

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of *

SOUTHBRIDGE SCHOOL COMMITTEE *

and *

SOUTHBRIDGE EDUCATION *

ASSOCIATION *

Case No. MUP-06-4762
MUP-07-5010

Date Issued: January 30, 2015

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Appearances:

Kimberly Rozak, - Representing the Southbridge School
Esq. Committee

Amy Laura - Representing the Southbridge Education
Davidson, Esq. Association

1 DECISION ON APPEAL OF HEARING OFFICER DECISION

2 SUMMARY

3 The Southbridge Education Association (Union) appeals from a Department of
4 Labor Relations (DLR) hearing officer decision dismissing a complaint alleging that the
5 Southbridge School Committee (Employer or School Committee) violated Section
6 10(a)(4), Section 10(a)(3) and, derivatively, Section 10(a)(1) of M.G. L. c. 150E (the
7 Law) by eliminating Ann Vasey's (Vasey) position as Early Childhood Coordinator
8 (ECC), and constructively discharging her in retaliation for engaging in concerted,

1 protected activity. After reviewing the decision, the parties' arguments on appeal and
2 relevant portions of the hearing record, the Commonwealth Employment Relations
3 Board (CERB) affirms the Hearing Officer's decision in its entirety.

4 FACTS

5 The Hearing Officer made detailed findings based on the lengthy record,
6 consisting of nine days of hearing and numerous exhibits. The Union challenges a
7 number of those findings and also claims that the Hearing Officer improperly ignored
8 material evidence. We address these arguments in the Opinion section of this decision.
9 After reviewing the Union's claims, we adopt the Hearing Officer's findings and reiterate
10 only those facts necessary for an understanding of our Opinion. Further reference may
11 be made to the Stipulated Facts and Findings of Fact set out in the Hearing Officer's
12 decision, reported at 40 MLC 218 (2014) and attached to the slip opinion of this
13 decision.

14 OPINION¹

15 **Count I – Section 10(a)(3) - Elimination of the ECC Position**

16 Count I of the Complaint alleges that the School Committee eliminated the ECC
17 position in June 2006 in retaliation for a December 2005 grievance that the Union filed
18 on Vasey's behalf protesting her reassignment and demotion and, thus, discriminated
19 against Vasey for engaging in activities protected by Section 2 of the Law in violation of
20 Section 10(a)(3) and, derivatively, Section 10(a)(1). To establish a prima facie case of a
21 Section 10(a)(3) violation, a charging party must produce evidence in support of four
22 elements: (1) that the employee engaged in concerted activity protected by Section 2 of

¹ The Board's jurisdiction is not contested.

1 the Law; (2) that the employer knew of the concerted, protected activity; (3) that the
2 employer took adverse action against the employee; and (4) that the employer's
3 conduct was motivated by a desire to penalize or discourage the protected activity.
4 Town of Carver, 35 MLC 29, 47, MUP-03-3894 (June 30, 2008).

5 The Hearing Officer found that the Union had established the first three elements
6 of a prima facie case of a Section 10(a)(3) retaliation violation, i.e., that Vasey engaged
7 in protected concerted activity (filing a grievance); that the Employer knew about this
8 activity; and that the Employer took adverse action against Vasey (eliminated her job).
9 The Hearing Officer concluded, however, that the Union had not met the fourth element:
10 that the employer's action was motivated by a desire to penalize or discourage the
11 protected activity.

12 The Hearing Officer first concluded that there was no direct evidence that School
13 Superintendent Dale Hanley (Hanley) harbored any animus towards Vasey's
14 involvement in filing the grievance. The Hearing Officer then considered whether there
15 was circumstantial evidence of anti-union animus. He found that there was some
16 circumstantial evidence due to the timing of the events, specifically, the timing between
17 the Union's December 21, 2005 grievance, the denial of the grievance at Step 2 on
18 March 27, 2006;² Hanley's notification to Vasey in April 2006 that funding might affect
19 her position; and, ultimately the elimination of the ECC on June 1, 2006.

20 Aside from timing, however, the Hearing Officer found no other circumstantial
21 evidence, such as prior evidence of antipathy towards union activities, disparate

² Although the grievance refers to a "demotion," in her Step 2 denial, Hanley addressed the "genesis of the grievance – the removal of Vasey's participation in the Principal's evaluation of preschool staff." (See JX 6 and 8.)

1 treatment or deviation of past practice that would suggest a nexus between the
2 December 2005 grievance and the June 2006 elimination of Vasey's position.
3 Moreover, the Hearing Officer found that the Employer's stated budget-based reasons
4 for eliminating the job were not trivial. In particular, the Hearing Officer found that
5 Hanley planned to decrease administrative costs in order to fund full-day preschool,
6 which Hanley hoped would respond to an unmet need in the community and increase
7 enrollment in the pre-school program.

8 On appeal, the Union contends that the Hearing Officer ignored substantial
9 circumstantial evidence of anti-union animus indicating that Hanley eliminated Vasey's
10 position in retaliation for the protected activities of requesting a salary stipend and filing
11 a grievance. The Union's argument centers on its contention that it was not until Vasey
12 wrote a letter stating her belief that she was entitled to a stipend that Hanley spoke to
13 her about teacher complaints Hanley had received earlier that fall about Vasey and the
14 fact that Hanley ultimately removed those evaluation duties from Vasey without making
15 an effort to resolve the teachers' complaints. In other words, the Union argues that after
16 Vasey requested the stipend, Hanley used the preschool teachers' complaints as a
17 pretext to remove her evaluation duties.

18 The CERB disagrees that the Hearing Officer erred by not considering this
19 evidence as proof of animus. First, in making this argument, the Union relies upon the
20 fact that Hanley told Vasey at this meeting that she did not "like her style." The Union
21 has not, however, identified anything in the record, and we find nothing, that indicates

1 an underlying anti-union animus for that statement. Further, the Hearing Officer never
2 made findings regarding that statement and we decline to draw inferences from it.³

3 Second, Count I of the complaint does not allege that Vasey's November 7, 2005
4 request for a stipend for the ECC position was protected concerted activity and there is
5 no indication in the record that a grievance was filed concerning the stipend. Nor does
6 the complaint allege that Hanley's decision not to grant the ECC position a stipend and
7 take away her evaluative duties were adverse actions or that the Employer took these
8 actions in retaliation for Vasey's stipend request. Accordingly, the Hearing Officer did
9 not separately analyze whether Hanley's decision to remove evaluation duties was
10 improperly motivated. Without such analysis, we find no error in the Hearing Officer's
11 failure to treat the initial removal of Vasey's evaluative duties as an expression of
12 animus or hostility towards the Union or protected activity or otherwise suggestive of
13 unlawful motivation. The mere fact that Hanley, who had only been superintendent
14 since July 2005, decided several months after the school year began to alter how
15 preschool teacher evaluations were performed, does not, standing alone, suggest that
16 the decision was unlawfully motivated. This is particularly true where the facts show
17 that Hanley received complaints from teachers about the evaluation process before
18 making the decision and Vasey does not claim that the teachers' original complaints
19 were invalid or unlawfully motivated.

³ Notably, the Hearing Officer generally found Vasey's testimony not credible. He further stated in fn. 6 that he credited "Hanley's testimony denying harsh comments Vasey attributed to her based on each witness's demeanor." The CERB will not disturb a hearing officer's credibility findings, if, as here, the reasons for the determinations are clearly stated and the evidence does not require a contrary finding. Vinal v. Contributory Retirement Appeal Board, 13 Mass. App. Ct. 85 (1982).

1 The Union next claims that the Hearing Officer made erroneous findings about
2 the reasons advanced by the School Committee for eliminating Vasey's position.
3 Specifically, the Union points to evidence showing that there were grant funds to pay
4 Vasey in the Early Childhood Council (Council) budget, and that the Council
5 recommended keeping Vasey and offered options to retain Vasey. The Union points out
6 that the Council also had concerns about Hanley's plan because the grant funds were
7 contingent on having enough students to support teachers, and that, ultimately, the
8 School Committee lost the whole grant. The Union also argues that the manner in
9 which Hanley testified about the funding issues shows animus.

10 However, the Union ignores the uncontested finding made by the Hearing Officer
11 that Vasey herself recognized that there would be a shortfall in the CPC (Community
12 Partnership for Children) budget, even excluding a number of significant cost items.
13 Further, the Union does not challenge the Hearing Officer's finding that Hanley had
14 policy reasons for eliminating Vasey's job. Those reasons included "decreas[ing]
15 administrative costs in order to fund full-day preschool which she hoped would both
16 respond to an unmet need in the community and increase enrollment in the preschool
17 program." With the ultimate approval of the Council, Vasey's administrative position
18 was cut and the funds reallocated to increase the remaining teachers' hours. Moreover,
19 the evidence shows that Vasey's was not the only position cut at the time – a full-time
20 secretary position was also cut to half time. The fact that another employee who is not
21 alleged to have engaged in protected concerted activity suffered an adverse
22 employment action at the same time as Vasey significantly undercuts the Union's
23 argument that the elimination of the EEC position was unlawfully motivated.

1 The Union further claims that the Hearing Officer ignored other relevant
2 circumstantial evidence that it claims supports a finding of animus, i.e., Hanley's
3 conditioning settlement of the collective bargaining agreement negotiations on
4 withdrawal of the prohibited practice charge filed with the DLR on September 13, 2006
5 (MUP-06-4762); and the fact that Vasey was told at a public meeting in front of teachers
6 that her position was being eliminated. These arguments are not persuasive. It is
7 common during successor contract negotiations to settle outstanding grievances and
8 DLR charges. Moreover, Hanley told Vasey in April 2006 that funding might affect her
9 position and that her duties could be reassigned. In addition, this information affected
10 the teachers who were present at the meeting. Thus, it was not unreasonable to
11 include these teachers in a meeting about those changes.

12 As to the Union's objection that the Hearing Officer applied the wrong standard
13 by seeking evidence of a "history" of animus, we note that he did not require such proof
14 as a prerequisite for a finding. Rather, in properly relying on all factors he considered
15 that a history of animus can be persuasive if, in fact, such evidence exists. See Town of
16 Carver, 35 MLC at 48.

17 In sum, for the reasons stated above and those set forth in the Hearing Officer's
18 decision, we affirm his conclusion that the Union failed to establish a prima facie case of
19 retaliation.

20 Furthermore, even assuming that Vasey had made out a prima facie case of
21 discrimination, the evidence the Union relies on would not have been sufficient to
22 demonstrate that, but for protected, concerted activities, Vasey's job would not have
23 been eliminated. We find no reason to disturb the Hearing Officer's finding that the

1 School Committee put forward a reasonable basis for eliminating the ECC job and none
2 of the arguments the Union makes establish by a preponderance of the evidence that
3 but for this protected activity, the employer would not have taken the adverse action.
4 Bristol County, 26 MLC 105, 109, MUP-2100 (January 28, 2000).

5 **Counts III and IV: Alleged Violation of Sections 10(a)(3) and Section 10(a)(4)**⁴

6
7 Counts III and IV of the complaint concern actions that occurred after Vasey
8 began working at the West School. They allege that, in June 2007, the School
9 Committee constructively discharged Vasey by taking multiple actions against her in
10 retaliation for filing grievances (Count III) and in retaliation for the Union filing MUP-06-
11 4672 against the School Committee (Count IV).

12 The facts reflect that after the ECC position was eliminated, the School
13 Committee reassigned Vasey to the West Street School. Joany Santa (Santa), who was
14 new to the Southbridge School System as of August 1, 2006, was the new Principal of
15 that school. In August 2006, Vasey met with Santa to discuss what position would be
16 appropriate for Vasey. They agreed that given Vasey's lack of classroom experience a
17 Title 1 teaching position would be the best fit.⁵

18 The Hearing Officer found that the Union established the first two prongs of its
19 prima facie case regarding these counts, i.e, that the Union had filed grievances and an
20 unfair labor practice charge on Vasey's behalf and that the School Committee was

⁴ Count II of the complaint alleged that the Employer violated Section 10(a)(5) of the Law by transferring the ECC duties outside of the unit. For reasons that are not apparent from the record before us, this count did not go forward to hearing.

⁵ Title 1 teachers work with underachieving students in conjunction with the student's primary teacher and co-plan lessons to ensure that the students receive individual attention from the Title I teacher.

1 aware of the grievances and that Vasey was pursuing her charge at the DLR as of April
2 2007. The Union's appeal centers on the Hearing Officer's determination that Vasey
3 had not been constructively discharged and that, therefore, she had not met the third
4 prong of the prima facie case, adverse action. See Town of West Springfield and Janet
5 Leonard, 21 MLC 1216, 1219 MUP-7465 (August 19, 1994) (treating constructive
6 discharge as adverse action for purposes of establishing a prima face case under
7 Section 10(a)(3) of the Law). For the reasons set forth below, the CERB affirms the
8 dismissal of these counts.⁶

9 In determining whether the Union established the third prong of the prima facie
10 case, the Hearing Officer first analyzed what actions of the Employer constituted
11 adverse actions within the meaning of the Law. The Union objects to this analysis
12 claiming that the point of a constructive discharge analysis is to examine the adverse
13 actions in their totality. However, in its post-hearing brief, the Union argues that the
14 "Employer engaged in a series of adverse actions against [Vasey] in retaliation for her
15 protected activities." Thus, it was not error for the Hearing Officer to look at each of the
16 adverse actions alleged by the Union to determine whether they constituted adverse
17 actions as the CERB has defined that term. See, e.g., City of Boston, 35 MLC 289,
18 291, MUP-04-4077 (May 20, 2009) (citing MacCormack v. Boston Edison Co., 423
19 Mass. 652, 662 (1996)) (plaintiff failed to prove adverse action element of a prima facie

⁶ The Union also argues that the Hearing Officer failed to separately consider the section 10(a)(4) allegation. This argument lacks merit. Citing City of Boston, 35 MLC 289 (2009), the Hearing Officer's decision accurately states that the same elements of proof apply to alleged violations of both Section 10(a)(3) and Section 10(a)(4) of the Law. Thus, after finding that the Union had established second prong of a prima face case of a Section 10(a)(4) violation, i.e., participating in DLR proceedings, the Hearing Officer then appropriately performed a single analysis of the facts to determine whether the Union had established the third and fourth prongs of the prima facie case.

1 case of unlawful retaliation where there was no evidence that he had been
2 disadvantaged with respect to salary, grade, or other objective terms and conditions of
3 employment). The Hearing Officer concluded that only the change in Vasey's schedule
4 and placing her on administrative leave constituted individual adverse actions. The
5 Union notably does not appeal from this determination.

6 Moreover, the Hearing Officer's analysis did not end there. He then properly
7 examined whether, taking all the alleged adverse actions together, the standard for
8 finding a constructive discharge had been met. In situations where, as here, an
9 employee resigns from her job, the employee cannot contend that the separation was a
10 discriminatory discharge unless the CERB determines that the employee has been
11 constructively discharged. Town of West Springfield, 21 MLC at 1219-1220. In making
12 this determination, the CERB applies a "reasonable person" test to determine whether
13 the change in working conditions was so difficult or unpleasant as to force the employee
14 to resign. Id. at 1220. In West Springfield, the CERB dismissed a charge alleging that
15 an employee had been constructively discharged in violation of Section 10(a)(3) of the
16 Law where the facts did not "establish that the Town was conditioning Leonard's
17 continued employment on relinquishing her Section 2 rights and thereby making
18 continued employment to her intolerable." Id. See also Newton School Committee, 6
19 MLC 1701, 1706, MUP-3416 (January 9, 1980) (citing Don's Catering Service, 5
20 MLC 1179, UP-2375 (H.O., July 26, 1978); W.T. Grant Co., 195 NLRB 1000, 79 LRRM
21 1670 (1972); and McPeak Motor Co., 198 NLRB 132, 80 LRRM 1575 (1972) (No
22 evidence on the record to indicate that the School Committee had made life so
23 unbearable for alleged discriminatee that his only alternative was to resign).

1 Applying these standards to the facts before him, the Hearing Officer concluded
2 that the School Committee's actions did not create an unbearable work environment for
3 Vasey but rather were appropriate responses to its concerns over Vasey's conduct. The
4 Hearing Officer concluded that a reasonable person intent on preserving their career
5 would not have construed Santa's actions as intolerable. And, although the Hearing
6 Officer did not find that Vasey had been constructively discharged, he went on to
7 analyze whether specific adverse actions were unlawfully motivated, i.e., changing
8 Vasey's schedule and placing her on administrative leave. The Hearing Officer found
9 there was a lack of circumstantial evidence of unlawful animus and that the School
10 Committee's stated reasons were not trivial. He therefore concluded that there was no
11 unlawful motivation.

12 On appeal, the Union contends that the Hearing Officer failed to consider the
13 "totality of Santa's vindictive and disparate treatment" when evaluating these counts. It
14 contends that, shortly after the in-person investigation of Case No. MUP-06-4672
15 occurred, Santa began subjecting Vasey to unique standards and other actions that
16 made it unbearable for Vasey to remain in her job. According to the Union, this conduct
17 consisted of criticizing Vasey's job performance; directing her to submit weekly lesson
18 plans on a template; changing Vasey's class schedule; repeatedly paging her over the
19 school's public address (PA) system; requesting Vasey to resubmit a personal day
20 request; accusing her of excessive absenteeism; removing her name from "common
21 planning teams" for the 2007-2008 school year; placing Vasey on paid administrative
22 leave and removing her name from the staff mailbox. The Union also contends that the
23 Hearing Officer made certain factual errors or ignored critical evidence when

1 considering its claims regarding lessons plans, schedules and paging, absenteeism and
2 common planning teams. We treat the Union's factual arguments with respect to these
3 actions in turn and then turn to the Union's ultimate argument that, even if these matters
4 viewed alone were minor, taken together, they establish that Vasey was constructively
5 discharged.

6 Lesson Plans/Employer Criticism

7 The facts show that, in early April 2007, a substitute teacher assigned to Vasey's
8 students informed Santa that she was unable to find Vasey's lesson plans. This caused
9 Santa to tell Vasey about a policy in the staff handbook requiring teachers to leave
10 lessons plans for a substitute and to indicate where they are located. Vasey responded
11 to Santa with a memo describing how she handled lessons plans. It was at this point
12 that Santa asked to see Vasey's lesson plans and that Santa and Vasey began
13 exchanging the series of memos that are extensively quoted over several pages of the
14 Hearing Officer's decision.

15 In concluding that Vasey had not been constructively discharged, the Hearing
16 Officer did not specifically address the Union's contentions regarding the lesson plans.
17 Rather, as noted above, he stated more generally that the School Committee's actions
18 were "appropriate responses to its concerns over Vasey's conduct" and that a
19 "reasonable employee in Vasey's position, who was making a significant career change
20 would have accepted guidance from their immediate supervisor and worked to improve
21 areas of concern."

22 The Union argues that, in reaching this conclusion, the Hearing Officer ignored
23 many crucial facts, including, with respect to lesson plans, that Vasey was the only

1 teacher required to submit lesson plans on a specific template and that the allegedly
2 new requirement came on the heels of Vasey's participation at a DLR in-person
3 investigation. However, the Union has failed to show that other teachers were similarly
4 situated to Vasey regarding lesson plans, i.e., that there were other teachers who were
5 accused of not leaving lesson plans for substitutes, or, in response to a directive to
6 submit lesson plans, submitted handouts rather than lesson plans or lesson plans that
7 Santa found illegible. As to timing, while it is true that the issue of lessons plans came
8 to the forefront at around the time that Vasey participated in the in-person conference in
9 Case No. MUP-06-4762, there is no dispute that Santa initially addressed this issue in
10 response to complaint by a substitute teacher specifically about Vasey's lesson plans
11 that also occurred in early April. There is no evidence that Santa's response to this
12 complaint, which was to remind Vasey of the staff handbook policy regarding lesson
13 plans, was either unreasonable or related in any way to Vasey's taking the day off to
14 appear at a DLR proceeding. Based on these facts and those set forth in the Hearing
15 Officer's decision, we reject the Union's claim that the Hearing Officer ignored essential
16 evidence when analyzing whether Santa's directives towards or critiques of Vasey
17 would have caused or were intended to cause a reasonable person in Vasey's shoes to
18 resign because of protected activity.

19 Schedule Changes and Paging

20 The Union claims that the Hearing Officer erred when he attributed the frequent
21 changes in Vasey's schedule and paging to the so-called "chair incident."⁷ The Union

⁷ The facts reflect that, on May 22, 2007, a student accused Vasey of removing his chair while he was sitting in it, causing him to fall. On June 4, 2007, the School District placed Vasey on paid administrative leave while it conducted an investigation of the

1 claims that the record show that the changes to Vasey's schedule and excessive paging
2 began before that incident occurred and closer in time to the April 2007 in-person
3 investigation. However, the Hearing Officer did not find that Vasey's schedule began to
4 change only after the chair incident. Rather, he found that her schedule changed "more
5 than usual" after this incident occurred and, further, that such schedule changes were
6 not unusual for a Title I teacher. As to when the allegedly excessive paging began, the
7 Union points to no portion of the record showing that this occurred before the chair
8 incident or close in time to the April DLR investigation. Even assuming that the
9 schedule changes and paging over the PA system occurred before the chair incident,
10 the Union has failed to show that they were in any way related to Vasey's filing
11 grievances or participating in DLR proceedings. Indeed, although the Hearing Officer
12 noted the fact that Vasey's name was frequently called over the PA system after the
13 chair incident, in the Opinion portion of the decision, he also indicated that Vasey was
14 paged as a function of her Title I position, which required her to move from classroom to
15 classroom.

16 The excerpts from witness testimony that the Union relies on to support its
17 argument do not persuade us otherwise. In particular, although the Union claims that
18 Tanya Paixo's (Paixo) testimony that she was never paged during her tenure as a
19 teacher in Southbridge demonstrates that only Vasey was excessively paged, (Hearing
20 Transcript (Tr.) Volume (Vol.) 1 (2/4/11) p. 106-107), it ignores Paixo's response to the
21 very next question Union counsel posed to her, i.e., whether she heard "other teacher's
22 name being called out during the day." Paixo replied that, "[t]here was one other

incident. In the interim, Santa changed Vasey's schedule to ensure that Vasey was always with another adult when in the classroom with students.

1 teacher who was called out that [she] could think of.” (Tr. Vol. 1 (2/4/11) p. 107). This
2 testimony undercuts the Union’s claim that Santa or other School Committee agents
3 singled out Vasey by excessively paging her.

4 Vasey’s Use of Sick and Personal Time

5 The collective bargaining agreement between the parties states that the School
6 Committee may require medical certification in cases of three consecutive absences or
7 if a pattern of absences exists. The facts reflect that, on May 18, 2007, Santa sent
8 Vasey a memo stating her concern over the number of absences that Vasey had
9 accumulated. Santa asked Vasey to provide a doctor’s note to justify the twenty-seven
10 days of sick and personal time Vasey had used during the school year. After some
11 correspondence back and forth between Santa, Vasey and Union representative Edwin
12 Kimball, Santa wrote a letter on June 1, 2007 stating that Vasey had been absent for
13 three consecutive days on more than one occasion during the school year. Santa
14 further wrote there was a pattern of absences by Vasey of being absent two or more full
15 or half days in each month of the school year and another pattern of averaging an
16 absence of more than one day per week in the month of May. Vasey then provided two
17 doctor’s notes. The record reflects no further correspondence between the parties
18 regarding this issue.

19 In his discussion of whether this sequence of events contributed to an
20 unbearable work environment for Vasey, the Hearing Officer found that Santa acted
21 pursuant to the parties’ collective bargaining agreement when she asked Vasey to
22 substantiate her twenty-seven sick and personal days. He further found that a
23 reasonable person in Vasey’s position would not have considered it unreasonable that

1 an employer was following the contract or requesting substantiation of absences after
2 using an average of three sick/personal days a month.

3 On appeal, the Union argues that the Hearing Officer improperly ignored
4 evidence showing that Santa treated Vasey differently than other teachers and
5 requested a doctor's note from her shortly after the Union filed a grievance on Vasey's
6 behalf.⁸ The Union's evidence that Vasey was disparately treated consists mainly of a
7 May 31, 2007 attendance report that the Union claims Santa sent stating that twenty-six
8 teachers were absent from the West School on that date and stating that "tomorrow's
9 absence is worse." The Union further claims that Santa acknowledged that staff
10 absenteeism was "terrible." However, the Union's description of the May 31 attendance
11 report in its supplementary statement does not comport with the testimony regarding

⁸ The May 18, 2007 grievance alleged that the School Committee 1) made unilateral changes in the evaluation procedure and standards as they applied to Vasey; 2) created a higher standard for Vasey to meet than for other similarly-situated teachers; 3) retaliated against Vasey for filing grievances and charges with the DLR; 4) attempted to coerce Vasey into resigning from her position; and 5) created a hostile and unsupportive work environment for Vasey. Santa denied the grievance at Step 1 on June 4, 2007 and the Union did not appeal the decision to Step 2 of the grievance/arbitration procedure.

1 this exhibit.⁹ Even if it did, the Union provided no further details regarding whether the
2 staff members listed as absent were similarly situated to Vasey in terms of their total or
3 average number of absences; whether they were required to provide doctor's notes;
4 and/or whether they were otherwise reprimanded or counseled for these absences. We
5 thus reject the Union's claim that, in determining that Santa's conduct was an
6 appropriate response to her concerns over Vasey's conduct, the Hearing Officer
7 improperly ignored evidence that Vasey was treated differently than other teachers.¹⁰
8 That evidence was simply not there.

9 The timing of Santa's request for a doctor's note does not alter this conclusion.
10 Although it occurred close in time to when the Union filed a grievance on Vasey's behalf
11 over the School Committee's earlier treatment of Vasey, the Union offered no evidence

⁹ The Union submitted the memo through Vasey, who testified that, "every day," Santa made a list of which students and teachers were absent and that in several of those memos, she stated that "absenteeism is terrible." (Tr. Vol. I, (1/31/11), p. 112-113). During Santa's direct testimony, however, she explained that she did not create the daily attendance list, her assistant Jean Turner did. (Tr. Vol. V, (5/6/11), p. 162). Santa also explained that the list below the part of the memo stating "Staff Status Today" were the names of teachers who were out that day. (Tr. Vol. V, (5/6/11), p. 166-167). There are seven names on that list. Thus, the Union's claim that twenty-six teachers were absent on May 31, 2007 is not accurate. Further, Santa denied ever telling staff that staff absenteeism was "terrible." (Tr. Vol. 5, (5/6/11), p. 162, 164). She did concede, however, that she has stated in staff meetings that attendance needed to be improved and that, if viewed as a whole, teachers would have a poorer attendance rate than students. (Tr. Vol. V, 5/6/11 at 164).

¹⁰ We also reject the Union's suggestion that the School Committee bore the burden of presenting evidence that any teacher other than Vasey had been reprimanded for excessive absences or required to provide medical documentation for their absences. As in all retaliation cases, the charging party bears the initial burden of demonstrating through direct or indirect evidence that the School Committee's actions were unlawfully motivated. City of Holyoke, 35 MLC, 153, 156, MUP-05-4503 (January 9, 2009). Because unlawful discrimination can be circumstantially proven by, among other things, evidence of disparate treatment, see, e.g., Town of Carver, 35 MLC at 48, the Union, not the School Committee, bore the burden of establishing this element of its claim. Id.

1 other than timing to overturn the Hearing Officer's conclusion that Santa had a
2 legitimate basis, grounded in the contract, for requesting Vasey to substantiate her
3 sick/personal leave. As the Hearing Officer correctly observed, timing alone is
4 insufficient to establish circumstantial evidence of unlawful discrimination. Bristol
5 County, 26 MLC 105, 110, MUP-2100 (January 28, 2000).

6 Exclusion from Common Planning Team List

7 The Union contended that the Employer's failure to include Vasey on a list of
8 Common Planning teams that Santa sent three days prior to the end of the school year
9 constitutes further evidence that Santa deliberately engaged in actions designed to
10 cause Vasey to quit. The Hearing Officer disagreed that this omission was the so-called
11 "crescendo" of Santa's "vendetta" against Vasey, finding it "clear" that the meetings
12 concerned the remaining days of the 2006-2007 school year, when Vasey was already
13 out on administrative leave.

14 On appeal, the Union argues that these findings were erroneous because the
15 teams were scheduled to meet during the last week of the school year. Thus, the Union
16 claims that the only plausible reason to set up these teams would be to plan for the
17 following school year. However, in finding otherwise, the Hearing Officer specifically did
18 not credit Vasey's testimony to this effect because he found it clear that the planning
19 meetings concerned the remaining days of school and that teachers who were absent
20 were left off the list. The Union's argument provides no basis for us to disturb these

1 detailed and reasoned findings.¹¹ Vinal v. Contributory Retirement Appeal Board, 13
2 Mass. App. Ct. at 101.

3 Constructive Discharge

4 We now turn to the Union's ultimate argument, that Santa's actions, viewed as a
5 whole, show a cumulative pattern of unequal and unfair treatment that would have
6 caused a reasonable person in Vasey's shoes to resign. The Union makes several
7 arguments in this regard. The Union first claims that the Hearing Officer improperly
8 failed to consider Santa's actions in their totality. In the section of the Opinion titled
9 "Constructive Discharge," the Hearing Officer examined the Union's claims and
10 concluded that Vasey had not been constructively discharged based on his assessment
11 that Santa's actions, as a whole, did not meet the standard, but rather were appropriate
12 responses to Santa's concerns over Vasey's conduct, or were simply a function of her
13 position as a Title 1 teacher with no set classroom. We therefore reject this claim.

14 The Union next takes issue with the Hearing Officer's statement that the fact that
15 Vasey began searching for another position within the early childhood field in December
16 2006, after her ECC title was eliminated, and that she did not tender her resignation
17 until she secured another job, significantly undercuts the Union's contention that Vasey
18 was forced to resign. The Union disagrees with this reasoning, arguing that the two
19 positions were not comparable in terms of salary and professional teacher status and

¹¹ The Union points to Tr. Vol. VI (5/11/11), p. 24 as support for its claim that two permanent substitute teachers that Santa was planning to hire for the next school year were on the Common Planning Teams list. The referenced testimony, however, has nothing to do with the Common Planning Teams list. The Union also cites Sheila LaPlante's testimony (Tr. Vol. VIII, 12/14/11, p. 142) for the proposition that common teams are formed once a year and announced at the end of the prior school year. However, LaPlante's testimony indicated that this was not always the case. Id.

1 that it is “preposterous” to think that anyone would voluntarily leave their job to accept
2 such a position.

3 We disagree. The facts reflect that Vasey admitted that she began looking for a
4 job outside the Southbridge School Systems in 2006, after the ECC title was eliminated,
5 because she wanted to stay within the early childhood field. The facts also show that
6 she did not resign until August 15, 2007, just one day after accepting another job in the
7 Easton school system as an ECC on a part-time basis. We therefore agree with the
8 Hearing Officer that the timing of Vasey’s decision to begin searching for another job
9 and the coincidence of her resignation with her finding another job in the field of her
10 choice is strong evidence that she did not resign because of Santa’s actions.

11 Finally, the Union reiterates why Santa’s actions, taken together, were
12 unreasonable, unlawfully motivated and/or designed to make Vasey quit in retaliation for
13 her protected activity. However, in the preceding section, we have already rejected the
14 Union’s arguments that the Hearing Officer’s findings were erroneous or incomplete
15 relative to Santa’s motivation. For these reasons, and those stated in the Hearing
16 Officer’s decision, we affirm that Vasey was not constructively discharged. Although
17 Vasey may have been unhappy about Santa’s actions and considered them unjustified,
18 for the foregoing reasons and those stated in the Hearing Officer’s decision, we
19 conclude that the Union has failed to establish that Vasey’s working conditions were
20 such that a reasonable person in the same situation would have felt compelled to
21 resign. Town of West Springfield, 21 MLC at 1219-1220.

1 Adverse Actions: Schedule Change and Administrative Leave

2 We also affirm the Hearing Officer's determination that the School Committee did
3 not change Vasey's schedule or place her on administrative leave in retaliation for
4 engaging in protected concerted activity or for filing a prohibited practice charge.
5 Having determined that these two events constituted "adverse actions" under the
6 applicable standard, the Hearing Officer considered whether the Union had established
7 the fourth prong of the prima facie case, that the actions were motivated by an unlawful
8 desire to penalize or discourage Vasey's protected activity. He concluded that they
9 were not.

10 On appeal, the Union contends that the Hearing Officer erred by not considering
11 the timing of the protected activity in relation to the adverse action. However, as we
12 previously noted in considering whether there was circumstantial evidence of unlawful
13 animus, the Hearing Officer expressly considered the closeness in time between the
14 actions and the May 11th grievance and participation in MUP-06-4762. In the absence
15 of any other evidence of antipathy towards Vasey's protected, concerted activities or
16 other circumstantial evidence of unlawful motivation, the Hearing Officer declined to rely
17 on timing alone to establish unlawful motivation. We find no flaws in this analysis.¹²

¹² Specifically, with respect to the Section 10(a)(4) allegation, the Union also contends that comments that Principal Santa made during the in-person investigation of Case No. MUP-07-5010 regarding Vasey and the DLR proceeding constitute evidence Santa bore animus towards Vasey for her involvement in DLR proceedings. However, these statements, which were recounted by a union witness during the hearing of the instant matter, were made in October 2009, more than two years after the incidents that form the basis of this charge. We perceive no error in the Hearing Officer declining to include these hearsay statements in his findings as, at best, they go to Santa's state of mind on the day of the in-person investigation, not during the relevant period in which the alleged discrimination took place.

1 Further, assuming that the Union had established a prima facie case, the Hearing
2 Officer analyzed whether, under part two of the three-part shifting burden of proof set
3 forth in Trustees of Forbes Library, 384 Mass. 559, 565-566 (1981), the School
4 Committee had presented legitimate reasons for taking the adverse actions. The
5 Hearing Officer found that the School Committee had lawful reasons for its actions, and
6 further concluded, under the last part of the test, that the Union had not provided
7 evidence that “but for” Vasey’s protected activities, the School Committee would not
8 have changed Vasey’s schedule or placed her on paid administrative leave.

9 Beyond the arguments made in the preceding section regarding the timing of the
10 decision to change Vasey’s schedule, the Union offers no arguments on appeal to
11 dispute these conclusions. We therefore affirm this aspect of the decision.

12 Conclusion

13 For the above-stated reasons, we affirm the decision of the Hearing Officer and
14 conclude that the School Committee did not retaliate against Vasey in violation of
15 Section 10(a)(3), Section 10(a)(4) and, derivatively, Section 10(a)(1) of the Law.
16 Accordingly, the Complaint is dismissed in its entirety.

17 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, BOARD MEMBER

HARRIS FREEMAN, BOARD MEMBER

APPEAL RIGHTS

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals Court.

HEARING OFFICER DECISION
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
SOUTHBRIDGE SCHOOL COMMITTEE * Case No. MUP-06-4762
* MUP-07-5010
and *
*
SOUTHBRIDGE EDUCATION * Date Issued:
ASSOCIATION * January 31, 2014

Hearing Officer:

Timothy Hatfield, Esq.

Appearances:

Kimberly Rozak, Esq. - Representing the Southbridge School
Committee

Amy Laura Davidson, Esq. - Representing the Southbridge Education
Jun X. Lim, Esq. Association

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issues in this case are whether the Southbridge School Committee (School
2 Committee) eliminated Ann Vasey's (Vasey) position as Early Childhood Coordinator
3 (ECC) in retaliation for engaging in concerted protected activity, and whether the School
4 Committee constructively discharged Vasey in retaliation for engaging in protected
5 activity and filing a Charge of Prohibited Practice (Charge) with the Department of Labor
6 Relations (DLR)¹³ in violation of Sections 10(a)(1), 10(a)(3) and 10(a)(4) of

¹³ Pursuant to Chapter 145 of the Acts of 2007, the Division on Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations

1 Massachusetts General Laws, Chapter 150E (the Law). Based on the record, and for
2 the reasons explained below, I find that the School Committee did not violate the Law as
3 alleged.¹⁴

4 STATEMENT OF THE CASE

5 On September 13, 2006, the Southbridge Education Association (Union) filed a
6 charge with the DLR alleging that the School Committee had engaged in prohibited
7 practices within the meaning of the Law. On July 9, 2007, the Union filed a second
8 charge based on related facts. On March 8, 2010, the DLR issued a consolidated
9 Complaint of Prohibited Practice (Complaint) and partial dismissal alleging that the
10 School Committee had violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of
11 the Law by retaliating against Vasey for engaging in concerted protected activity and
12 Section 10(a)(4) and, derivatively, Section 10(a)(1) for retaliating against Vasey for filing
13 a Charge with the DLR. On May 13, 2010, the School Committee filed a Motion to
14 Reconsider Issuance of a Complaint. The DLR denied the Motion.

15 I conducted a hearing on January 31, February 4, April 1, April 8, May 6, May 11,
16 July 29, and December 14, 2011; and February 29, 2012, at which both parties had the
17 opportunity to be heard, to examine and cross-examine witnesses and introduce
18 evidence.

previously conferred on the Labor Relations Commission. The Commonwealth
Employment Relations Board (Board) is the body within the Division of Labor Relations
charged with deciding adjudicatory matters. References to the Board include the former
Labor Relations Commission. The Division is now known as the Department of Labor
Relations.

¹⁴ Pursuant to Standing Order 2009-1 and 456 CMR 13.01(1) of the DLR's Rules and
Regulations, the Board designates hearing officers to preside over hearings and decide
the allegations set forth in complaints for prohibited practice charges filed on or before
November 14, 2007.

1 On February 3, 2011, the Union filed a Motion in Limine to Prevent the School
2 Committee from Introducing Documentary or Testimonial Evidence Related to Ann
3 Vasey's Status in the Bargaining Unit. On February 4, 2011, I denied the Motion in
4 Limine.

5 On April 1, 2011, the School Committee filed a Motion to Dismiss at the
6 conclusion of the Union's Case in Chief. On April 27, 2011, the Union filed its opposition
7 to the Motion to Dismiss. On May 6, 2011, I denied the School Committee's Motion to
8 Dismiss.

9 On July 29, 2011, at the conclusion of the School Committee's case in chief, the
10 School Committee orally moved to preclude the Union from calling rebuttal witnesses. I
11 directed the parties to brief the issue. On September 6, 2011, the School Committee
12 filed a Motion in Limine, and the Union filed its opposition. On September 7, 2011, prior
13 to ruling on the Motion in Limine, I directed the Union to provide a written offer of proof
14 regarding the anticipated testimony of all potential rebuttal witnesses. On September 8,
15 2011, the Union challenged the offer of proof requirement by filing an Interlocutory
16 Appeal and Request for Relief with the Board. On September 9, 2011, the School
17 Committee filed an opposition to the Interlocutory Appeal and Request for Relief. On
18 September 12, 2011, the Board denied the Union's Appeal. On October 5, 2011, the
19 Union filed its Offer of Proof for potential rebuttal witnesses, and on November 2, 2011,
20 the School Committee filed its Response to the Charging Party's Offer of Proof. On
21 November 29, 2011, I denied the School Committee's Motion and allowed the Union to
22 call certain rebuttal witnesses.

1

FINDINGS OF FACT

2

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9

The Union is the exclusive bargaining representative for all professional employees of the School Committee excluding all Superintendents, School Business Administrators, Principals, Assistant Principals, Administrators of Special Education, Directors of Pupil Personnel Services, Title I Director, Director of Education Support Services, Nurses, Substitute Teachers, Permanent Substitute Teachers, In-School Suspension Supervisors and Director of Curriculum and Staff Development. The School Committee employed Vasey as the ECC beginning in 1993. At all times relevant to this matter, Vasey was a member of the bargaining unit.¹⁶

2005-2006 School Year

11

1. December 2005 Grievance

12

13

14

15

16

In November 2005, Vasey discovered that the School District posted job openings for the curriculum coordinator, math coordinator and team leader positions and paid stipends to those positions. Vasey believed that her duties as ECC were comparable to those of the posted positions. On November 7, 2005, Vasey wrote a letter to Superintendent Hanley (Hanley) stating:

¹⁶ The School Committee argued that the ECC position was excluded from the bargaining unit and “had no standing to file [Vasey’s] grievance dated December 21, 2005.” However, the parties did not specifically exclude the position from the bargaining unit until the July 1, 2006 – June 30, 2009 Collective Bargaining Agreement. In any case, Vasey’s status in the bargaining unit is irrelevant to my analysis of the Union’s allegation that the School Committee retaliated against Vasey for engaging in protected activity. See Sch. Comm. of Stoughton v. Labor Relations Comm’n, 4 Mass.App.Ct. 262, 268 (1976); Sch. Comm. of Newton v. Labor Relations Comm’n, 388 Mass. 557, 563 (1983). The School Committee did not allege or present any evidence that the ECC position is a managerial or confidential title excluded from the protections of the Law. See, i.e. Town of Dedham, 16 MLC 1235, 1240-41(1989) (addressing an employer’s argument that employee alleging retaliation for protected activity was a managerial employee and thus, excluded from coverage under the Law).

1 It is rewarding that the Southbridge Public School System is
2 treating all staff as professionals, particularly the recent acknowledgment
3 of leadership responsibilities in the newly posted Curriculum Department
4 Heads and Curriculum Supervisors.

5
6 The Early Childhood Coordinator position is a parallel position as to
7 the duties listed in these new postings. (the Union in the past has upheld
8 the similarity of the curriculum and coordinator positions.) Both are on a
9 teacher contract and have corresponding duties.

10
11 The Department Heads and the Curriculum Supervisors will receive
12 a stipend in these newly posted positions, the Early Childhood Coordinator
13 position should thus also receive a stipend. These positions are new to the
14 Southbridge Public School system, while the Early Childhood Coordinator
15 is a position that I have been in for thirteen years. The position needs to
16 be equalized. The Early Childhood Coordinator is primarily a leadership
17 position. Both Curriculum Supervisors and the Early Childhood
18 Coordinator oversee curriculum, observe staff, review weekly lesson
19 plans, review student progress reports done by teachers (twice a year),
20 grant write, budget, order materials, plan professional development in
21 early childhood, conduct monthly staff meetings (and monthly DCAP) etc.

22
23 I would be glad to meet with you to discuss how parallel the duties
24 as posted are. It appears the stipend increases [are] for additional
25 leadership responsibilities. There are funds in the preschool Revolving
26 Account that could be utilized, or [Community Partnership for Children]
27 CPC grant funding.

28
29 I am sure this was an oversight as you were concentrating on
30 creating the curriculum positions. As this pertains to a salary issue, I am
31 sending a copy of this correspondence to the Union as well.

32
33 Approximately three weeks after Vasey sent the letter, Hanley asked to meet with
34 her. First, Hanley spoke with Vasey concerning complaints she had received from
35 preschool teachers regarding Vasey's management style. Earlier that fall, three of the
36 four preschool teachers met with Hanley to voice their concerns that Vasey was not
37 treating them professionally, especially in regards to evaluations Vasey periodically

1 performed on each preschool teacher.¹⁷ As a result of the complaints, Hanley told Vasey
2 that she had decided that Vasey should no longer perform evaluations of the preschool
3 teachers and that the principal should instead do evaluations. Next, Hanley and Vasey
4 discussed Vasey's request for a stipend. Hanley explained that the ECC position would
5 not qualify for a stipend because the position was not on the same level as the posted
6 positions receiving stipends, and that the Department of Elementary and Secondary
7 Education (DESE) was funding the stipends as part of the School District's Turnaround
8 Plan.¹⁸

9 On December 21, 2005, the Union filed a grievance over the removal of Vasey's
10 evaluation duties. The grievance was denied at Step 1 of the parties' grievance and
11 arbitration procedure on January 31, 2006, and at Step 2 on March 27, 2006. The Union
12 did not pursue the grievance to arbitration.

13 2. Elimination of the ECC position

14 DESE's CPC grant mandates that participants in the grant program, including
15 Southbridge, establish an Early Childhood Council consisting of community agencies
16 that serve preschool children and their families, child care providers, public schools, and
17 parents. The mission of the Southbridge Early Childhood Council (the Council) is to
18 work collaboratively to assess community needs, ensure that they are met, and avoid

¹⁷ Hanley was scheduled to meet with all four preschool teachers, but one was out sick on the day of the meeting.

¹⁸ I credit Vasey's testimony that she and Hanley discussed both the preschool teachers' complaints and her request for a stipend at the same meeting because Hanley testified that her memory was not clear on that point. The School Committee did not present evidence to support Hanley's assertion that it placed Vasey on an improvement plan concerning her evaluation methods. However, I credit Hanley's testimony denying harsh comments Vasey attributed to her based on each witness's demeanor.

1 duplicating services. The Council drafts the CPC grant budget annually. Typically, the
2 Council receives parameters from DESE in the spring and asks the Southbridge Public
3 Schools for input. The Superintendent is the "fiscal agent" for the grant and must
4 approve the Council's grant budget. In other words, the Council develops a proposed
5 budget for Southbridge's early childhood education programs, but the Superintendent
6 has the final authority.

7 In early April 2006, Hanley informed Vasey that funding may affect the ECC
8 position, and that she might reassign some of the ECC's duties to other administrators.
9 On April 7, 2006, Chairperson of the Southbridge Early Childhood Council Mary Ann
10 Ingle (Ingle) sent a letter to Hanley stating "[Vasey] informed me that changes to the
11 Coordinator position are being considered for the upcoming fiscal year" and urging
12 Hanley to communicate her plans to the Council as early as possible.¹⁹

13 On May 9, 2006, the Council began preliminary discussions of the FY '07 CPC
14 grant. Vasey presented her calculations of the budget. She did not include several
15 significant cost items in her draft budget including: a stipend paid to the ECC for working
16 sporadically during the summer, a stipend for a secretary to assist in processing the
17 CPC grant, one administrative stipend, cleaning fees, a Spring workshop, and "mental
18 health." Vasey noted that even excluding those costs, there was a shortfall in the CPC
19 budget. Vasey suggested using revolving funds to pay the salary of a preschool
20 Associate or part of a preschool teacher's salary. On May 19, 2006, the Council's

¹⁹ I credit Hanley's testimony on this point given the documentary evidence that Vasey knew that budgetary issues could affect the ECC position. I generally found Vasey's testimony not credible. Vasey showed a tendency to avoid direct answers to questions, creating the strong impression of evading or avoiding lines of questioning on which the Union's position was not particularly strong.

1 executive committee drafted the 2006-2007 budget and presented it to the full council
2 for a vote on May 30, 2006. The Council unanimously passed the Executive
3 Committee's budget which included the ECC position.

4 On May 31, 2006, Hanley informed Ingle that she would not sign the Executive
5 Committee's budget before recommending certain changes. The Council held a special
6 meeting on June 1, 2006. Hanley began the meeting by explaining the budget issues
7 facing the town, the number of teacher layoffs, and her concern for the financial health
8 of the preschool. Hanley recommended that the Council eliminate the ECC position, cut
9 one full-time secretary position to half-time, and split that cost between school and grant
10 funds. Hanley explained that she wished to reallocate those funds in order to increase
11 the hours of four preschool teachers. The Council had concerns over Hanley's
12 recommendations because of the nature of the grant. The grant is a "draw down" grant,
13 meaning that the preschool could only use the grant money to fund teacher positions if
14 there were enough students who met eligibility criteria enrolled in the preschool. The
15 School Committee could fund the ECC position, however, with the grant regardless of
16 the number of eligible students.

17 The Early Childhood Council met again on June 9, 2006, with Pat Cameron
18 (Cameron), a representative from DESE, and Lois Ducharme (Ducharme), the
19 Southbridge School District's representative, in attendance. Ducharme presented a
20 letter from Hanley explaining her recommendations and the motivation behind them:

21 Subsequent to our meeting last week, I have explored all possible
22 options to move our school district forward and maximize direct instruction
23 to our students while reviewing the cuts I must make to the school budget.
24 We are going to lose staff for a second year. Equally as important are my
25 concerns regarding the number of students we serve in our preschool
26 program and the declining enrollment we have experienced.

1
2 I am, therefore, making the following the recommendations to
3 amend the 2007 CPC grant:
4

5 1. Restructure the position of Early Childhood Coordinator with the duties
6 and responsibilities assigned to highly qualified, experienced staff who will
7 maximize effort and minimize cost. Approximately \$60,000 of the salary
8 budgeted in the grant for this position will then fund the teaching position
9 currently in the School District budget. I have attached the description of
10 the coordination responsibilities for this change. The remaining \$1,000
11 would be applied to professional development. Attendance at professional
12 development opportunities provided by the school district for preschool
13 staff will also be opened to public agency staff as space allows.
14

15 2. The finance and budgetary transactions and grant management will be
16 completed by the central office data analyst. This in-kind district service
17 will free approximately \$3,100. I would suggest these funds be assigned to
18 public agency needs as the Council determines.
19

20 3. In an effort to increase enrollment, one of the half-day sessions will be
21 increased to a full day session. This change will accommodate family
22 needs for a full day program while increasing services to those children.
23 Class size in the remaining half day sessions will be increased to a
24 maximum of 15 students. The Administrative District Director will reach out
25 to the community via contacts with other agencies and local advertisement
26 to promote increased enrollment.
27

28 Helping Hands²⁰ is a well-established and respected program. I
29 believe these changes will strengthen the program and increase student
30 enrollment, thus providing greater services to greater families and
31 children.
32

33 Members of the Council raised several concerns and asked Cameron what authority the
34 Council had to make changes to Hanley's proposal. Cameron explained that the School
35 District, as the fiscal agent, has the authority to restructure staff. The Council may make
36 recommendations or advocate for a certain position, but the decision ultimately rests
37 with the School District. Cameron also explained that in the event that the preschool

²⁰ The Southbridge Public Preschool Program is known as Helping H.A.N.D.S.

1 could not fully enroll the classrooms, the grant could be amended and monies
2 reallocated two times per year or more if there were significant changes to the grant.

3 Before leaving the meeting to allow the Council to discuss the grant, Cameron
4 clarified that the grant must be submitted with signatures from both Superintendent
5 Hanley and the Council and stated that DESE agreed to extend the deadline to submit
6 the grant until June 13, 2006. Upon further discussion, the Council unanimously voted
7 to accept the grant with Hanley's recommendations and eliminated the ECC position.²¹

8 After the ECC position was eliminated, the School Committee reassigned Vasey
9 to the West Street School where students in grades 4 and 5 attend classes. On June
10 24, 2006, the Union filed a grievance alleging that the School Committee violated the
11 CBA when it "demoted and reassigned" Vasey in retaliation for her exercise of her rights
12 as a member of the Union. Hanley denied the grievance at Step 2 on July 31, 2006.

13 2006-2007 School Year

14 In August 2006, Vasey met with the new Principal of the West Street School,
15 Joany Santa (Santa).²² Santa and Vasey discussed what position Vasey should take at
16 the school based on her prior experience as the ECC. Given Vasey's lack of classroom
17 teaching experience, they agreed that the Title 1 teacher position would be the best fit.
18 The Title 1 teacher works with underachieving students in conjunction with the students'

²¹ Ingle characterized several points of conversation during the June 9, 2006 meeting differently during her testimony. I do not credit Ingle's testimony as the meeting minutes supplied as a joint exhibit clearly summarize the details of the meeting.

²² Santa was new to the Southbridge School System as of August 1, 2006. Prior to August 2006, Santa worked as a Principal in Rhode Island.

1 primary teacher. The Title 1 teacher and the primary teacher co-plan lessons to ensure
2 that struggling students receive individual attention from the Title 1 teacher.

3 During the August 2006 meeting, Vasey told Santa that her previous position was
4 eliminated. Vasey attempted to give Santa a copy of an article describing the elimination
5 of the ECC, but Santa refused to accept it. Santa told Vasey that her philosophy was to
6 start fresh and avoid issues that occurred before her arrival to the school system.²³

7 On September 13, 2006, the Union filed an unfair labor practice which the DLR
8 docketed as MUP-06-4762, the first charge before me in this consolidated case. The
9 charge alleges that the School Committee eliminated the ECC position in retaliation for
10 Vasey's protected activity. Santa was aware that the School Committee reassigned
11 Vasey to the West Street School because her previous position was eliminated.

12 Early in the school year, issues arose concerning Vasey's classroom teaching
13 skills, her relationship with her colleagues, and tardiness. Ms. Caplette, Ms. Kean-
14 Carron, Mr. Veshia and Mr. Sanchez, Vasey's fellow teachers, complained to Santa that
15 Vasey arrived late, appeared to be learning the content along with the students,
16 sometimes participated as a student, and wasn't planning lessons. Santa spoke with
17 Vasey on several occasions about these issues, and Vasey was receptive to her advice.
18 Over time, however, Vasey became less receptive and her relationship with Santa and
19 her fellow teachers deteriorated.

20 In November 2006, Santa held a mediation session between Vasey and two fifth
21 grade teachers that Vasey worked alongside, Sheila LaPlante (LaPlante) and Sara

²³ Vasey testified that Santa told her to "make lemons out of lemonade." Santa denies making that specific statement. I credit Santa's testimony on this point, but in essence the conversation she had with Vasey advised her to try and make the best of her situation.

1 Biron (Biron), after both teachers came to Santa separately to raise concerns about
2 Vasey and the Title I schedule.²⁴ The group was unable to come to an agreement,
3 leaving Santa to build the Title 1 schedule.

4 On December 1, 2006, Dennis Lataille (Lataille), the Director of the Title 1
5 program, performed an evaluation of Vasey's Title 1 reading class. Lataille's evaluation
6 report was positive and did not raise any concerns. Santa did not formally evaluate
7 Vasey during the 2006-07 school year.

8 On April 3, 2007, the DLR held an informal conference in case number MUP-06-
9 4762. Santa was aware of the conference because Vasey had requested time off to
10 attend it. However, Santa was unaware of the substance of the Union's allegations at
11 that time.

12 1. Concerns with Vasey's lesson planning and other
13 performance issues escalate
14

15 In early April, a substitute teacher assigned to Vasey's students informed Santa
16 that she was unable to find Vasey's lesson plans for that day. Santa addressed this
17 issue with Vasey and reminded her of the policy in the staff handbook which requires
18 teachers to leave lesson plans for the substitute and indicate where they are located.
19 Vasey responded to Santa with a memo entitled "General Assistance for a Sub:"

20 My time is structured so that for several periods during the day I
21 support what the teacher is doing, thus the teacher asks me to assist
22 certain students in whatever is needed in that lesson in reading or in math.
23 The writing lessons are co-taught with Ms. Bornfriend. The Computer Lab
24 is in math or in ELA.
25

26 My plans are on my desk, in my bag - packed and ready for the
27 day. The Lab sequence is posted in the lab, the teacher or the children

²⁴ I do not credit LaPlante's testimony. LaPlante was evasive and repeatedly stated that she could remember meeting but could not recall why or what subjects were discussed.

1 state what they are working on. (It is impossible to know where each
2 teacher is with their class of fourth or fifth grade students.)
3

4 Ms. Bornfriend knows, as well as a special book for writing in the
5 bag, what is being worked on. It is stated in the lesson plan book and
6 more detailed in the writing book. The students will also assist as they are
7 in the process of their writing assignment. You bring the students down
8 from Ms. LaPlante's room and join the other students and Ms. Bornfriend.
9

10 Ms. LaPlante directs me as how to best assist her with her students
11 for reading and math. The needed teacher resources are in my bag.
12

13 On April 13, 2007, in response to Santa's request for a copy of lesson plans,
14 Vasey submitted a series of handouts that were part of project she was working on with
15 the art teacher.²⁵ On April 23, 2007, Santa wrote:

16 The "plans" you gave me on Friday April 13, 2007 lacked the
17 fundamental structure teachers use to insure teaching the standards
18 effectively. Daily lesson plans usually include objectives, activities to be
19 carried out, materials to be used, skills to be taught, standards addressed
20 and the form of evaluation (formal or informal). I have enclosed a sample
21 lesson plan with this memo which was given out by Karen Ryan earlier
22 this school year. However, bear in mind that there is no single, standard
23 format to follow.
24

25 Lesson plans are a valuable teaching tool and day to day record of
26 your teaching. They offer a means of reflecting on the effectiveness of the
27 delivery of a lesson for the purpose of adjusting future methods of
28 teaching and self-evaluation. Please take full advantage of the time you
29 spend lesson planning with Beth Chamberland on a weekly basis to
30 secure this basic teaching skill.
31

32 Leaving plans on your desk is a requirement for us to keep the
33 continuity of instruction as much as possible when a teacher is out,
34 whether unexpected or known. The staff handbook details it, we discussed
35 it on the first faculty meeting in August, and I recently reminded everyone
36 in my weekly memo. Lesson plans are a non-negotiable.
37

²⁵ I do not credit Vasey's testimony that she submitted these handouts solely because she was excited about the project. Vasey submitted the "handouts" after Santa specifically requested lesson plans.

1 If you have any questions, please let me know. I appreciate your
2 interest and cooperation.²⁶
3

4 Later on April 23, 2007, Vasey responded to Santa with her own memo stating:

5 . . . There is a misunderstanding. I never gave you lesson plans.
6 What I did share with you were some of the handouts I am using in the
7 writing class. I wanted to share with you the fact that I am integrating art,
8 and art vocabulary with the writing lesson. I also took the initiative to
9 contact the art teacher who kindly lent me some art posters. In turn, I gave
10 her some of the art vocabulary handouts I gave to you. The lesson
11 coincides with the Trophies lesson "World of William Joyce." Some of the
12 graphic organizers incorporate math concepts, the Venn diagram to
13 compare and contrast. A grading rubric is given to each student at the start
14 of each writing project.
15

16 I had wanted to speak with you to share what I was doing and give
17 you some handouts. You were busy and could not meet; I thus left you the
18 handouts. These are not lesson plans.
19

20 I certainly know the importance of good lesson planning since I
21 reviewed teachers' lesson plans for the past 14 years. The preschool had
22 to keep lesson plans for NAEYC accreditation as well as DOE/EEC review
23 in relation to the grant.
24

25 I am always open to learning more, and refining my skills as a
26 teacher. Fifth grade is a new venture for me.
27

28 Please be aware that my time is structured so that for several
29 periods during the day I support what the teacher is doing, thus the
30 teacher asks me to assist certain students in whatever is needed in that
31 lesson in reading or math. I do plan the writing lessons, and co-teach with
32 Ms. Bornfriend.
33

34 My plans were on my desk, the new Sub did not look in my bag-
35 packed and ready for the day. The Lab sequence is posted in the lab, the
36 teacher or the children state what they are working on since it is
37 impossible to know where each teacher is with their class of fourth or fifth
38 grade students. Ms. Bornfriend knows, as well as having a special book
39 for writing, what is being worked on. It is stated that in the lesson plan
40 book, and more detailed in the writing book.
41

²⁶ I do not credit Vasey's testimony that Santa required her to use "Bloom's Taxonomy" framework for her lesson plans. Santa's memo specifically states that "there is no single, standard format to follow."

1 On April 24, 2007, Santa directed Vasey to submit a copy of her lessons plans
2 weekly for Santa to review, and Vasey complied. Vasey sought out the Union's
3 assistance following Santa's request for lesson plans. Union president Martena Shea
4 (Shea) wrote to Santa that while the Union was "not questioning the legitimate right of
5 the District and building principals to check and see that lesson plans are being
6 completed," if lesson plans are reviewed, all teachers should have their lesson plans
7 reviewed on a regular basis, and Santa cannot dictate the format of those lesson plans.

8 On April 25, 2007, Santa sent a memo to Vasey outlining several concerns she
9 had regarding Vasey's performance (April 25 Memo):

10 It has become necessary for me to for me to apprise you formally of
11 some concerns I have regarding your performance throughout this 2006-
12 2007 school year and to suggest ways in which I hope you can become
13 more successful in your teaching endeavors. Although Mr. Lattaile, Mrs.
14 Chamberland, Ms. Ryan, fellow teachers and I have talked with you on
15 several occasions about teaching techniques, you have not shown enough
16 improvement or initiative to adopt beginning elementary teacher essentials
17 (lesson planning, classroom management, knowledge of curriculum and
18 standards).

19
20 *Suggestion:* I recommend that you immediately initiate different
21 techniques, including but not limited to; student discussion groups, small
22 group work where students participate in a variety of learning activities,
23 prepare literacy and math laboratory activities/lessons in a timely manner
24 to avoid using students' assistance inappropriately the day of the
25 laboratory.

26
27 For some time you have had difficulty in fulfilling professional
28 teaching responsibility; i.e., tendency to be late to your classrooms, failing
29 to provide grades for student work to partner teachers, poorly constructed
30 lesson plans. While anyone might have these things happen occasionally,
31 you have had them occur frequently throughout the school year
32 demonstrating a lack of effort to improve your efficiency. Your lack of input
33 on lesson planning with your partner teachers creates strained working
34 conditions that deteriorate into heated discussions with partner teachers,
35 often in front of students.

36

1 *Suggestion:* You should begin immediately to exhibit a more pro-active
2 attitude toward the routine responsibilities of teaching. Despite our
3 discussions, you have not assumed a share in your development as a
4 teacher by engaging in professional development offered in the district
5 along with your colleagues. I think this lack of participation contributes to
6 your inability to establish rapport with fellow teachers. It will be necessary
7 to participate in the professional development opportunities scheduled
8 (see attached), start now.

9
10 All administrators and even several teachers have assisted you in
11 every way possible, but I think the real need is for self-assessment,
12 application of effort, and a focus on improving instruction, not engaging in
13 debates with teachers and administrators. Although this letter is quite
14 frank, the purpose is to address areas in need of improvement. You have
15 good qualities, however, I cannot overlook your performance since the
16 beginning of the school year. I suggest strongly you review the
17 recommendations attached and accept the feedback as a tool to improve
18 your practice. I have scheduled a formal meeting time with you (5/7, 5/14,
19 5/21 at 1-1:45pm).²⁷

20
21 Then on April 26, 2007, Santa responded to Vasey's April 23 memo and provided her
22 critique of the submitted lesson plans:

23 The plans you left for me are illegible. Please find an attached
24 template of an electronic template I have sent to you as an email
25 attachment. Please type your lesson plans using this template and leave it
26 in my mailbox weekly. Lesson plans are . . . non-negotiable.

27
28 I received your typed note (thank you). I am concerned with several
29 statement[s]:

30
31 "I support what the teacher is doing, thus the teacher asks me to assist."

32
33 You are not a teacher assistant helping other teacher; you are a
34 teacher too and should not rely solely on the directives and plans of other
35 teachers.

36
37 "It is impossible to know where each teacher is with their class of fourth or
38 fifth grade students."

39

²⁷ Vasey testified that she did not recall receiving the April 25 Memo from Santa. I do not credit this testimony. Vasey and Santa both testified that formal meetings were held as listed in the April 25 Memo.

1 It is not impossible if you communicate and plan with the teachers
2 you work with. You have refused to develop a system to communicate
3 effectively with teachers; email each other each week, notes in mailboxes,
4 common planning, prep etc.

5
6 “Mrs. LaPlante directs me as how to best assist her with her students for
7 reading and math.”

8
9 Again, you are not a teacher assistant helping other teachers. Our
10 Para professionals fulfill those responsibilities. As a certified teacher you
11 are expected to also plan and not rely solely on the directives and plans of
12 other teachers.

13
14 Later that same day, Vasey responded:

15
16 Thank you for the template.

17
18 As I said when I initiated a meeting with you today, I would like to
19 maintain a good working relationship, talking directly with one another.

20
21 This is in response to your memo April 26, 2007.

22
23 My note was for a substitute to assist with covering for me. From
24 that perspective they can take direction as noted.

25
26 I do support teachers, as we work together as a team. They support
27 me too. I do assist children, as Title I is an intervention based program. I
28 view teaching as assisting children with learning.

29
30 The statement – it is impossible to know where each teacher is, in
31 parenthesis; clarifies the preceding sentence. “The teacher or children
32 state what they are working on.” They state this as I ask them. This is so I
33 can adjust Labs to be more relevant to what they are doing.

34
35 For example this week, Ms. Carron was asked for Math Lab, what
36 her students were doing in Math. She replied the students were starting
37 geometry soon. I thus directed the students to GeoBoards and Tangrams
38 for the Math Lab. I followed up by telling Ms. Carron how the students did,
39 and that one student in particular created three dimensional objects with
40 the GeoBoard. The same is done for ELA.

41
42 I have never refused to communicate with teachers. I have sought
43 out and asked them where they are in their class, and how the Labs can
44 assist. I have always attended Common Planning time.

45

1 I work collaboratively with Ms. LaPlante in reading (three times a
2 week) and in Math.

3
4 This hopefully clarifies semantic interpretation.

5
6 I have been open to learning in my first year of teaching and in the
7 fifth grade (a background in preschool). (The Superintendent assigned to
8 Title I fourth grade, in the Fall I was told I was Title I fifth grade.) Although
9 the system did not provide a mentor, I was able to attend two trainings in
10 Jan. that were offered after school in ELA and Everyday Math. There was
11 time designated to math on Mondays, and professional development was
12 given to teachers in ELA. I am aware that the ELA training (through Tufts)
13 is new for most teachers as well. This has been a year of change at WSS
14 with schedules and assignments.

15
16 Working together, supporting each other in a learning environment
17 assists all to reach full potential.

18
19 On May 1, 2007, Santa and Vasey met to discuss lesson plans. Vasey asked
20 Santa beforehand if she needed union representation because Santa had indicated that
21 the meeting was "formal." Santa told Vasey that union representation was not
22 necessary.

23 During the meeting, Santa showed Vasey a file of papers and told Vasey that she
24 wanted to move away from the written memos going back and forth as it was not
25 productive.²⁸ They also discussed classroom management and Santa wanted to
26 discuss a specific incident in the computer lab. Santa asked Vasey whether she knew
27 that one of the students in the computer lab had given her the wrong information about
28 where the class was in the book. Vasey responded that if a teacher doesn't tell her she
29 asks the students. Santa asked Vasey to answer the question "yes" or "no." Vasey
30 continued to answer Santa's question with a sentence explaining or justifying her
31 reliance on the students. Santa repeated that she wanted a yes or no answer. Vasey

²⁸ Based on Santa's demeanor, I do not credit Vasey's testimony that Santa said "you're like a dog chasing its tail and I'm keeping a thick file on you."

1 responded that her Union had told her that if she felt uncomfortable she should leave.

2 As Vasey left the meeting, Santa said, "Oh mother of God."²⁹

3 After the meeting, Santa emailed Vasey as follows:

4 I am writing to address your outburst today during our meeting.
5 Although I do understand that you may not be open to receiving feedback
6 I want to re-iterate that it is important for you to engage in a dialogue
7 about your work and not a debate. It is extremely difficult for myself and
8 other educators to support your first year in the classroom as a teacher if
9 you are not open to feedback or if you get argumentative and defensive,
10 as I stated when we met.

11
12 Approaching the class time in an organized fashion with strong
13 lesson plans to implement is essential. You cannot have it "in your head"
14 optimizing the teaching time is extremely important and making that
15 process transparent is important for your development. We will be meeting
16 weekly to support you implementing more sound teaching practices when
17 planning lessons which have yet to happen. We are quickly approaching
18 the end of the school year and cannot afford to waste time going around in
19 circles over feedback. I trust our next meeting will include a more open
20 approach on your part. Screaming that you are going to call your union
21 and wanting to abruptly leave the meeting because you do not want to
22 answer questions about your planning process is not productive. I suggest
23 you see these meetings for what they are, an opportunity for you to
24 improve your practice.

25
26 Please go back and review the plan you provided, add more details
27 to the lesson plans which need to include the scope and sequence of the
28 lesson, paced through-out the week, with more specificity to the activities
29 used to teach or reinforce a skill. Your plan to have students "pick a
30 graphic organizer" is fine except that you had not shown the students as a
31 whole or individually when and how to use each one so they could make
32 an informed choice as to which organizer is best. Instilling a sense of
33 efficacy is crucial for student learning. The students already have gaps,
34 they cannot afford to have any steps skipped. I have addressed all of the
35 major points of our meeting today and look forward to meeting again on
36 Monday.

37
38 Vasey responded:

39
40 I am in receipt of your email dated 5-1-07.

²⁹ Based on Santa's demeanor and her description of the office layout, I do not credit Vasey's testimony that Santa stormed out of her office and yelled.

1
2 It is disappointing to me that our interactions are not as collegial as
3 I would like, and despite my requests to talk to each other, communication
4 has been reduced to continual memos.

5
6 I am appreciative that you began the meeting with me on 5-1-07
7 stating what a good job I had done with the lesson plans, and noted the
8 time and effort they took to do. I have done lesson plans all year,
9 particularly when there are other new teachers as well as veteran teachers
10 in the building.

11
12 At a meeting that I initiated on 4-26-07, for the purpose of fostering
13 good relations, you stated you were telling me bluntly, since I do not take a
14 hint, that I made a poor decision to take the job as it is not in my area. You
15 stated that I could have gone to another system. You told me that when
16 my job was eliminated I should have gone elsewhere. It is the districts
17 option to utilize my skills, and if I am assigned a position that does not
18 allow me to utilize these skills, then support needs to be provided such as
19 peer mentorship. Of course your perception, said with vehemence, has
20 made me wary.

21
22 It would have been easy for me to say yes to you when you viewed
23 giving students choices on the time lines (linear, vertical, by age) as
24 "weak". Instead I explained my purpose and goals and viewing choice to
25 assist children in differentiated learning. Some children prefer to write
26 linear, and some prefer to write vertically. I noted that it is similar to a
27 constructivist view (as in the math). I am an educator and thus view the
28 benefit of discussion of ideas. I am disappointed if your view of
29 "supervision" is to only agree. I was a bit surprised that you took so much
30 time to review the handouts I had researched and then to direct me on
31 how they were to be used, and how you wanted me to divide the students.
32 I have always valued academic freedom, where the goals and standards
33 are met within the curriculum through allowing innovation and teaching
34 decisions. I was glad we did come to agreement on use of the time lines;
35 one step to assisting students in organizing thoughts for writing their
36 essay.

37
38 The perception of the meeting we each have is quite different. I did
39 not scream or have an outburst. I began to feel under interrogation when
40 you kept insisting say "Yes or No", when I replied in a sentence. I then said
41 that the Union had instructed me to leave if the meeting took such a turn. I
42 did leave. You then yelled "Oh mother of God".

43
44 I am always open to feedback that is constructive in its nature.
45 (Constructive feedback is teaching, given out of care, and has the purpose
46 to assist.) Showing me my file and stating "do not reply to my memos- I

1 have a large file on you” is not nurturing. I in fact seek feedback from other
2 teachers as well as being perceptive to student feedback and adjusting
3 what is done based on best reaching them. I also share ideas as asked
4 with fellow teachers. The feedback I have received from many of my
5 colleagues has been positive in this year of change. Several teachers
6 have assisted my learning this year, which I greatly appreciate.
7

8 As instructed, for Monday I will revise the lesson plan with dates. I
9 have been advised by the [Union] that I should have representation at any
10 meeting with a Supervisor.
11

12 I am hopeful that I can begin to view you as supportive, as you
13 began your memo.
14

15 On May 7, 2007, Santa’s secretary, Jeanne Turner, left Vasey a note requesting
16 that she resubmit a personal day request she had submitted two weeks prior. The note
17 specifically asked Vasey to submit a legible personal day request.

18 On May 11, 2007, the Union filed a grievance alleging that the School
19 Committee: 1) made unilateral changes in the evaluation procedure and standards as
20 they applied to Vasey; 2) created a higher standard for Vasey to meet than for other
21 similarly situated teachers; 3) retaliated against Vasey for filing grievances and charges
22 with the DLR; 4) attempted to coerce Vasey into resigning from her position; and 5)
23 created a hostile and unsupportive work environment for Vasey. On June 4, 2007, Santa
24 denied the grievance at Step 1 stating:

25 As Principal, part of my responsibility is to ensure teaching
26 standards are met by all teaching staff in my building, including Ms. Vasey.
27 Any ongoing matter(s) she may have with Administration does not insulate
28 her from having to fulfill her responsibilities as a teacher. I have the right
29 and obligation to discuss any such issues with Ms. Vasey, and while Ms.
30 Vasey alleges she is the only teacher being asked to meet such
31 standards, I can assure you this is not the case.
32

33 Ms. Vasey has not been retaliated against for any reason, she has
34 not been “coerced” into resigning her position, and she certainly has not
35 been subject to a hostile or unsupportive work environment.
36

1 The Union did not appeal Santa's decision to Step 2 of the parties' grievance and
2 arbitration procedure.

3 2. Santa questions Vasey's use of sick and personal time

4 On May 18, 2007, Santa sent a memo to Vasey stating her concern for the
5 number of absences that Vasey had accumulated.³⁰ Santa told Vasey to provide a
6 doctor's note to justify the 27 days of sick and personal time used during the school
7 year. The parties' collective bargaining agreement states that the School Committee
8 may require medical certification in cases of three consecutive absences or if a pattern
9 of absences exists. That same day, Edwin Kimball (Kimball), a representative of the
10 Union, wrote to Santa that the Union advised Vasey not to produce a doctor's note
11 unless the School Committee could demonstrate that a pattern of absences existed. On
12 May 20, 2007, Vasey responded to Santa to explain some of her absences. On May 23,
13 2007, Santa responded to Kimball's letter clarifying that her memo addressed Vasey's
14 27 sick/personal days, not her bereavement day and professional conference days.
15 Further, Santa noted that Vasey used an additional 2.5 days since May 18 and did not
16 provide a doctor's note. On June 1, 2007, Santa explained the School Committee's view
17 of Vasey's absences in a letter to Kimball:

18 Ms. Vasey has been absent for three consecutive days on more
19 than one occasion during this school year. Second, there is a "pattern" of
20 absences by Ms. Vasey. For example, Ms. Vasey has been absent two or
21 more full or half days in each month of the school year – this is a pattern.
22 In May, she is averaging an absence of more than one day per week – this
23 is yet another pattern. With a total of 30 full and half-day sick/personal
24 days through May 23, 2007, Ms. Vasey clearly has a pattern of excessive
25 absences for the 2006-2007 school year.
26

³⁰ Santa also copied the memo to Hanley, Lataille, and to Vasey's personnel file.

1 Vasey complied with Santa's request and provided two doctors' notes. Vasey's therapist,
2 Ellen Burns LICSW (Burns), stated that she had been seeing Vasey for symptoms of
3 work-related emotional stress since the School Committee eliminated her position in
4 June 2006. Burns added that Vasey had "been experiencing increased symptoms of
5 stress in response to what has appeared to be an increasingly hostile work
6 environment." Vasey's primary care physician, Ralph Sherman (Sherman), wrote that
7 Vasey was under his care for continuing physical and mental health related conditions.

8 3. Chair Incident

9 On May 22, 2007, a student accused Vasey of removing his chair while he was
10 sitting in it, causing him to fall. Vasey admitted to moving the chair. Santa was out of the
11 building at the time and instructed Guidance Counselor Alesandria Flynn (Flynn) and
12 Lataille to take statements of the nurse, the students, and Vasey. The following day,
13 Santa met with the student and his parents, the nurse, and Vasey. Santa collected
14 statements from students who sat close to the student. The School District also
15 received a complaint from the student's parents which it shared with Santa.

16 Following the incident, Santa changed Vasey's schedule to ensure that Vasey
17 was always with another adult while in the classroom with students. Therefore, her
18 schedule changed more often than usual and her name was frequently called over the
19 PA system. On June 4, 2007, the School District placed Vasey on paid administrative
20 leave while it conducted an investigation of the May 22 incident.

21 4. "New teams" list

22 On June 12, 2007, Santa sent a memo to the West Street School faculty and
23 staff. She wrote: "the 'new teams' are listed below. I have changed the common

1 planning meetings for the rest of this week to allow us to meet. Please follow the
2 schedule below. We'll meet in the common planning room (unless someone has an
3 unusually cool room to offer)." The "new teams" list covered June 12, 2007 through
4 June 15, 2007. Vasey's name was not included on the list. Vasey could not have
5 attended the common planning meetings because she remained on administrative
6 leave.³¹

7 Summer 2007

8 On August 15, 2007, Vasey tendered her letter of resignation to Hanley. On
9 August 20, 2007, the School Committee accepted Vasey's resignation with Santa
10 writing, "I hereby accept with prejudice your voluntary resignation from employment with
11 the Southbridge School District, effective August 15, 2007. For the record, it is noted
12 that your resignation was submitted and accepted during a disciplinary investigation of
13 you by the district." Sometime in August 2007, Vasey went to the West Street School
14 with a representative from the Union to retrieve her mail. However, Vasey did not see
15 her name listed on any of the mailboxes. The School removed her name because it was
16 not expecting Vasey to return to her position.³²

³¹ I do not credit Vasey's testimony that the list was referring to teaching clusters for the 2007-2008 school year because it is clear that the meetings were set up for the remaining days of school, and that teachers who were absent were left off the list. The Union pointed to "Komar" being on the list even though she was on medical leave. However, the list uses "Komar's Lit Lab (Computer Room)" to indicate a location, not a person. "Komar" is the only name on the list twice and "Komar's Lit Lab (Computer Room)" appears the same format as Library, Art, PE and Music on the list.

³² I credit Santa's testimony that she was not expecting Vasey to return. I do not credit Vasey's testimony that the School Committee did not know that she planned to leave her position before removing her name. I found it significant that Vasey could not say exactly when in August she went to retrieve her mail.

1 adverse action against the employee; and 4) the employer's action was motivated by a
2 desire to penalize or discourage the protected activity. City of Holyoke, 35 MLC 153,
3 156 (2009). Once the charging party establishes a prima facie case, if the employer
4 provides lawful reasons for the alleged discriminatory conduct, the charging party must
5 then prove that "but for" the protected activity, the employer would not have taken the
6 adverse action. Trustees of Forbes Library, 384 Mass. 559, 565-566 (1981).

7 The same elements of proof apply to alleged violations of Section 10(a)(3) and
8 Section 10(a)(4) of the Law, but the two sections protect different employee activity. City
9 of Boston, 35 MLC 289 (2009). Section 10(a)(4) of the Law specifically addresses
10 discrimination against an employee because of his or her participation in a DLR
11 proceeding. Commonwealth of Massachusetts, 25 MLC 44, 46 (1998); M.G.L. c. 150E §
12 10(a)(4).

13 MUP-06-4762: Count I

14 In Count I, the Union alleges that the School Committee eliminated the ECC
15 position in June 2006 in retaliation for the December 2005 grievance the Union filed on
16 Vasey's behalf.

17 Protected Activity and Employer Knowledge

18 The Board has decided that an employee's activity is protected if it focuses on
19 generally applicable terms and conditions of employment that impact the collective
20 bargaining unit as a whole. City of Boston, 8 MLC 1872, 1875 (1982); Town of
21 Shrewsbury, 5 MLC 1519, 1523 (1978). To be concerted, the evidence must
22 demonstrate that the employee is acting with other employees, or on the authority of
23 other employees, rather than acting out of self-interest. Town of Southborough, 21 MLC

1 1242, 1249 (1994), citing Meyers Industries, 268 NLRB 493 (1984). It is well settled that
2 the filing and processing of a grievance by an employee constitutes concerted,
3 protected activity, because the employee is seeking to enforce the provisions of a
4 collectively-bargained agreement, even if the employee is acting in his or her own self-
5 interest. Boston City Hospital, 11 MLC 1065, 1072 (1984), citing Interboro Contractors,
6 Inc., 157 NLRB 1295 (1966), enforced, 399 F.2d 495 (2d Cir. 1967).

7 The School Committee does not dispute that the Union filed a grievance on
8 Vasey's behalf on December 21, 2005, nor claim that it was unaware of the grievance.
9 However, the School Committee argues that the DLR should dismiss the Complaint
10 because Vasey was not a member of the bargaining unit and did not have standing to
11 file the grievance. Whether or not Vasey was a member of the bargaining unit in
12 December 2005 is irrelevant to my analysis because there is no dispute that the Union
13 filed the grievance over the elimination of the position. In any case, Section 2 rights
14 apply equally to all employees regardless of their union or nonunion status. See Sch.
15 Comm. of Stoughton v. Labor Relations Comm'n, 4 Mass.App.Ct. 262, 268 (1976); Sch.
16 Comm. of Newton v. Labor Relations Comm'n, 388 Mass. 557, 563 (1983). See also
17 Town of Dedham, 16 MLC 1235, 1240-41(1989) (addressing an employer's argument
18 that employee alleging retaliation for protected activity was a managerial employee and
19 thus, excluded from coverage under the Law). Accordingly, I find that the Union has
20 established the first and second prongs of its prima facie case in MUP-06-4762.

21 Adverse Action

22 The Board has consistently defined adverse action as an adverse personnel
23 action, such as a suspension, discharge, involuntary transfer or reduction in supervisory

1 activity. City of Holyoke, 35 MLC 153, 156 (2009) (citing Town of Dracut, 25 MLC 131,
2 133 (1999)). Many management decisions, though possibly inconvenient or even
3 undesirable, do not constitute adverse employment actions unless the charging party is
4 materially disadvantaged in some way. See City of Boston, 35 MLC 289, 291 (2009)
5 (citing MacCormack v. Boston Edison Co., 423 Mass. 652, 662 (1996) (plaintiff failed to
6 prove adverse action element of a prima facie case of unlawful retaliation where there
7 was no evidence that he had been disadvantaged in respect to salary, grade, or other
8 objective terms and conditions of employment); Sallis v. Univ. of Minnesota, 408 F.3d
9 470, 476 (8th Cir. 2005) (termination, reduction in pay or benefit, and changes in
10 employment that significantly affect an employee's future career prospects constitute
11 material employment disadvantage but minor changes that merely inconvenience an
12 employee or alter work responsibilities do not)). An employer's decision to eliminate a
13 position has been found to constitute an adverse action. Lawrence School Committee,
14 33 MLC 90 (2006) (elimination of "Application Developer" position and laying off the
15 employee holding the position constituted an adverse action). Here, the elimination of
16 Vasey's position clearly constitutes an adverse action.

17 Animus

18 To support a claim of unlawful motivation, a charging party may rely on
19 circumstantial evidence and reasonable inferences drawn from that evidence. City of
20 Holyoke, 38 MLC at 156. Several factors may suggest unlawful motivation, including the
21 timing of the alleged discriminatory act in relation to the protected activity, triviality of
22 reasons given by the employer, disparate treatment, an employer's deviation from past
23 practices, or expressions of animus or hostility towards a union or the protected activity.

1 Id. at 157. Timing alone is insufficient to support a finding of illegal employer motivation.

2 Id.

3 There is no direct evidence establishing that Hanley harbored any unlawful
4 animus towards Vasey's involvement in filing the December 2005 grievance.³³
5 Therefore, I consider whether there is sufficient circumstantial evidence.

6 The Union argues that the timing of the School Committee's decision to eliminate
7 the ECC position supports the Union's prima facie case for unlawful motivation because
8 Hanley denied the December 2005 grievance at Step 2 on March 27, 2006; and in April
9 2006, she informed Vasey that funding may affect the ECC position and that some of
10 the ECC's duties may be reassigned to other administrators. Then on June 1, 2006,
11 Hanley recommended that the Council eliminate the ECC position. The timing of the
12 School Committee's decision does provide circumstantial evidence of unlawful
13 motivation. However, the Board has long held that timing alone is insufficient to
14 establish unlawful employer motivation. Bristol County, 26 MLC 105, 110 (2000).

15 There is no evidence of a history of antipathy toward union activities, disparate
16 treatment, or deviation from past practices. Moreover, the School Committee's reasons
17 for eliminating the ECC position were not trivial. Hanley planned to decrease
18 administrative costs in order to fund full-day preschool which she hoped would both
19 respond to an unmet need in the community and increase enrollment in the preschool
20 program. Therefore, I do not find that the School Committee's decision to eliminate the

³³ Hanley's decision not to grant the ECC position a stipend and her decision to take away Vasey's evaluative duties were not alleged as adverse actions in this case, but both parties discussed these events at hearing and in their briefs. I only view the evidence submitted as evidence of Hanley's alleged anti-union animus, but the Union did not submit any evidence that Hanley showed any prior animus towards Vasey's protected activity or the Union in general.

1 ECC position was motivated by an unlawful desire to penalize or discourage Vasey's
2 protected activity. Thus, the Union has not established a prima facie case of retaliation,
3 and I dismiss this portion of the complaint.

4 MUP-07-5010: Counts III & IV

5 In Count III, the Union alleges that the School Committee continued to retaliate
6 against Vasey for grievances filed on December 21, 2005; June 24, 2006; and May 11,
7 2007. In Count IV, the Union alleges that the School Committee's retaliatory actions
8 were also a response to Vasey's participation in MUP-06-4762.

9 Protected Activity and Employer Knowledge

10 Count III

11 As explained above, Vasey's December 2005, June 2006, and May 2007
12 grievances constitute protected activity. There is no question that the School Committee
13 had knowledge of these grievances as it responded to all three. Therefore, the Union
14 has satisfied the first and second prong of its prima facie case for Count III.

15 Count IV

16 Likewise, there is no dispute that the Union filed an unfair labor practice charge
17 on Vasey's behalf on September 13, 2006, and that the School Committee had
18 knowledge of the charge. Santa admitted that she knew Vasey was pursuing her unfair
19 labor practice charge at the DLR by April 2007 even though she was not familiar with
20 the details of Vasey's allegations. Therefore, the Union has satisfied the first and second
21 prong of its prima facie case for Count IV.

1 Adverse Action

2 The Union alleges that the School Committee took several adverse actions
3 against Vasey in retaliation for her protected activity: 1) criticizing Vasey's job
4 performance; 2) directing Vasey to submit weekly lesson plans using a specific format;
5 3) changing Vasey's class schedule; 4) repeatedly paging Vasey over the school's
6 public announcement (PA) system; 5) requesting Vasey to resubmit a personal day
7 request; 6) accusing Vasey of excessive absenteeism; 7) excluding Vasey's name from
8 "common planning teams" for 2007-2008 school year; 8) placing Vasey on paid
9 administrative leave; and 9) removing Vasey's name from her staff mailbox.

10 Under the adverse action standard explained above, changing Vasey's class
11 schedule and placing her on paid administrative leave constitute adverse actions.
12 Paging Vasey over the school's public announcement (PA) system, requesting that
13 Vasey resubmit an illegible personal day request; asking Vasey to provide
14 documentation for what Santa saw as a pattern of absenteeism; excluding Vasey's
15 name from "common planning teams" while she was on administrative leave; and
16 removing her name from her staff mailbox are not adverse personnel actions and,
17 therefore, do not constitute adverse actions.³⁴

18 Counseling an employee on her job duties or responsibilities does not constitute
19 adverse action. City of Peabody, 28 MLC 281, 284 (2002). Therefore, Santa's
20 discussions with Vasey concerning performance issues do not constitute adverse
21 action. Likewise, Santa's request to review Vasey's lesson plans was necessary to
22 counsel Vasey on her responsibility to prepare adequate lesson plans. The requirement

³⁴ The Union did not provide any argument or case law to support its allegation that these actions constitute adverse actions, and I have found none.

1 to submit lesson plans on a weekly basis was not an adverse personnel action. The
2 evidence clearly refutes the Union's allegation that Vasey was required to use "Bloom's
3 Taxonomy." Santa did not require any specific format.

4 Constructive Discharge

5 The Union also alleges that the School Committee's actions created an
6 unbearable work environment which forced Vasey to resign on August 15, 2007, and
7 that the constructive discharge constituted an adverse action. An employee who
8 voluntarily quits cannot contend that the separation was a discriminatory discharge,
9 unless it is determined that the employee has been constructively discharged. Town of
10 West Springfield, 21 MLC 1216, 1219-20 (1994). A constructive discharge occurs when
11 the burden imposed upon the employee causes, and is intended to cause, a change in
12 working conditions so difficult or unpleasant as to force him or her to resign. Id. at 1219-
13 20 (citing Crystal Princeton Refining Co., 222 NLRB 1068, 1069 (1976)). Compare Auto
14 Fast Freight, 272 NLRB 561 (1984), enforced, 793 F.2d 1126 (9th Cir. 1986) (union
15 members were constructively discharged when they resigned after being told that they
16 would have to discontinue union membership to continue their employment) with Red
17 Arrow Freight Lines, 289 NLRB 1347 (1988) (employee who resigned following
18 reassignment was not constructively discharged, where there was no evidence that
19 assignment was particularly difficult or unpleasant or conditioned on the employee's
20 abandoning rights guaranteed by the National Labor Relations Act.) The focus is not on
21 the employee's subjective perceptions, but whether the new working conditions were so
22 difficult or unpleasant that a reasonable person in the employee's shoes would have felt
23 compelled to resign. Town of West Springfield, 21 MLC at 1219-20 (citing Calhoun v.

1 Acme Cleveland Corp., 798 F.2d 559 (1st Cir. 1986)). Mere dissatisfaction with the
2 nature of assignments, criticism of an employee's performance, and dissatisfaction with
3 compensation are insufficient to establish a constructive discharge. GTE Products Corp.
4 v. Stewart, 421 Mass. 22, 35 (1995) citing Stetson v. NYNEX Serv. Co., 995 F.2d 355,
5 361 (2d Cir.1993). "Part of an employee's obligation to be reasonable is an obligation
6 not to assume the worst, and not to jump to conclusions too fast." GTE Products Corp.,
7 421 Mass. at 36 (citing Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536, 1539 (11th Cir.
8 1987)).

9 The School Committee's actions did not create an unbearable work environment
10 for Vasey, but instead, were appropriate responses to its concerns over Vasey's
11 conduct. A reasonable employee in Vasey's position who was making a significant
12 career change could have accepted guidance from their immediate supervisor and
13 worked to improve areas of concern. Turner's paging Vasey over the school's PA
14 system was a result of the Title 1 position which required Vasey to move from classroom
15 to classroom. Santa admittedly changed Vasey's schedule in response to the Chair
16 Incident, but the Union did not provide evidence that the changes were excessive given
17 Vasey's conduct or that any changes prior to the incident were out of the ordinary for the
18 Title 1 position. Santa's request that Vasey resubmit an illegible personal day request
19 was a legitimate and minor administrative request that did not result in any adverse
20 consequences for Vasey. Similarly, Santa acted pursuant to the contract when she
21 directed Vasey to substantiate her use of 27 sick/personal days. It is not unreasonable
22 to expect an employer to follow the contract and request substantiation after using an
23 average of 3 sick/personal days per month.

1 Further, the Union argues that when Vasey realized that Santa had not included
2 her in any of the common planning teams “Principal Santa’s vendetta against [Vasey]
3 reached its crescendo.” However, a cursory review of the common planning teams list
4 shows that the meetings only concerned the remaining days of the 2006-2007 school
5 year. Santa’s decision to place Vasey on paid administrative leave after the Chair
6 Incident is a common sense response to such an accusation from a student. Finally, I
7 found that the school removed Vasey’s name from her staff mailbox only after it had
8 reason to believe she was not returning. For these reasons, I do not find that Vasey was
9 constructively discharged. The Union did not produce evidence that the School
10 Committee’s actions taken together were so unbearable that a reasonable person would
11 have been compelled to resign. A reasonable person intent on preserving their career
12 would not have construed Santa’s actions as intolerable.

13 Furthermore, cutting against the Union’s constructive discharge argument is
14 Vasey’s admission that she began looking for a job outside the Southbridge School
15 District in 2006, after the School Committee eliminated the ECC position, because she
16 “wanted to stay within the early childhood field.” Throughout the 2006-2007 school year,
17 Vasey was searching for another position, but not because of Santa’s “bullying.” Vasey
18 strongly desired to return to early childhood education instead of continuing as a Title I
19 teacher for fourth and fifth grade students. By time Vasey noticed that the West Street
20 School had removed her mailbox, she had secured a job in the Easton Public Schools
21 and admitted that she had no intention to return to the Southbridge School District.

1 Animus

2 There is no direct evidence to suggest that Santa harbored any unlawful animus
3 towards Vasey's involvement in filing grievances or her participation in a DLR
4 proceeding. Therefore, I consider whether there is sufficient circumstantial evidence.

5 The timing of the School Committee's actions support the Union's prima facie
6 10(a)(4) case for unlawful motivation because they occurred on the heels of the in-
7 person investigation of the Union's charge on April 6, 2007. I also find suspicious timing
8 to support the Union's prima facie 10(a)(3) case for unlawful motivation because Vasey
9 was placed on administrative leave on June 4, 2007, after filing a grievance on May 11,
10 2007. However, as stated above, the Board has long held that timing alone is
11 insufficient to establish unlawful employer motivation. Bristol County, 26 MLC at 110.

12 There is no evidence of a history of antipathy toward Vasey's union activities,
13 disparate treatment, or deviation from past practices. Moreover, the School Committee's
14 reasons for changing Vasey's schedule and placing her on administrative leave were
15 not trivial. The School Committee received a complaint accusing Vasey of purposefully
16 pulling a chair out from under a student causing him to fall. It must take any allegation
17 that a teacher intentionally harmed a student seriously and investigate further.
18 Therefore, I do not find that the School Committee actions were motivated by an
19 unlawful desire to penalize or discourage Vasey's protected activity. Thus, the Union
20 has not established a prima facie case of retaliation and I dismiss this portion of the
21 complaint.

1 The School Committee's Reasons for Taking the Adverse Action were Lawful

2 Even if the Union presented circumstantial evidence to establish that the School
3 Committee's decision to alter Vasey's schedule and place her on administrative leave
4 was unlawfully motivated, I find that the School Committee had lawful reasons for doing
5 so. Once the charging party has established a prima facie case, the burden shifts to the
6 employer to produce legitimate, non-discriminatory reasons for taking the adverse
7 action. Forbes Library, 384 Mass. at 566. The employer must show a lawful reason for
8 its decision and "produce supporting facts indicating this reason was actually a motive in
9 the decision." Melrose School Committee, 33 MLC 61, 70 (2006) (citing Quincy School
10 Committee, 27 MLC 83, 92 (2000)). If the employer is able to produce lawful reasons for
11 its actions, the employee must then prove that, "but for" the protected activity, the
12 employer would not have taken the adverse action. Bristol County, 26 MLC 105, 109
13 (2000).

14 Here, the School Committee's assignment of Vasey only to classrooms with
15 another teacher present, and its subsequent decision to place her on administrative
16 leave were reasonable considering that a student alleged that Vasey had intentionally
17 harmed him. The School Committee had to take seriously the student's accusation, and
18 performed an investigation which included interviews of the school nurse and other
19 students. These facts clearly support that the student's accusation motivated the School
20 Committee to change Vasey's schedule and place her on leave. The Union did not
21 provide evidence that "but for" Vasey's protected activity, the School Committee would
22 not have taken these adverse actions against her.

