

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

COMMONWEALTH OF MASSACHUSETTS/
COMMISSIONER OF ADMINISTRATION
AND FINANCE

and

SEIU, LOCAL 509

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Case Number: SUP-16-5168

Date Issued: April 12, 2018

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Mark P. Detwiler, Esq. Representing the Commonwealth of Massachusetts

James Hykel, Esq. Representing SEIU, Local 509

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this matter is whether the Commonwealth of
2 Massachusetts/Commissioner of Administration and Finance (Commonwealth or
3 Employer), acting through MassHealth (MassHealth), interfered with, restrained or
4 coerced its employees in the exercise of their rights guaranteed under Section 2 of
5 Massachusetts General Laws, Chapter 150E (the Law) in violation of Section 10(a)(1) of
6 the Law by: interrogating employees concerning their union activities, threatening
7 employees with unspecified reprisals because they engaged in union activities, and
8 surveilling employees while they conducted union meetings. Based on the record and
9 for the reasons explained below, I find that the Commonwealth did not unlawfully

1 interrogate employees concerning their union activities. The Commonwealth did,
2 however, violate the Law by threatening employees with unspecified reprisals for
3 engaging in union activities, and by surveilling employees while they conducted union
4 meetings.

5 STATEMENT OF THE CASE

6 On March 30, 2016, Service Employees International Union, Local 509 (Union)
7 filed a charge of prohibited practice with the Department of Labor Relations (DLR)
8 alleging that the Commonwealth had violated Sections 10(a)(1), 10(a)(3) and 10(a)(5) of
9 the Law. On November 9, 2016, a DLR Investigator conducted an in-person
10 investigation of these allegations. On December 14, 2016, the Investigator issued a
11 Complaint of Prohibited Practice and Partial Dismissal alleging that the Commonwealth
12 had violated Section 10(a)(1) of the Law, and dismissing the 10(a)(3) and 10(a)(5)
13 allegations. On December 19, 2016, the Commonwealth filed an Answer to the
14 Complaint of the Prohibited Practice.

15 On October 5, 2017, I conducted a hearing during which the parties received a
16 full opportunity to be heard, to examine and cross-examine witnesses, and to introduce
17 evidence.¹ On December 15, 2017, the parties filed post-hearing briefs.

18 STIPULATIONS OF FACT

- 19
20 1. The Commonwealth of Massachusetts is a public employer within the meaning of
21 Section 1 of the Law.

¹Prior to the outset of the hearing, the Commonwealth requested the sequestration of witnesses. I granted the Commonwealth's request. The Commonwealth designated Ricardo Couto (Couto), a Labor Relations Specialist, as its essential representative, and he remained present throughout all witness testimony. The Commonwealth subsequently called Couto as a rebuttal witness, and I noted on the record that he had been present throughout the hearing.

- 1
2 2. Service Employees International Union, Local 509 is an employee organization
3 within the meaning of Section 1 of the Law.
4
5 3. The Union is the exclusive statewide bargaining representative for certain
6 employees employed in Unit 8 in the categories of Benefit Eligibility Review,
7 Social Worker A/B/C and D.²
8

9 FINDINGS OF FACT

10 General Background

11 MassHealth is a state agency responsible for ensuring that all residents of
12 Massachusetts have access to health care. Since December 7, 2015, Diane Pixley
13 (Pixley) has been the Director of the Taunton MassHealth Enrollment Center (Taunton
14 MEC). As the Director, Pixley is responsible for the day to day operations of the
15 Taunton MEC, including personnel and labor relations issues. The primary function of
16 the Taunton MEC is to provide walk-in and telephone services related to the health care
17 enrollment of Massachusetts residents; certain administrative hearings also occur at the
18 Taunton MEC.

19 The Union represents approximately sixty-five members at the Taunton MEC.
20 Katherine Burgess (Burgess) is the Union's Chief Steward at the Taunton MEC, and
21 she is also a member of the Union's Chapter Board. She has worked at the Taunton
22 MEC as a BERS A/B for more than eleven years. Burgess' primary job duty as a BERS
23 A/B is to answer incoming phone calls. Jennifer Doe (Doe) is a Union employee and
24 currently the Union's Lead Internal Organizer. During the events at issue in this matter,
25 she was a Union Field Representative responsible for all MassHealth facilities. Doe
26 was a Field Representative for three and a half years.

²Per the Collective Bargaining Agreement, the correct job titles are Benefits Eligibility and Referral Social Worker (BERS) A/B, C and D.

1 The Taunton MEC

2 The Taunton MEC shares a building with several other state agencies, and
3 occupies parts of the building's first two floors. An elevator and stairs link these two
4 floors. The first floor contains the health care reform unit; and also a public walk-in
5 area, hearing rooms, a training room,³ and a staff lounge. On the second floor, a
6 secure door separates a hallway, containing the elevator and restrooms, from the work
7 area. The second floor work area contains a clerical unit, an intake unit, an integration
8 unit and a community ongoing unit. Upon passing through the secure door from the
9 hallway into the work area, the office of Assistant Director Jenny Duvall (Duvall), Room
10 200, is on the immediate left. Proceeding down the hallway away from the secure door,
11 the next room on the left is a large conference room, Room 201. The employee break
12 room is to the right, across from Room 201. Proceeding farther down the hallway away
13 from the secure door, and immediately after Room 201 on the left, is Pixley's corner
14 officer, Room 202.⁴ Employee cubicles and storage rooms largely comprise the
15 remainder of the second floor work area.

16 Throughout the day, Pixley frequently has occasion to walk about the Taunton
17 MEC. She goes to Room 200 to speak with Duvall seven to ten times a day, and she
18 uses the elevator three or four times a day to enter and exit the building and to check on

³The training room has windows that allow one to see into it from the work area if the blinds on the windows are not drawn. Burgess' cubicle is directly across from the training room. When Burgess is sitting in her cubicle, she can see people walk by the area. Pixley walks by this area on occasion, but not often.

⁴The distance from Pixley's office to the secure door is approximately twenty-five feet. Walking this distance takes Pixley no more than ten seconds.

1 the walk-in and staff areas on the first floor. She also goes to the second-floor
2 breakroom two or three times a day.

3 Room 201

4 Two wooden doors access Room 201 from the hallway. These doors have
5 windows that allow one to see into Room 201 from the hallway, and vice versa.⁵ A
6 windowless door inside Room 201 also directly connects Room 201 with Room 202,
7 Pixley's office. As of the date of the hearing, white noise machines, which drown out
8 audible noise, had been installed outside both Room 201 and Room 202 for over six
9 months; they were not installed during the events at issue.⁶

10 February 2016 Union Membership Meeting

11 The Union holds membership meetings at the Taunton MEC three to four times
12 per year. So as not to disrupt operations, the Union splits the membership meeting into
13 a first and second session, with some members attending the first session and other
14 members attending the second session. Each session usually lasts an hour.

15 In February 2016, the Union held a membership meeting in Room 201.⁷ Burgess
16 and Doe, along with between one-half and two-thirds of the Union's membership,
17 attended the first session from 10:00 am to 11:00 am. During this first session, Pixley
18 walked by Room 201 several times. Each time that Pixley walked by Room 201 she
19 looked in at the membership meeting through the door windows and scanned the room

⁵These windows are approximately the size of two and a half pieces of 8 ½ x 11 paper.

⁶Prior to the installation of the white noise machines, Pixley could hear from her office the muffled conversations of people speaking in the conference room.

⁷Neither party introduced evidence to establish the date of the February membership meeting.

1 before moving on. At approximately 10:59 am, Pixley entered Room 201 unannounced
2 and told the membership to return to work.⁸ Pixley then left Room 201 before returning
3 within a minute to again tell the membership to return to work. The first membership
4 session then adjourned.

5 March 9, 2016 Union Meetings Prior to Local Labor-Management Meeting

6 After receiving notice that the Union would meet with certain members on the
7 morning of a March 9, 2016 local labor-management meeting (labor-management
8 meeting), Pixley confirmed via email with the Union's President, Adrienne Weiss
9 (Weiss), that the meeting would only include the integration unit and would not also
10 include the intake unit. On March 9, 2016, prior to the labor-management meeting,
11 Burgess met with the integration unit in the training room on the first floor of the Taunton
12 MEC. The meeting lasted between forty-five minutes and one hour. During this
13 meeting, Pixley walked by the training room two or three times. Pixley looked into the
14 training room each time that she walked by the room. Pixley did not stop as she walked
15 by the training room, and she did not enter the training room during the meeting.

16 While Burgess was meeting with the integration unit, Doe also met with some
17 members of the intake unit. About ten minutes into Doe's meeting, Pixley arrived and
18 asked to speak with Doe outside the room. Pixley explained to Doe that both units were
19 not supposed to meet at the same time, and Doe's meeting then ended.

20 March 9, 2016 Local Labor-Management Meeting

⁸ Pixley testified, without specifying that she was talking about the February meeting, that she interrupted a Union meeting once because it "ran over," and she then returned to her office and "waited a little bit" before returning to the meeting again because "they were still meeting." I credit the more specific testimony of Burgess, which Doe generally corroborated.

1 On March 9, 2016, the parties held a labor-management meeting. Those present
2 for the Union included: Doe, Burgess, Weiss, the Union's Vice President Valerie
3 Copeland, and stewards Antonio Rodrigues, Joann Araujo-Moniz and Jernice Diaz.
4 Those present for local management included: Pixley, Duvall, and five team managers.
5 Additionally, Couto and Donna Morrin (Morrin), also a Commonwealth Labor Relations
6 Specialist, participated via conference call.

7 This was Pixley's first local labor-management meeting as Director of the
8 Taunton MEC. After consulting with her team managers about discussion topics for this
9 meeting, Pixley wrote, by email to Weiss dated March 8, 2016:

10 These are some items the managers would like discussed tomorrow as well,
11 please let me know if you have any questions:
12

- 13 •Professionalism in meetings
- 14 •Responses to issues/incidents prior to a complete investigation of the facts
- 15 •Manager directives
- 16 •Clarity on policies, procedures, union contract contents
- 17 •Allegations of management misconduct
- 18

19 In prior local labor-management meetings, management did not usually send
20 agenda items to the Union. "Professionalism in meetings" and "Allegations of
21 management misconduct" were items that Pixley wanted to discuss at the meeting.
22 Pixley wanted to discuss "Professionalism in meetings" because of tension and
23 communication challenges in the office that Pixley saw as a Union problem. Pixley and
24 her managers felt that at various meetings they had been spoken to in a manner that
25 was not respectful. Additionally, and most recently, Duval had informed Pixley that two
26 staff members had been upset about how the staff members were treated at a Union
27 meeting. Pixley considered the safety and security of the upset staff members to be at
28 issue based upon what Duvall told her about the Union meeting. Pixley did not

1 elaborate on or explain to the Union why she wanted to talk about these topics prior to
2 the labor-management meeting.

3 The labor-management meeting lasted between sixty and ninety minutes. At
4 least the first forty-five minutes were devoted to the Union's agenda items, which did not
5 include any of management's agenda items. Approximately ten minutes into the labor-
6 management meeting, Pixley indicated that she wanted to get to management's
7 agenda. Doe objected and the meeting continued through the conclusion of the Union's
8 agenda.

9 The discussion then shifted to management's agenda, and Pixley took up the first
10 topic, "Professionalism in meetings." Pixley made some initial comments regarding the
11 Union's lack of professionalism in meetings, which Burgess understood to be directed at
12 Burgess. Pixley then addressed with the Union the meeting that Duvall had told Pixley
13 about involving the two upset staff members.⁹ Pixley stated that Duvall had made
14 Pixley aware of behavior that Pixley had concerns about, and Pixley would be
15 investigating that behavior because it was her duty and responsibility to ensure the
16 safety and security of all the staff in the building. Pixley further expressed that she
17 needed to investigate what occurred at the Union meeting where the staff were
18 subjected to behavior that was potentially unsafe or unprofessional.¹⁰

⁹Burgess testified that this occurring during discussion of the final topic, "Allegations of management misconduct." Doe and Pixley testified that this occurred during the discussion of "Professionalism in meetings." Also, Pixley testified that the meeting adjourned without reaching the final agenda item. The subject matter of the dispute pertains more to professionalism than management misconduct, and I therefore credit Doe and Pixley's recollection over Burgess' on this point.

¹⁰Burgess identified the referenced Union meeting as the February membership meeting. Neither Doe nor Pixley identified Union meeting that was at issue.

1 At this point, Doe interjected, and an exchange between Doe and Pixley ensued,
2 in which Doe asserted the protected status of Union meetings, and Pixley continued to
3 assert what she saw as her responsibility to investigate to ensure the safety and
4 security of the staff.¹¹ At some point during this exchange between Doe and Pixley,
5 Couto interjected and told Pixley that he would discuss the issue with her offline.¹² The
6 meeting then abruptly ended.

¹¹Although Pixley testified that she “indicated that my concern was not about the meeting, or the contents of the meeting, I was concerned about unprofessional behavior towards staff members,” there is no evidence in the record that Pixley ever articulated to the Union how that alleged unprofessional behavior constituted a potential threat to the safety and security of the staff. There is also no evidence that any formal complaint was filed with management over the conduct of any Union meeting.

¹²Burgess testified that Doe asked Couto to intercede, and Couto then told Pixley they would talk about this issue later. Doe testified that Couto told Pixley “to stop,” and that Pixley then continued before Couto said they would “discuss it offline.” According to Doe, after Couto told Pixley they would discuss it later, Pixley continued to say “that some of the temporary workers came to her and were upset and she would be investigating that.” Pixley testified that Couto stated there would be no investigation, and they would talk after the meeting. Couto, who was not sequestered, and had difficulty remembering the basic details of this meeting on cross-examination, testified on direct examination that, “as testified today” he told Pixley “not to do that” and that they would talk “offline.” Upon further direct examination, Couto added that he “made a comment” to “everyone” that “no one was going to be investigating...anything that’s going on at the Union meetings.”

I do not find that Couto said that no investigation would occur. On direct examination, Couto, who was not sequestered, explicitly referred to prior testimony rather than testifying from his memory, and on cross-examination he testified to not remembering numerous basic details surrounding the meeting. Additionally, neither Burgess nor Doe testified to Couto making any such statement, and their testimony generally corroborates each other on this point, whereas the only testimony to corroborate Pixley on this point is Couto’s, which I find unreliable. Finally, as discussed infra, Couto had to later tell Pixley that she could not investigate the Union meeting, which he would not have needed to say to Pixley if he had already told her that no investigation would occur.

1 After the meeting ended, management left the room and the Union remained in
2 the room to caucus. About two minutes later, Pixley returned, entered the room and
3 attempted to continue the discussion with Doe.¹³ Doe told Pixley to leave and Pixley left
4 the room. After the caucus ended, the membership returned to their desks and finished
5 the workday.¹⁴

6 At some point shortly after the meeting ended, Pixley spoke with Couto and
7 Morrin on the telephone. During this conversation, Pixley again expressed concern
8 about the Union's behavior during Union meetings. Couto and Morrin told her that she
9 could take no action, that Union meetings were outside her jurisdiction, and to refer
10 Union issues to Union representatives. They instructed Pixley to meet with her
11 managers to make sure that the managers understood this directive. Pixley
12 subsequently met with her managers and told them to refer staff to the Union if the staff
13 raised issues that involved a Union meeting. Pixley did not subsequently tell any
14 bargaining unit members that she would not investigate the Union meeting. Pixley did
15 not investigate the Union meeting.

16 After the labor-management meeting, Doe left messages regarding the meeting
17 with Morrin and Morrin's supervisor, but did not reach them. About four days after the
18 labor-management meeting, Doe spoke with Couto and Morrin on the telephone about
19 the labor-management meeting. During this conversation, Couto told Doe that "no

¹³Both Burgess and Doe testified that Pixley returned about two minutes after leaving. According to Doe, Pixley "started asking a question about the contract." Pixley testified that she did not recall the Union caucusing, and she did not recall returning to the room. I credit the more specific testimony of Burgess and Doe.

¹⁴The record contains no evidence that during the labor-management meeting Pixley asked any questions about Union activity.

1 harm's been done other than the comment." Couto did not subsequently speak to any
2 bargaining unit member about the incident.

3 October 4, 2016 Union Meeting

4 On October 4, 2016, Burgess met with a Union member in the first floor training
5 room for approximately twenty minutes. During this meeting, Burgess saw Pixley stop
6 outside the training room and stare in the window at Burgess and the Union member.
7 Pixley remained stopped outside the training room looking in at Burgess and the
8 member for approximately thirty seconds.¹⁵

9 OPINION

10 A public employer violates Section 10(a)(1) of the Law when it engages in
11 conduct that may reasonably be said to tend to interfere with, restrain, or coerce
12 employees in the exercise of their rights under Section 2 of the Law. Town of Bolton, 32
13 MLC 20, 24, MUP-01-3254 (June 27, 2005); Groton-Dunstable Regional School
14 Committee, 15 MLC 1551, 1555, MUP-6748 (March 20, 1989). The Commonwealth
15 Employment Relations Board (CERB) does not analyze either the motivation behind the
16 conduct, Town of Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12, 1982), aff'd
17 sub nom. Town of Chelmsford v. Labor Relations Commission, 15 Mass. App. Ct.
18 1107(1983), or whether the coercion succeeded or failed. Groton-Dunstable Regional
19 School Committee, 15 MLC at 1555. The CERB applies an objective test that focuses
20 on the impact that the employer's conduct would have on a reasonable employee rather
21 than the subjective impact of the employer's conduct on the actual employee involved.

¹⁵The Commonwealth did not cross-examine Burgess on this testimony or rebut this testimony with any evidence.

1 Quincy School Committee, 27 MLC 83, 91, MUP-1986, (December 29, 2000). Under
2 this test, expressions of employer anger, criticism, and ridicule directed at an
3 employee's protected activities have been found sufficient to constitute interference,
4 restraint, and coercion of the employee. Id. Even without a direct threat of adverse
5 consequences, the CERB has found a violation when an employer makes disparaging
6 remarks about an employee's exercise of protected activities. Athol-Royalston Regional
7 School District, 26 MLC 55, 56, MUP-1832 (November 2, 1999).

8 March 9, 2016 Local Labor-Management Meeting

9 The Complaint alleges that the Commonwealth violated the Law when Pixley, at
10 the labor-management meeting, interrogated employees about their Union activities and
11 threatened employees with unspecified reprisals because they engaged in Union
12 activities. I address each allegation in turn.

13 Interrogating Employees Regarding Union Activities

14 An employer who coercively interrogates employees about their union activities
15 violates Section 10(a)(1) of the Law. Lawrence School Committee, 33 MLC 90, 99,
16 MUP- 02-3631 (December 13, 2006) (citing Plymouth House of Correction, 4 MLC
17 1555, 1572, MUP-2234, 2429 (December 6, 1977)). Here, the record contains no
18 evidence that Pixley interrogated any employee during the labor-management meeting.
19 To interrogate, as that word is commonly understood, means to question formally or
20 systematically.¹⁶ Neither Burgess nor Doe, the Union's only witnesses, testified to
21 Pixley asking any question about Union activities during the labor-management
22 meeting. As there is no evidence in the record that during this meeting Pixley sought to

¹⁶See, for example, Meriam-Webster's Collegiate Dictionary, 10th Edition, 1998.

1 elicit any information about any Union activity, she did not interrogate, let alone
2 coercively interrogate, any employee about his or her Union activity. Accordingly, the
3 Union has not here carried its burden of proof, and I dismiss this allegation.

4 Threatening Employees with Unspecified Reprisals

5 Pixley told the Union members during this meeting that she had been made
6 aware of some behavior that she had concerns about, and that she would be
7 investigating that behavior to ensure the safety and security of all staff in the building.
8 Pixley also told the Union members that she needed to investigate what occurred at the
9 Union meeting where the staff was subjected to behavior that was potentially unsafe or
10 unprofessional. Section 2 of the Law protects lawful, concerted activities for the
11 purpose of collective bargaining, in this case the conduct of a Union meeting, and the
12 record contains no evidence that Pixley explained to the Union how any behavior
13 potentially implicated the safety and security of all staff in the building.¹⁷

14 As Director of the Taunton MEC, Pixley is responsible for handling personnel
15 issues, and I conclude that a reasonable employee under these circumstances would
16 perceive Pixley's statements that she would be investigating staff behavior during a
17 Union meeting to threaten adverse consequences for engaging in protected union
18 activity. See Town of Dennis, 29 MLC 79, 83, MUP-01-2976 (October 10, 2002) (A
19 remark that clearly ties adverse employment action to protected activity would tend to
20 intimidate and discourage a reasonable employee); See also, Town of Bolton, 32 MLC
21 at 26 (Letter containing threatening comments violates Section 10(a)(1) of the Law).

¹⁷Although concerted activity can lose its protected status if it is unlawful, violent, in breach of contract in certain circumstances, disruptive, or indefensibly disloyal to the employer, those facts are not here present. See, City of Haverhill, 8 MLC 1690, MUP-4204 (December 16, 1981).

1 Consequently, Pixley's conduct may reasonably be said to tend to interfere with,
2 restrain or coerce employees in the exercise of their Section 2 rights in violation of
3 Section 10(a)(1) of the Law.

4 The Commonwealth argues that Pixley's statements that she would investigate
5 the Union meeting did not violate the Law because she made only one brief comment
6 that did not derogate or ridicule the Union, and the context and tone of Pixley's
7 statement show that she was talking about the well-being of an employee, and not
8 interference with the Union. Additionally, the Commonwealth argues, Couto
9 immediately "rectified" any impression that an investigation would occur. For the
10 following reasons, these arguments do not persuade me.

11 The brevity of chilling conduct does not excuse interference with rights
12 guaranteed under Section 2 of the Law. Lawrence School Committee, 33 MLC at 100.
13 Additionally, although comments that derogate or ridicule union activity are sufficient to
14 find a violation of Section 10(a)(1) of the Law, they are not necessary to find a violation
15 of Section 10(a)(1) of the Law. Athol-Royalston Regional School District, 26 MLC at 56
16 (*"Even without direct threats of adverse consequences,"* disparaging remarks may be
17 unlawful (emphasis supplied)). Moreover, the CERB does not analyze the motivation
18 behind the conduct. Town of Chelmsford, 8 MLC at 1916. Rather, the test remains
19 whether the conduct may reasonably be said to interfere with, restrain or coerce
20 employees in the exercise of their Section 2 rights. Groton-Dunstable Regional School
21 Committee, 15 MLC at 1555. I conclude that a reasonable employee under the
22 circumstances would perceive Pixley's statements that she would investigate behavior

1 that occurred at the Union meeting to threaten adverse consequences for engaging in
2 Union activity.

3 Additionally, there is no merit to the Commonwealth's argument that Couto
4 "rectified" any violation that may have occurred. In Salem School Committee, 35 MLC
5 199, 217, MUP-04-4008 (April 14, 2009), the CERB determined that the respondent
6 neither cured nor rendered moot an underlying prohibited practice when it settled a
7 grievance, but did nothing to publicize its actions or to renounce future similar actions.
8 Here, Couto did not overrule Pixley when she made the statement that she would
9 investigate the Union meeting. Couto also did not assure the membership that Pixley
10 would not investigate their conduct at the Union meeting. Thus, the Commonwealth did
11 not cure, or "rectify," the impression that Pixley's threat to investigate created.
12 Therefore, I find that the Commonwealth violated Section 10(a)(1) of the Law when
13 Pixley threatened employees with unspecified reprisals for engaging in union activities.

14 Surveillance

15 Employer surveillance of union meetings violates Section 10(a)(1) of the Law.
16 Plymouth County House of Correction, 4 MLC 1555, 1571-72, MUP-2234, 2429
17 (December 6, 1977). Additionally, creating the impression of surveillance is unlawful
18 interference. Id., (citing CBS Records Division, 223 NLRB 709 (1976)). CBS Records
19 Division held that creating the impression of surveillance was unlawful even though
20 surveillance did not actually occur because of "the tendency of the conduct to affect the
21 freedom to support or not support the Union." Id. Here, the Union alleges that Pixley
22 surveilled a Union meeting three times. I address each instance in turn.

23 February 2016

1 On an unidentified date in February 2016, Pixley walked by a Union meeting
2 several times in the course of one hour and looked in the room through windows in the
3 doors as she walked by the room without stopping. This Union meeting was occurring
4 in a room adjacent to Pixley's office, and when the meeting occurred the
5 Commonwealth had not yet installed the white noise machines that it would later install
6 in this vicinity. Pixley entered the Union meeting at approximately 10:59 am to disperse
7 the meeting, and after briefly leaving the room she again returned to disperse the
8 meeting. These facts persuade me that Pixley was monitoring the Union meeting
9 before it ended, and this conduct would give a reasonable employee under the
10 circumstances the impression that management is closely watching the Union's
11 meetings. Therefore, I conclude that Pixley's conduct would tend to interfere with,
12 restrain or coerce a reasonable employee in the exercise of his or her Section 2 rights in
13 violation of Section 10(a)(1) of the Law.

14 March 9, 2016

15 Conversely, the evidence does not establish that Pixley violated the Law on the
16 morning of March 9, 2016, prior to the labor-management meeting. Confusion
17 surrounded which unit was meeting, and the Union met with two groups at the same
18 time in contravention of its previous agreement. Pixley walked by Burgess' Union
19 meeting and looked in, but did not enter the meeting room. Pixley's conduct in holding
20 the Union to its agreement relates to the Employer's legitimate operational concerns,
21 and under the circumstances I do not find that it would interfere with a reasonable
22 employee exercising his or her Section 2 rights.

23 October 2016

1 On October 4, 2016, Burgess met with a Union member in the first floor training
2 room. During that meeting, Pixley stopped outside the room and stared through the
3 window into the room at Burgess and the member. The undisputed evidence showed
4 that Pixley did not often visit this area of the first floor. Additionally, this incident
5 occurred after Pixley told the Union stewards, including Burgess, at the labor-
6 management meeting that she would investigate a Union meeting. The Commonwealth
7 did not present any evidence to explain Pixley's presence outside this Union meeting.
8 The evidence again establishes that Pixley was closely monitoring protected Union
9 activity. Accordingly, I conclude that this conduct would tend to interfere with a
10 reasonable employee in Burgess' position exercising her Section 2 rights, in violation of
11 Section 10(a)(1) of the Law.

12 CONCLUSION

13 The Commonwealth, acting through MassHealth, did not unlawfully interrogate
14 employees about their Union activities. The Commonwealth did interfere with, restrain
15 or coerce its employees in the exercise of their rights guaranteed under Section 2 of the
16 Law in violation of Section 10(a)(1) of the Law when Pixley: 1) threatened employees on
17 March 9, 2016 with unspecified reprisals because they engaged in Union activities; and
18 2) surveilled employees while they conducted Union meetings in February and October
19 of 2016.

20 ORDER

21 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the
22 Commonwealth shall:

- 23 1. Cease and desist from:

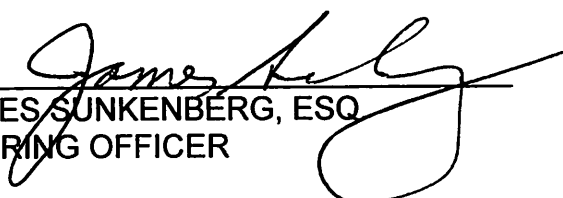
- 1 a. Threatening employees with unspecified reprisals for engaging in
2 Union activity.
3
4 b. Surveilling employees at Union meetings.
5
6 c. In any like manner, interfering with, restraining or coercing its
7 employees in the exercise of any right guaranteed under the Law.
8

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

- 10 a. Immediately post signed copies of the attached Notice to Employees in
11 all conspicuous places where members of the bargaining unit usually
12 congregate and where notices to these employees are usually posted,
13 including electronically if the Commonwealth customarily
14 communicates to its employees via intranet or email, and maintain for
15 a period of thirty (30) consecutive days thereafter; and
16
17 b. Notify the DLR in writing of the steps taken to comply with this decision
18 within ten days of receipt of the decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the 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 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 Commonwealth of Massachusetts/Commissioner of Administration and Finance, acting through MassHealth, violated Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by interfering with, restraining or coercing employees in the exercise of their rights under Section 2 of the Law. The Employer posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of the Law provides that public employees:

[S]hall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve.

WE WILL NOT threaten employees with unspecified reprisals for engaging in union activity.

WE WILL NOT surveil employees at union meetings.

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

Commonwealth of Massachusetts

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, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).