4400 (March 10, 2000). Direct  
13 dealing is impermissible for at least two reasons. First, direct dealing violates the  
14 union's statutory right to speak exclusively for the employees who have elected it to  
15 serve as their sole representative. Suffolk County Sheriff's Department, 28 MLC 253,  
16 259, MUP-2840 (Jan. 30, 2000) (citing SEIU, Local 509, 431 Mass. at 715). Second,  
17 direct dealing undermines the employees' belief that the union actually possesses the  
18 power of exclusive representation to which the statute entitles it. Suffolk County Sheriff's  
19 Department, 28 MLC at 295.

20 The Association argues that the Committee unlawfully engaged in direct dealing  
21 with Nobil, McCabe and other members of the bargaining unit at the January 14, 2015  
22 staff meeting when Barner discussed with them the issue of when to schedule the Spirit

1 Day event. Despite Barner's ultimate decision to hold Spirit Day during a Friday staff  
2 meeting in May of 2015, which the Association concedes was within Barner's  
3 managerial prerogative, it asserts that the Committee's failure to first negotiate with the  
4 Association over when to schedule the Spirit Day event violated Section 10(a)(5) of the  
5 Law.

6 The Committee argues that because Barner's discussion about *whether* to hold a  
7 Spirit Day event involved a non-mandatory subject of bargaining, any discussion about  
8 *when* to schedule the event cannot amount to direct dealing. Instead, the  
9 Committee contends that the January 14, 2015 staff meeting was merely a  
10 "brainstorming" session (as opposed to an actual negotiation) about whether to hold the  
11 event in conjunction with the upcoming staff meeting in May. Although the Committee  
12 admits that no Association officials were present during that discussion, it contends that  
13 there was no bypass of the Association because Barner's communication with unit  
14 members during the staff meeting did not have the purpose or effect of undermining the  
15 Association's authority. Rather, the Committee asserts that based on the length of the  
16 Spirit Day discussion (i.e., approximately two or three minutes), and based on Barner's  
17 decision to ultimately keep May 13, 2015 as the date for the Spirit Day event, Barner  
18 had the right to exercise his non-delegable educational prerogative and discuss the  
19 scheduling issue with staff members.

20 I agree that the Committee has the non-delegable educational prerogative to  
21 create educational events, such as Spirit Day, which includes Barner's facilitation of an  
22 open discussion about that event at the January 4, 2015 staff meeting. Board of Higher

1 Education, 41 MLC 217, SUP-08-5396 (Feb. 6, 2015). I also agree that Article IX,  
2 Section VIII B of the Agreement provides Barner with the unequivocal right to schedule  
3 social events like Spirit Day because that provision clearly states, "all teachers are  
4 required to attend three events scheduled outside regularly scheduled work hours".  
5 Moreover, Article VIII, Section I of the Agreement gives him the exclusive right to  
6 schedule an after school staff meeting that ends 30 minutes after the normal teacher  
7 dismissal time. While nothing in the contract limited Barner's ability to turn the May  
8 2015 staff meeting into a Spirit Day event, there is no evidence that the Association  
9 waived its right to act as the exclusive representative for unit members at the January  
10 14, 2015 staff meeting during Barner's discussion about when to schedule the Spirit  
11 Day event (i.e., whether to hold it on Wednesday, May 13 or move it to a Friday).  
12 Contrast City of Springfield, 41 MLC 342, MUP-09-5623 (May 29, 2015) (CERB found  
13 no direct dealing where employer successfully raised affirmative defense of waiver by  
14 contract). In fact, nothing in the Agreement gives Barner the exclusive right to negotiate  
15 directly with unit members over the working hours of contractual social events like Spirit  
16 Day without first bargaining with the Association. Id. at 342 n.4.

17 Even though the Committee maintains that there was no need for Barner to  
18 negotiate with the Association after the January 14, 2015 staff meeting based on group  
19 consensus and Barner's subsequent decision not to disturb the selected date for the  
20 Spirit Day event, these facts are irrelevant because the Committee was still required to  
21 first negotiate with the Association over mandatory subjects, such as hours of work. See  
22 City of Lowell, 28 MLC 157, MUP-2478 (Oct. 15, 2001) (whether the employer came to

1 an agreement with the employee was irrelevant because the bypass itself was sufficient  
2 to violate the Law); see also Medford School Committee, 1 MLC 1250, 1252, MUP-690  
3 (Jan. 20, 1975) (hours of work are a mandatory subject of bargaining under Section 6 of  
4 the Law). Thus, the Committee could not bypass the Association and bargain directly  
5 with unit members who attended the January 14, 2015 staff meeting over when to  
6 schedule the 2015 Spirit Day event. City of Lowell, 28 MLC at 159. Accordingly,  
7 because the Committee via Barner bypassed the Association on January 14, 2015, and  
8 dealt directly with unit members by asking them to vote on when to schedule the 2015  
9 Spirit Day event, I find that the Committee violated Sections 10(a)(5) and (1) of the Law.  
10 Id.

### 11 Chilling Conduct

12 A public employer violates Section 10(a)(1) of the Law when it engages in  
13 conduct that tends to interfere with, restrain, or coerce employees in the exercise of  
14 their rights under Section 2 of the Law. See Town of Bolton, 32 MLC 13, 18-19, MUP-  
15 01-3255 (June 27, 2005) (citing; Quincy School Committee, 27 MLC 83, 91-92, MUP-  
16 1986 (Dec. 29, 2000)); see also Groton-Dunstable Regional School Committee, 15 MLC  
17 1551, 1555-57, MUP-6748 (March 20, 1989). Absent a showing of animus, an  
18 employer may still violate that section of the Law if it takes adverse action against an  
19 employee while he or she is engaging in protected activity, provided that the employee's  
20 own conduct does not remove him or her from the Law's protection. Town of Bolton, 32  
21 MLC at 18-19.

1       The Commonwealth Employment Relations Board's (Board) inquiry into an  
2       alleged Section 10(a)(1) violation focuses on the effect of the employer's conduct on a  
3       reasonable employee, not on the employer's motivation behind the conduct. Town of  
4       Bolton, 32 MLC at 19 (citing Town of Winchester, 19 MLC 1591, 1595-96, MUP-7514  
5       (Dec. 22, 1992)); Town of Chelmsford, 8 MLC 1913, 1916-18, MUP-4620 (March 12,  
6       1982), aff'd sub nom. Town of Chelmsford v. Labor Relations Commission, 15 Mass.  
7       App. Ct. 1107 (1983). Also, the Board does not analyze whether the employer's  
8       conduct actually restrained or coerced an employee of his or her rights. Cape Cod  
9       Regional Technical High School District Committee, 28 MLC 332, 336, MUP-2541 (May  
10      15, 2002) (citing Groton-Dunstable Regional School Committee, 15 MLC at 1556-57).  
11      Expressions of employer anger, criticism, and ridicule directed at employees' protected  
12      activities are sufficient to constitute interference, restraint, and coercion of employees.  
13      Cape Cod Regional Technical High School District Committee, 28 MLC at 336-37 (May  
14      15, 2002) (citing Town of Winchester, 19 MLC at 1596).

15      Here, the Committee argues that Nobil was the only person at the January 14,  
16      2015 staff meeting who complained of Barner being "demeaning, dismissive and  
17      disrespectful." It also argues that during the Spirit Day discussion, Nobil was visibly  
18      angry despite Barner's need to proceed with the other agenda items for the staff  
19      meeting. Additionally, the Committee contrasts Nobil's demeanor against McCabe's  
20      testimony and the testimony of Lewis, Jacobs and Bell, which supports Barner's  
21      character as a person who is not loud or angry. Based on this evidence, the Committee  
22      contends that a reasonable person would understand why Barner denied Nobil's

1 requests to check the Agreement at the January 14, 2015 staff meeting. In the  
2 alternative, the Committee argues that because scheduling a Spirit Day event is within  
3 its non-delegable educational prerogative, Barner was within his rights to discuss when  
4 to schedule the event and deny any requests to consult the Agreement during the staff  
5 meeting.

6 Conversely, the Association argues that the evidence supports a finding of  
7 unlawful interference, restraint and coercion based on Barner repeatedly denying and/or  
8 ignoring Nobil and McCabe's requests to check the Agreement at the staff meeting.  
9 Specifically, it contends that Barner's conduct and his tone were demeaning,  
10 disrespectful and dismissive toward Nobil and McCabe when he denied their requests  
11 and disregarded their concerns about being fully-informed before the vote. Further, the  
12 Association contends that Nobil's testimony is more credible than Barner's, Lewis' and  
13 Bell's testimony because Nobil had a more specific recollection of what occurred during  
14 that part of the staff meeting.<sup>8</sup>

15 There is no dispute that Nobil and McCabe were engaged in concerted,  
16 protected activity when they raised concerns at the January 14, 2015 staff meeting  
17 about whether Barner's proposal to schedule the 2014-2015 Spirit Day event on  
18 Wednesday, May 13, 2015 complied with the Agreement. Nor is there any dispute that  
19 their requests to check the Agreement constituted concerted, protected activity.

---

<sup>8</sup> As discussed in my findings of fact, above, I have already resolved the parties' credibility arguments, finding that Nobil's testimony was more credible than the testimony of Barner, Lewis and Bell concerning Nobil's requests to check the contract.

1 However, there is a dispute about whether Barner's comments toward Nobil and  
2 McCabe restrained, interfered or coerced them in the exercise of their rights to question  
3 Barner's proposal and seek clarification via the contract. See generally, Town of  
4 Winchester, 19 MLC at 1596-98 (Board ruled that union officials have right to publicly  
5 protest working conditions).

6 On numerous occasions, Nobil and McCabe asked Barner to check the contract  
7 to ensure that unit members were fully informed before voting on when to schedule the  
8 Spirit Day event. During their discussion, Barner conceded that he was not sure  
9 whether he could accommodate the PTO's preference to have Spirit Day on a Friday by  
10 moving the Wednesday staff meeting in May of 2015. Based on his uncertainty,  
11 McCabe asked twice to check the Agreement, and Nobil pointed out the potential  
12 contractual problem of carrying over 15 minutes of early-departure time into the  
13 following work-week if the event was held on a Friday. Nobil also pointed out that the  
14 Agreement was nearby and easily accessible. Nonetheless, Barner decided that the  
15 conversation had become "too complicated." Despite his acknowledgement that the  
16 Spirit Day discussion was punctuated with uncertainty, confusion and complication, he  
17 still denied McCabe's and Nobil's requests to clarify the situation by checking the  
18 contract. Even after taking the vote, when Nobil reiterated her concerns, Barner  
19 dismissed her final request as untimely because the vote had "already been taken."

20 I find Barner's statements to be disparaging because they completely  
21 disregarded Nobil's and McCabe's legitimate concerns that voting to have Spirit Day on  
22 Wednesday, May 13, 2015 might violate the terms of the Agreement. See Groton-

1 Dunstable Regional School Committee, 15 MLC at 1557 (even without a direct threat of  
2 adverse consequences, the Board has found a violation when an employer makes  
3 disparaging remarks toward a union or the exercise of protected activity). A reasonable  
4 employee would likely be chilled by Barner's actions because, in a span of only two or  
5 three minutes, he repeatedly denied Nobil's and McCabe's requests to check the  
6 contract despite the complicated nature of the discussion; the close proximity and easy  
7 accessibility of the contract; the likelihood that the contract would clarify any confusion;  
8 the need for the unit members to be properly informed before casting their vote; and  
9 Barner's own uncertainty about whether his proposal complied with the contract. Cape  
10 Cod Regional Technical High School District Committee, 28 MLC at 336-37 (citing Town  
11 of Winchester, 19 MLC at 1596). At no point during the staff meeting did Barner warn  
12 staff that they had run out (or were running out) of time to discuss the issue of when to  
13 schedule the Spirit Day event. Nor is there any evidence that Nobil or McCabe were  
14 seeking to delay the meeting or the vote. Instead, Barner's dismissal of Nobil's and  
15 McCabe's requests prevented them from ensuring compliance with the terms of the  
16 Agreement during the January 14, 2015 staff meeting. Town of Chelmsford, 8 MLC at  
17 1916-18. This action violated Section 10(a)(1) of the Law.

#### 18 CONCLUSION

19 For the reasons stated above, I conclude that the Committee violated Section  
20 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it discussed with unit  
21 members possible dates and times to schedule a Spirit Day event at the January 14,  
22 2015 staff meeting. I also conclude that the Committee violated Section 10(a)(1) of the

1 Law when it denied unit members the opportunity to consult the Agreement before  
2 scheduling the Spirit Day event during the January 14, 2015 staff meeting.

3 ORDER

4 WHEREFORE, based on the foregoing, it is hereby ordered that the Stoughton  
5 School Committee shall:

6 1. Cease and desist from:

- 7 a. Dealing directly with employees represented by the Association over matters  
8 that are properly the subject of negotiations with the Association.  
9  
10 b. Making statements that would tend to interfere with, restrain, or coerce Nobil  
11 and McCabe from participating in concerted protected activity.  
12  
13 c. Interfering with, restraining, or coercing employees in the exercise of their  
14 rights guaranteed under the Law.  
15

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

- 17  
18 a. Sign and post immediately in conspicuous places where employees usually  
19 congregate or where notices to employees are usually posted, including  
20 electronically, if the Committee customarily communicates to its employees  
21 via intranet or e-mail, and maintain for a period of thirty (30) consecutive days  
22 thereafter signed copies of the attached Notice to Employees;  
23  
24 b. Notify the DLR in writing of the steps taken to comply with this decision within  
25 thirty (30) of the steps taken by the Committee to comply with the Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
KENDRAH DAVIS, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



**THE COMMONWEALTH OF MASSACHUSETTS  
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 (Committee) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it discussed with unit members possible dates and times to schedule a Spirit Day event at a January 14, 2015 staff meeting. The Hearing Officer has also held that the Committee violated Section 10(a)(1) of the Law by interfering with, restraining, and coercing employees in the exercise of their rights guaranteed under the Law.

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.

The Committee assures its employees that:

- WE WILL NOT deal directly with employees represented by the Association over matters that are properly the subject of negotiations with the Association.
- WE WILL NOT make statements that would tend to interfere with, restrain, or coerce unit members Linda Nobil and Sue McCabe from participating in concerted protected activity; and.
- WE WILL NOT interfere with, restrain or coerce employees in any right guaranteed under the Law.

\_\_\_\_\_  
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 Labor Relations, Charles F. Hurley Building, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).