

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

SPRINGFIELD SCHOOL COMMITTEE

and

SPRINGFIELD EDUCATION
ASSOCIATION, LOCAL 2023

*
*
*
*
*
*
*
*
*

Case No. MUP-15-4815

Date issued:

February 16, 2018

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Maurice M. Cahillane, Esq. - Representing the Springfield School
Committee

Ryan Dunn, Esq. - Representing the Springfield Education
Association, Local 2023

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Springfield School Committee (Committee)
2 violated Section 10(a)(1) of M.G.L. c.150E (the Law) by interfering with, restraining and
3 coercing bargaining unit members Lisa Pasay (Pasay), Diane Krawczynski
4 (Krawczynski), and Patricia Murphy (Murphy) in the exercise of their rights protected
5 under Section 2 of the Law. For the reasons explained below, I find that the Committee
6 did not violate Section 10(a)(1) of the Law as alleged.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

¹ On June 28, 2016, the Union withdrew a fourth Section 10(a)(1) allegation.

² On May 6, 2016, the Union requested a 45-day administrative closure of the case. The DLR granted that request on May 11, 2016. On June 8, 2016, the Union requested a reopening of the case, which the DLR also granted on that same day.

1 The Committee filed its Answer to the Complaint on April 6, 2017.³ On April 28,
2 2017, I conducted a hearing at which both parties had a full opportunity to be heard, to
3 examine and cross-examine witnesses, and to introduce evidence. Both the Committee
4 and the Union filed their post-hearing briefs on June 23, 2017.

5 ADMISSIONS OF FACT

6 The Committee admitted to the following facts:⁴

- 7
- 8 1. The City of Springfield (City) is a public employer within the meaning of Section 1
- 9 of the Law.
- 10
- 11 2. The Committee is the City's collective bargaining representative for the purpose
- 12 of dealing with school employees.
- 13
- 14 3. The Union is an employee organization within the meaning of Section 1 of the
- 15 Law.
- 16
- 17 4. The Union is the exclusive bargaining representative for all teachers who are
- 18 members of Unit A and who are employed by the Committee.
- 19
- 20 5. Pasay is a member of the bargaining unit described in paragraph 4.
- 21
- 22 6. Pasay served as a building representative for the Union from 2003 through 2013.
- 23
- 24 7. By letter dated June 10, 2015, the Committee notified Pasay that it intended to
- 25 terminate her employment, but it did not subsequently terminate her.
- 26
- 27 8. Krawczynski is a member of the bargaining unit described in paragraph 4.
- 28
- 29 9. By letter dated December 14, 2014, the Committee notified Krawczynski that it
- 30 intended to terminate her employment, however it did not subsequently terminate
- 31 her.

³ At the April 5, 2017 pre-hearing conference, the Union did not object to the Committee's late submission of its Answer.

⁴ In its Answer, the Committee made full and partial admissions of fact. This section of my decision reflects only the Committee's full admissions of fact.

1
2 10. Murphy is a member of the bargaining unit described in paragraph 4.

3
4 11. On March 20, 2015, the Committee notified Murphy that it intended to terminate
5 her employment.

6 STIPULATIONS OF FACT

7
8 The parties stipulated to the following facts:

9
10 1. Pasay is a teacher employed by the Committee.

11
12 2. Pasay engaged in concerted protected activity including, but not limited to raising
13 the bargaining unit members' concerns at meetings with the administration of her
14 Building, and that of the School District.

15
16 3. The activity described in paragraph 2 constitutes concerted protected activity
17 within the meaning of Section 2, of the Law.

18
19 4. The Committee had knowledge of the concerted protected activity described in
20 paragraph 2 by letter dated June 10, 2015, which notified Pasay of the
21 Committee's intent to terminate her employment; but, [it] did not subsequently
22 terminate her.

23
24 5. In or about November 2015, the Committee sought to schedule a meeting
25 pursuant to the June 10, 2015 notice of intent to terminate Pasay described in
26 paragraph 4. The parties met in or about January 2016, after which the
27 Committee took no action concerning contemplated termination of Pasay's
28 employment.

29
30 6. On April 28, 2015, Murphy entered into an agreement with the Committee
31 wherein she agreed to resign her employment at the conclusion of the 2014-2015
32 school year (SY). This agreement also provided that the Committee could
33 terminate Murphy earlier for insubordination, if necessary.

34
35 FINDINGS OF FACT

36 **Lisa Pasay**

37 For over 20 years, the Committee has employed Pasay as a teacher at Balliet
38 Elementary School (Balliet). At all relevant times, Pasay has held the teaching position

1 of science specialist at Balliet. Beginning in or about 2003, Pasay served as a building
2 representative for the Union and continued in that role until 2013. Between 2013 and
3 2016 she did not serve as the building representative, but resumed her role in that
4 capacity at some point in 2016 or 2017.

5 **1. The Union Meetings**

6 In October of 2011, Pasay met with Union president Tim Collins (Collins) to
7 discuss student disciplinary and staff safety issues. At some point after that meeting,
8 Collins met with Balliet principal Shadae Thomas (Thomas) to discuss student
9 disciplinary and staff safety issues. Collins never revealed to Thomas—or anyone else
10 from the Committee—that Pasay was his primary source of his information for that
11 meeting. Pasay did not attend the meeting between Collins and Thomas.

12 In or around June of 2012, then-Deputy Superintendent Dan Warwick (Warwick)
13 came to Balliet to conduct a staff meeting. Present at that meeting were Pasay, Collins,
14 and Chief of Human Resources Melissa M. Shea, Esq. (Shea). At some point during
15 the meeting, Pasay read aloud from a list of concerns that she compiled from other unit
16 members, which included issues about student discipline and staff morale.

17 **2. The Climate Survey**

18 Also, at some point during October of 2011, Pasay administered a climate survey
19 that required completion by all teachers and staff, including Thomas. Thomas informed
20 Pasay that Thomas would not complete the survey on that day. Pasay reminded

1 Thomas that all staff had to complete the survey in Pasay's presence. Thomas ignored
2 Pasay's reminder, returned the survey to Pasay and left the room.

3 **3. Pasay's Evaluations**

4 During the 2011-2012 SY, Thomas observed Pasay's classroom instruction and,
5 subsequently, gave Pasay an overall evaluation rating of "meets expectations."

6 Beginning in the 2012-2013 SY, the Committee implemented a new teacher
7 evaluation system called the Springfield Effective Educator Development System
8 (SEEDS). Under SEEDS, a building principal is required to make unannounced
9 observations of teachers' classroom instruction. Based on those observations, the
10 principal will evaluate a "professional status" teacher, and the Committee will place him
11 or her on either self-directed or directed (i.e., improvement) plans.

12 Pursuant to SEEDS, Thomas, along with the Committee's Director of Science
13 Ronald St. Amand (St. Amand), made unannounced visits to Pasay's classroom during
14 the 2012-2013 SY. At the conclusion of their observations, Thomas gave Pasay an
15 overall rating of "needs improvement" and placed her on a one-year, self-directed plan
16 for the 2013-2014 SY.

17 Beginning in March of 2014, and continuing through June of 2014, Pasay took
18 leave from employment pursuant to the federal Family and Medical Leave Act (FMLA).
19 Pasay continued her leave from September of 2014 through December of 2014, and
20 returned to Balliet at some point during the spring semester of the 2014-2015 SY. On

1 her return in January of 2015, Thomas placed Pasay on a 54-day improvement plan,
2 which extended Pasay's initial 2013 -2014 improvement plan through June of 2015.

3 Throughout the 2014-2015 SY, Thomas made several unannounced
4 observations of Pasay's classroom. After concluding her observations, Thomas sent
5 Pasay a "Notice of Intent to Terminate," dated June 10, 2015, which stated the reasons
6 for her termination:

7 You have been on an Improvement Plan since January 5, 2015, in which
8 you were offered many professional support opportunities and many forms
9 of feedback and your performance is still unsatisfactory.

10

11
12 You have received five ratings of Unsatisfactory on 2/6, 3/2, 3/17, 4/10
13 and 5/6 during unannounced observations.

14

15
16 This constitutes sufficient cause for termination....

17
18 You will be given the opportunity to review my decision to terminate you....
19 The Review Meeting will be held on June 15, 2015.... Please be advised
20 that the Superintendent of Schools is aware of and has approved this
21 action pursuant to Mass. Gen. Laws Ch. 71, sec. 42.

22
23 At some point during the 2015-2016 SY, Pasay met with Thomas who informed
24 Passay that she would not be terminated. The Committee confirmed Pasay's
25 employment status, allowing her to return to work at the beginning of the 2016-2017 SY.

26 **Diane Krawczynski**

27 Beginning in 1986, the Committee hired Krawczynski as an academic support to
28 the classroom computer teacher at the Washington school. After transferring
29 subsequently to three different schools within the Committee's school district, the

1 Committee finally transferred Krawczynski to the Dryden Memorial Elementary School
2 (Dryden) in 2000, where she has since been employed as an academic support and a
3 classroom science teacher. In July of 2014, the Committee hired Shelia Hoffman
4 (Hoffman) as principal at Dryden.

5 **1. The Union Meetings**

6 At some point in October of 2014, Krawczynski met with Union president Collins
7 and Union representative Rose Sattler (Sattler) to discuss concerns that bargaining unit
8 members had about safety and morale at Dryden. At some point after that meeting,
9 Krawczynski and Sattler co-authored a typed list of those concerns and presented a
10 copy of the list to Collins. The list did not identify Krawczynski's or Sattler's name, nor
11 did it identify the names of any other unit member.

12 On or about November 5, 2014, Collins met with Hoffman to address unit
13 members' concerns about safety and morale. During that meeting Collins provided
14 Hoffman with a copy of the typed list, but never revealed the co-authors' identities.
15 Krawczynski did not attend this meeting, and Collins never mentioned her name at any
16 point during the meeting.

17 **2. The Change to Krawczynski's Classroom**

18 In October of 2014, Hoffman met with Human Resources Chief Schools Officer
19 Elizabeth Crowley (Crowley) to discuss the annual census and assess student-to-
20 teacher ratios for budget allocation purposes. Based on the data, the Committee
21 concluded that it needed an additional classroom for a new third grade. To create the

1 necessary space, Hoffman decided to shift Krawczynski from a fixed-classroom teacher
2 to a mobile teacher position. At some point in November of 2015, Hoffman notified
3 Krawczynski that she would no longer have a fixed classroom, but would have to utilize
4 an equipment cart to wheel from classroom to classroom. Hoffman also secured
5 storage space in the Dryden gymnasium where Krawczynski could store her classroom
6 equipment and other supplies. She also offered Krawczynski custodial assistance for
7 the transition. Krawczynski complained to Hoffman that this change was difficult for her
8 due to an existing back problem. She also complained that she was unable to use a
9 mobile cart and was unable to move/lift items over ten pounds.

10 3. The 51A DCF Report

11 On or about November 14, 2014, Krawczynski was the subject of a report filed by
12 Hoffman with the Department of Children and Families (DCF). Two teachers had
13 informed Hoffman that Krawczynski had allegedly pushed a student. Sattler also
14 submitted a letter to Hoffman concerning Krawczynski's alleged involvement in the
15 pushing incident. Crowley instructed Hoffman to file a "51A" report with DCF and to
16 conduct an investigatory meeting. Pursuant to Crowley's instructions, Hoffman
17 scheduled a hearing in December of 2014 to investigate the matter. After the hearing,
18 neither Hoffman nor the Committee took further action against Krawczynski, and DCF
19 did not pursue the report.

20 4. Krawczynski's Evaluations

1 During the 2013-2014 SY, then-principal Diane M. Brouillard (Brouillard) and St.
2 Amand evaluated Krawczynski and gave her an overall rating of "needs improvement."
3 One reason for that rating was based on an incident where Krawczynski had tipped
4 "over a student's desk in frustration," for which Brouillard reprimanded Krawczynski by
5 letter dated November 12, 2013. At some point between the end of the 2013-2014 SY
6 and the beginning of the 2014-2015 SY, Brouillard left Dryden and was replaced by
7 Hoffman.

8 During the 2014-2015 SY, Hoffman, along with former principal Ellen Hurley
9 (Hurley) and St. Amand,⁵ conducted unannounced observations of Krawczynski's
10 classroom instruction pursuant to the new SEEDS requirements. Several of those
11 observations occurred on September 22, 2014, December 5, 2014, January 14 and 29,
12 2015, and March 5, 2015, resulting in an overall rating of "unsatisfactory." Based on
13 this rating, Hoffman placed Krawczynski on a 44-day improvement plan.

14 **5. Krawczynski's Leave of Absence and Notice to Terminate**

15 In May of 2015, Krawczynski took a medical leave of absence pursuant to the
16 FMLA. She returned about one year later on May 27, 2016. Because Krawczynski's
17 absence extended beyond six months, Human Resources reviewed her professional
18 status and determined that she was unable to perform her job duties. Consequently,
19 the Committee issued a notice of intent to terminate Krawczynski, dated December 14,
20 2015, which stated in part:

⁵ St. Amand accompanied Hoffman on only one observation on January 14, 2015. Hoffman does not have supervisory authority over St. Amand.

1 This letter constitutes notice of intent to terminate your employment as a
2 teacher at Dryden....The reason for your termination of employment is
3 detailed below:
4

5 Since May 20, 2015, you have been out of work and unable to perform
6 your job as a teacher at Dryden.... On November 17, 2015, your provided
7 [the Committee] with a doctor's note along with your accommodations
8 request indicating you could return to work with...[certain] restrictions....
9

10 Unfortunately, as a teacher within the Science program, these restrictions
11 cannot be accommodated. As such, because you cannot perform the
12 essential functions of your job you cannot return to work [for the
13 Committee].
14

15 As a result, I have concluded that the above constitutes sufficient cause
16 for your termination....effective December 23, 2015.
17

18 The notice of intent to terminate did not reference Krawczynski's prior
19 evaluations. In February of 2016, Krawczynski met with the Committee to discuss the
20 notice, at which time the Committee decided not to terminate her employment. When
21 Krawczynski returned to work in May of 2016, Hoffman reassigned her as a temporary
22 kindergarten teacher at Dryden for the remainder of the 2015-2016 SY. In that position,
23 the Committee provided Krawczynski with a fixed-classroom and a teaching aide.
24 Beginning in the fall of the 2016-2017 SY, Hoffman reassigned Krawczynski to the
25 "highly desirable" position of Science Intervention Writing teacher (intervention teacher)
26 at Dryden, which includes working with small groups of children. After observing and
27 evaluating Krawczynski in the intervention position, Hoffman gave her "proficient"
28 ratings.

Patricia Murphy

At all relevant times, Murphy worked as an intervention teacher at the Marty Walsh Elementary School (Walsh). By letter dated March 20, 2015, the Committee notified Murphy that it intended to terminate her employment. On or about April 28, 2015, Murphy signed a voluntary resignation agreement, effective on the last day of the 2014 – 2015 SY. The agreement stated that the Committee could terminate Murphy's employment for insubordination. It also stated, in pertinent part:

From April 28, 2015 to the end of the 2014-15 [SY], Ms. Murphy will not continue her regular duties. She will report to the principal at the Walsh School each day in the morning at her normal start time and will be assigned duties by the principal.

These duties will be primarily administrative, for example, refilling books in the library or assisting the librarian. Ms. Murphy will also check out with the principal at the end of the school day.

On April 30, 2015, Ms. Murphy will give the principal her keys and laptop. If Ms. Murphy, in the sole discretion of the principal is insubordinate or disruptive, the principal shall have the option to accelerate the date of Ms. Murphy's resignation. Except for Ms. Murphy's assigned duties, and potential acceleration of her date of resignation, in all other requests, all provisions of the collective bargaining agreement⁶ applicable to teachers shall apply to Ms. Murphy's employment at Walsh School.

....

The principal shall provide Ms. Murphy with a written assignment each day.

Pursuant to that resignation agreement, Bianchi initially assigned Murphy to work in the teachers' reference library (reference library) and to monitor students in the

⁶ The parties did not submit into evidence a copy of the pertinent collective bargaining agreement.

1 hallway as they came to the cafeteria for lunch. At no time did Bianchi assign Murphy to
2 assist cafeteria employees in serving lunch to students or to assist teachers on bus duty
3 at the end of the day.

4 **1. The Complaints against Murphy**

5 While Murphy was the only employee assigned to the reference library, other
6 employees sometimes went there for materials or lunch breaks. On Murphy's first day
7 in the reference library, a teacher came for books and chatted with Murphy, but stopped
8 once Bianchi entered the room. On another occasion, a paraprofessional employee
9 went to the reference library to have lunch, but Bianchi instructed her to eat lunch
10 elsewhere. Also around this time, Murphy monitored students as they went to the
11 cafeteria for lunch. On one occasion, Murphy believed that the cafeteria was "short-
12 staffed" and decided to assist the cafeteria employees by serving food to students.
13 Some of the cafeteria employees complained to Bianchi about possible safety code
14 violations and line disruptions caused by Murphy. Based on those complaints, Bianchi
15 instructed Murphy not to serve food or to perform other duties belonging to the cafeteria
16 staff. Bianchi also ended cafeteria duties and assigned her to work exclusively in the
17 teachers' reference library.

18 At some later point, Bianchi received another complaint from a teacher that
19 Murphy had left the reference library and went into that teacher's classroom (on more
20 than one occasion) to talk with her while she was teaching. Bianchi met subsequently

1 with Murphy, instructing her not to go into teachers' classrooms and disrupt them while
2 they were teaching.

3 At the end of the school day on or around May 20, 2015, Murphy was unable to
4 leave the school premises because school buses had blocked her car. While waiting for
5 the buses to clear, Murphy stood on the sidewalk and began talking to nearby teachers
6 who were on bus duty. Bianchi saw Murphy's interaction with those teachers and
7 instructed Murphy to refrain from talking to them because it disrupted their bus duties.

8 In or around mid-June 2015, Murphy tried to attend a baby shower that was held
9 for a paraprofessional employee on school grounds before school hours. By the time
10 she arrived around 9:30 a.m., the event was over. Even though all of the shower
11 participants were gone, Murphy stayed in the room. Soon after, Bianchi saw Murphy
12 and instructed her to return to the reference library.

13 **2. Murphy's Complaints to the Union**

14 At some point between April 28, 2015 and the end of the 2014-2015 SY, Murphy
15 contacted Union representative Peter Reese (Reese) concerning her working conditions
16 at the Walsh School. At some point in May or June of 2015, Reese contacted Shea at
17 Human Resources to discuss Murphy's working conditions.

1 By e-mail on June 8, 2015, Murphy expressed her concerns directly to Bianchi,
2 complaining that she was not allowed to talk to anyone.⁷ By reply e-mail on that same
3 day, Bianchi clarified her expectations of Murphy's job performance, stating, in full:

4 Mrs. Murphy,

5
6 I never said that you were not to interact with the staff. You are given
7 assignments each day and you are expected to be at those assignments
8 doing the work where and when the schedule states, as we agreed at the
9 hearing.

10
11 I asked that you not visit with staff at the end of the day while they are
12 supervising students getting on the bus.

13
14 You have been asked to park where all the staff parks in the staff parking
15 area, I was not aware that this was an issue. Do you need to park
16 elsewhere[?]

17
18 You can take your prep in the teachers' room or leave as you stated 4 x a
19 month or in room 10. You are asked not to take prep periods in
20 classrooms where teachers are teaching.

21
22 I never stated that you were restricted to areas, again you are given
23 assignments and expected to be doing those assignments in the assigned
24 places.

25
26 I hope that this clarifies things for you.

⁷ The Union did not enter Murphy's e-mail into the record. Instead, in an attempt to refresh her memory, Murphy read from a document that the Union represented as Murphy's e-mail. At the hearing, the Committee requested to review the document but the Union refused that request. On direct examination, Bianchi testified that some of the information alleged by Murphy in the e-mail was inaccurate. The Union did not rebut Bianchi's testimony on the veracity of that document. Consequently, because the Union failed to offer the document into the record, and because it did not rebut Bianchi's testimony, I credit Bianchi's testimony that the testimony given by Murphy regarding part of Murphy's e-mail was not credible.

Timeliness

The CERB will not toll the period of limitations on a continuing violation theory, if the alleged violation involves a discrete action that is not repeated in the six months preceding the filing of the charge. See, Felton, 33 Mass. App. Ct. at 928 (citing Boston

1 Superior Officers Federation v. Labor Relations Commission, 410 Mass. 890, 891
2 (1991)).

3 **1. Krawczynski**

4 The Committee argues that the Union's Section 10(a)(1) allegation concerning
5 Krawczynski is untimely because the alleged misconduct (i.e., the December 14, 2014
6 notice of intent to terminate) occurred more than six months after the Union filed its
7 Charge. I agree because the Union filed its Charge on September 9, 2015, which was
8 more than six months after it became aware of the Committee's December 14, 2014
9 letter. Because the Union has not shown good cause why it filed the Charge more than
10 six months past the statute of limitations, and because the Union does not allege a
11 continuing violation, I must dismiss this portion of the Complaint as untimely. Felton, 33
12 Mass. App. Ct. at 928; Town of Lenox, 29 MLC at 52.

13 **2. Pasay**

14 The Committee contends that the Union's Section 10(a)(1) allegation concerning
15 Pasay is untimely because the alleged misconduct (i.e., the June 10, 2015 notice of
16 intent to terminate) occurred more than two years after Pasay's concerted, protected
17 activity of meeting with Collins in October of 2011, and meeting with Superintendent
18 Warwick in June of 2012. However, I am unpersuaded by the Committee's contention.
19 The Complaint alleges specifically that the Committee's issuance of the June 10, 2015
20 letter was conduct that interfered with, coerced and restrained Pasay in the exercise of
21 her Section 2 rights. Because the Union filed its Charge on September 9, 2015, and

1 because that filing date is within six months of June 10, 2015, I find that the Charge is
2 timely as it relates to Pasay. Felton, 33 Mass. App. Ct. at 928; Town of Lenox, 29 MLC
3 at 52.

4 **Section 10(a)(1)**

5 Pursuant to Section 2 of the Law, an employee has the right to “engage in lawful,
6 concerted activities for the purpose of collective bargaining or other mutual aid or
7 protection, free from interference, restraint, or coercion.” An employer violates Section
8 10(a)(1) of the Law when its conduct may reasonably be said to tend to interfere with,
9 restrain, or coerce employees in the free exercise of their rights under Section 2 of the
10 Law. Bristol County Sheriff’s Department, 31 MLC 6, 15, MUP-2872 (July 15, 2004)
11 (citing Quincy School Committee, 27 MLC 83, 91, MUP-1986 (Dec. 29, 2000)).

12 The focus of a 10(a)(1) inquiry is the objective effect that the employer’s conduct
13 would have on a reasonable employee. Bristol County Sheriff’s Department, 31 MLC at
14 15 (citing Town of Winchester, 19 MLC 1591, 1596, MUP-7514 (Dec. 22, 1992)). The
15 subjective impact that the employer’s conduct had on a specific employee is not
16 determinative of a violation. Bristol County Sheriff’s Department, 31 MLC at 15 (citing
17 Town of Winchester, 19 MLC at 1596)). Further, the employer’s motivation for the
18 conduct and whether it was successful in coercing or restricting employee exercise is
19 not considered by the CERB. Bristol County Sheriff’s Department, 31 MLC at 15 (citing
20 Town of Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12, 1982); Town of
21 Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct. 1107 (1983)). Nor does

1 the CERB consider whether the coercion succeeded or failed. Bristol County Sheriff's
2 Department, 31 MLC at 15 (citing Groton-Dunstable Regional School Committee, 15
3 MLC 1551, 1556, MUP-6748 (March 20, 1989)).

4 **1. Pasay**

5 The Union argues that the Committee interfered, restrained and coerced Pasay
6 in the exercise of her rights protected under Section 2 of the Law. Specifically, it
7 contends that Thomas' conduct during the climate survey of October of 2011, her
8 evaluations of Pasay during the 2013 -2014 SY and 2014-2015 SY, and the
9 Committee's issuance of a notice of intent to terminate on June 10, 2015, chilled
10 Pasay's rights in violation of Section 10(a)(1) of the Law. While the Committee
11 concedes that Pasay was engaged in concerted, protected activity during the 2011-
12 2012 SY, it contends that there is no evidence that Pasay continued that activity into
13 subsequent school years between 2013 and 2016. It also contends that because
14 Pasay's protected activity occurred years prior to her June 10, 2015 notice of intent to
15 terminate, there is no reasonable connection linking her prior activity to that notice.

16 The Union's arguments fail for several reasons. First, its contentions related to
17 Pasay's evaluations prior to and during the 2013-2014 SY are inapposite because the
18 Investigator dismissed allegations related to that school year in the Complaint.
19 Similarly, its contention that the conduct of Thomas during the climate survey
20 constituted chilling conduct is also inapposite because it falls beyond the scope of the
21 Complaint. The only allegation raised by the Investigator is whether the June 10, 2015

1 notice of intent to terminate Pasay amounted to unlawful conduct. Next, there is no
2 evidence that Pasay was engaged in protected, concerted activity during the 2014-2015
3 SY. In fact, Pasay admittedly ceased all of her duties as Union representative between
4 2013 and 2016. Finally, when Thomas observed Pasay during the 2014-2015 SY, she
5 determined that Pasay's job performance was "unsatisfactory" on at least five occasions
6 (i.e., February 6, March 2 and 17, April 10 and May 6, 2015). These unsatisfactory
7 reviews resulted in the Committee's ultimate decision to issue its June 10, 2015 notice
8 of intent to terminate Pasay.

9 Based on this evidence, I find that the Committee's actions do not rise to a
10 Section 10(a)(1) violation. First, Thomas conducted Pasay's 2014-2015 performance
11 evaluation pursuant to SEEDS, which is the same system applied to all similarly-
12 situated teachers at the Balliet School. The Committee subjects all teachers to
13 unannounced classroom observations, and evaluates them based on their
14 "professional" status, which requires placement in either self-directed, directed or
15 "improvement" plans. There is no evidence that Thomas deviated from these standards
16 when she evaluated Pasay during the 2014-2015 SY. Further, the Committee issued
17 its June 10, 2015 notice of intent to terminate Pasay pursuant to G.L. c. 71, sec. 42, and
18 nothing in the record shows that the Committee deviated from the statute when it issued
19 its notice of intent. Although Pasay believed that Thomas' evaluation was conducted
20 with the intent to chill Pasay's rights to engage in protected activity, her subjective belief

1 is not determinative of whether a violation occurred. Bristol County Sheriff's
2 Department, 31 MLC at 15, 18.

3 Consequently, the Union is unable to show that the Committee engaged in action
4 that would chill reasonable employees in the exercise of their rights protected under
5 Section 2 of the Law. Thus, the Union cannot satisfy its burden of proving that the
6 Committee violated the Law in the manner alleged. Bristol County Sheriff's Department,
7 31 MLC at 18; contrast City of Boston, 26 MLC 80, 83, MUP-1478 (Jan. 6, 2000)
8 (CERB found that employer's discipline for concerted, protected conduct during a
9 grievance hearing chilled reasonable employees in the exercise of their rights to engage
10 in grievance proceedings). Therefore, I dismiss this portion of the Complaint.

11 2. Murphy

12 The Union argues that the Committee interfered, restrained and coerced Murphy
13 in the exercise of her rights protected under Section 2 of the Law. Specifically, it
14 contends that principal Bianchi prevented Murphy from seeking mutual aid and
15 protection from the Union between April 28, 2015 and the end of the 2014-2015 SY
16 when she assigned Murphy to the reference library and restricted her contact with other
17 unit members. Conversely, the Committee argues that Murphy entered into a voluntary
18 resignation agreement on April 28, 2015, which specifically outlined the scope of her
19 duties and warned her that it could terminate her employment for insubordination. The
20 Committee also argues that despite Murphy's violation of that agreement on numerous

1 occasions, Bianchi refrained from terminating Murphy's employment or taking any other
2 action that interfered with her Section 2 rights.

3 While Bianchi reassigned Murphy to work in the reference library pursuant to the
4 terms of the agreement, there is no evidence that she prohibited Murphy from seeking
5 mutual aid and protection from the Union. After receiving numerous complaints from
6 various employees, Bianchi instead directed Murphy not to interrupt teachers, cafeteria
7 workers and other employees while they performed their duties. Despite the Union's
8 contentions, there is no evidence that Murphy ever engaged with those employees for
9 the purpose of seeking mutual aid or protection. Rather, it is undisputed that Murphy
10 interacted with those employees for the sole purpose of socializing. Further, when
11 Murphy complained to principal Bianchi by e-mail in June of 2015 about her working
12 conditions, Bianchi replied immediately and resolved Murphy's concerns by clarifying
13 her expectations of Murphy's job duties pursuant to the agreement.

14 Based on the record, I do not find that a reasonable employee would be chilled
15 by Bianchi's actions of assigning Murphy to the reference library or directing her not to
16 interfere with other working employees. Except for her contact with Reese, nothing
17 shows that Murphy was engaged in any concerted, protected activity related to her
18 interaction with other unit members. Contrast, Bristol County Sheriff's Department, 31
19 MLC at 16 (citing Quincy School Committee, 19 MLC 1476, 1480-82, MUP-5951 (Oct.
20 21, 1992) (employer cannot electively forbid discussion of certain types of union
21 business without running afoul of Section 10(a)(1) of the Law)). Further, there is no


1 evidence that Bianchi harbored animus toward Murphy or deviated from the terms of the
2 agreement. Rather, the record shows that Bianchi was authorized to terminate
3 Murphy's employment at any time for insubordination, but instead exercised restraint
4 while trying to work with Murphy and ensure that Murphy completed her tenure through
5 the end of the school year.

6 Consequently, the Union cannot show that the Committee engaged in any action
7 that would chill reasonable employees in the exercise of their rights protected under
8 Section 2 of the Law. Therefore, it cannot satisfy its burden of proving that the
9 Committee violated Section 10(a)(1) of the Law in the manner alleged. Bristol County
10 Sheriff's Department, 31 MLC at 18; contrast City of Boston, 26 MLC at 83 (CERB
11 found that issuing discipline for concerted, protected conduct during a grievance hearing
12 chilled reasonable employees in the exercise of their rights to engage in grievance
13 proceedings). Therefore, I dismiss this portion of the Complaint.

14 CONCLUSION

15 For the reasons stated above, I conclude that the Committee did not violate
16 Section 10(a)(1) of the Law as alleged.

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.