DC 37, 3 OCB2d 56 (BCB 2010)

(IP) (Docket No. BCB-2822-09).

Summary of Decision: The Union alleged that DEP violated NYCCBL § 12-306(a)(1) and (4) when it unilaterally changed the office and technology policy governing employees' use of the internet, computer equipment, and the telephone system. The Union also alleged that by prohibiting use of these resources by employees for the dissemination and communication of information related to the Union, DEP interfered with these employees' statutory rights. The City contended that DEP is within its managerial prerogative to restrict employee use of communication equipment, did not interfere with the rights of its employees under the NYCCBL, and is not under any obligation to bargain with the Union about its office and technology policy. The Board found that DEP interfered with its employees' rights because its new office and technology policy singularly bans the use of DEP's office and technology resources in connection with union-related activities. Accordingly, the petition was granted with respect to the violation of NYCCBL § 12-306(a)(1). ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Petitioner,

-and-

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

DECISION AND ORDER

On December 22, 2009, District Council 37 ("DC 37" or "Union") filed a verified improper practice petition against the City of New York ("City") and the New York City Department of

Environmental Protection ("DEP") alleging that DEP violated New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(a)(1) and (4). The Union claims that DEP issued a memorandum that unilaterally changed the office and technology policy governing employees' use of the internet, computer equipment, and the telephone system. The Union further alleged that this memorandum interferes with its members' statutory rights under NYCCBL § 12-305 because the prohibition specifically prohibits the use of these systems in the dissemination of union-related information or business. The City contended that DEP is within its rights to restrict employee use of communication equipment and that the memorandum does not constitute a change to a mandatory subject of bargaining. Also, the City argues that the Union failed to establish that DEP interfered with its employees' protected rights because alternative methods of communication with the Union is still possible. We find that DEP's memorandum, which concentrated only on prohibiting use of the agency's office and technology resources in connection with union-related matters, interfered with employees' statutory rights. We further find that, since this memorandum contains such content specific prohibition, which is violative of the NYCCBL, we need not decide the issue of bargaining.

BACKGROUND

DEP is an agency of approximately 6,000 employees that manages and conserves the City's water supply; distributes clean drinking water; collects and treats wastewater; regulates air quality, hazardous waste, and critical quality of life issues; and oversees large capital construction projects related to these goals. DEP has offices involved in contracting, customer service, engineer design and construction, environmental compliance, water and sewer operations, police and security, and

environmental planning and assessment. In these offices, which are located across nine counties within the State of New York, DEP employs Architectural Specialists, Chemical Engineers, Engineering Specialists, Forensic Scientists, Geologists, Mechanical Engineering Drafters, Principal Electrical Engineers, Senior Landscape Architects, and Waterfront Construction Inspectors, among others; all of which are represented by DC 37's affiliate, Civil Service Technical Guild, Local 375 ("Local 375").[1] The majority of these employees, if not all, have access to DEP computers and telephones and are assigned DEP-issued email addresses.

On March 31, 2005, DEP issued the Flexible Use Policy ("Policy") that governs DEP employees' use of DEP's office and technology resources including but not limited to information technology, personal computers, related peripheral equipment, software, telephones, pagers, wireless communication devices, facsimile machines, photocopiers, internet services, and email systems. The Policy states:

> DEP employees are permitted limited personal use of DEP office and technology resources under the following conditions:
>
> 1. If the use is not prohibited pursuant to this or another applicable agency policy.
>
> 2. If the use does not interfere with or otherwise impede DEP's operations or employee productivity.
>
> 3. If the use involves no more than minimal additional expense to DEP.
>
> 4. If the use does not conflict with the employee's official duties and responsibilities.
>
> 5. If the use is only at times during which the employee is not

[1] Local 375's office is located in downtown Manhattan, and has telephone number, fax number, an email address, and a website.

required to perform services for DEP.

(Pet., Ex. A). The Policy defines "personal use" as "activity that is conducted for purposes other than accomplishing official work related activity. Personal use under this Policy does not include any use that is unlawful, violates DEP's Conflict of Interest rules, or other applicable rules and regulations, or is specifically prohibited by this Policy or another applicable agency policy." (*Id.*).

The Policy continues and enunciates "unauthorized personal uses" as:

> -any personal use of DEP's office and technology resources that could cause congestion, delay, or disruption of services to any of DEP's office and technology resources [such as] . . . electronic greeting cards, video, sound, digital images or other large computer file attachments.
>
> -any personal use of DEP's office and technology resources as a staging ground or platform to gain unauthorized access to other systems.
>
> -any personal use of DEP's office and technology resources in the creation, copying, transmission, or retransmission of chain letters.
>
> -any personal use of DEP's office and technology resources for activities that are inappropriate to the workplace or are prohibited by applicable law, rule, regulation or agency policy.
>
> -any personal use of DEP's office and technology resources for the creation, downloading, viewing, storage, copying or transmission of any material that is: obscene, sexually explicit or sexually oriented; hate speech; threatening [or] defamatory.
>
> -any personal use of DEP's office and technology resources for furtherance of a non-DEP business or non-DEP employment, including, without limitation, consulting for pay, sales or administration of business transactions . . ., or sale of goods or services.
>
> -any personal use of DEP's office and technology resources to engage in any outside fund-raising activity, endorse any product or service, participate in any lobbying activity, or engage in any prohibited

> political activity.
>
> -any personal use of DEP's office and technology resources to post agency information to external newsgroups, chat rooms, bulletin boards or other forums without explicit authorization.
>
> -any personal use of DEP's office and technology resources in the unauthorized acquisition, use, reproduction, transmission, or distribution of any information [that is] private or confidential.
>
> -any unauthorized modification of DEP's office and technology resources, including but not limited to, loading personal software or making configuration changes.

(*Id.*).

The Policy states that DEP employees "do not have a right of privacy while using any of DEP's office and technology resources, whether for official or personal purposes, at any time." (*Id.*). Sanctions for violating the Policy may result in the loss of use or limitations on use of office and technology resources; financial liability for the cost of such use; disciplinary or other adverse personal actions, up to and including dismissal; or civil and/or criminal penalties.

When DEP employees log onto the DEP computer system, the first screen that appears on the monitor is a statement reading:

> This computer, including all related equipment, is the property of [DEP] and is solely for uses authorized by DEP. You have no right to privacy on the system, and all information and activity on the system may be monitored. Any unauthorized use of the system may result in disciplinary action, civil or criminal penalties.[2]

(Ans., Ex. 1). In order for DEP employees to gain access to the computer, they must click on "OK," thereby acknowledging and accepting the terms of this statement.

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[2] The record is not clear as to when this message began appearing on the computers of DEP employees.

On November 26, 2007, a Local 375 member contacted DEP's Director of Labor Relations, via telephone call and email, regarding his receipt of emails from other Local 375 members who were campaigning for elected posts within a chapter of Local 375. DEP's Director of Labor Relations responded to this inquiry via an email to this individual, as well as to other "union officials," stating that campaign emails to a DEP email address are not permitted because they constitutes "dissemination of campaign information" using DEP communication systems. (Ans., Ex. 3). Again, on March 13, 2008, DEP's Director of Labor Relations received an email from another Local 375 member asking for action to be taken against a Local 375 member who sent electioneering emails, which disrupted the work day. DEP's Deputy Director of Labor Relations re-issued her previous directive and further stated that DEP email system is not to be used to further union activity.

As a result of the March 13, 2008 email, the Local 375 member who had been accused of sending electioneering emails to Local 375 members within DEP was brought up on disciplinary charges. During the course of these disciplinary procedures, DEP asserted that it concluded that its employee lacked the proper understanding of the Policy. Thus, on August 25, 2009, DEP issued a memorandum with the subject line: "Clarification to the DEP Flexible Use Policy," and was sent to all DEP employees ("Clarification Memorandum"). (Pet., Ex. B). This memorandum states that it "clarifies" the Policy "as it relates to the use of DEP's official email system by DEP employee for purposes that relate to union activities." (*Id.*). Under the Clarification Memorandum:

> DEP employees are prohibited from using DEP office and technology resources for lobbying activity. This prohibition applies to use of Outlook, or other DEP official email system or information resource, for activity relating to union elections or dissemination of information relating to any type of union business including, but not limited to notices regarding chapter meetings; notices regarding upcoming union events such as union holiday functions or informational fairs;

> information or advice regarding contract interpretation and the rights of fellow union members. **In other words, the DEP Outlook email should not be used in connection with any type of Union activity.**

(*Id.*) (Emphasis supplied).

On October 6, 2009, DC 37's Assistant Director of Research and Negotiations sent DEP's Deputy Commissioner a letter requesting a meeting regarding the impact of the Clarification Memorandum. Although he acknowledged that DEP "may have legitimate reasons for attempting to limit DEP employees' email usage," he asserted that the prohibition of using "DEP Outlook email for any purposes related to union activities" is unduly restrictive. (Pet., Ex. C). In response, on November 19, 2009 and again on January 5, 2010, DEP's Office of Labor Relations emailed the Union seeking to schedule a labor-management meeting to discuss the Policy. To date, a meeting on this topic has not been scheduled nor has DEP rescinded the Policy or the Clarification Memorandum.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that DEP violated NYCCBL § 12-306(a)(1) and (4) by refusing to collectively bargain in good faith on a mandatory subject of bargaining, DEP's office and technology policy.[3] Use of computers, the internet, and emails clearly affect the terms and conditions of

[3] NYCCBL § 12-306(a) provides in pertinent part:
It shall be an improper practice for a public employer or its agents:
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
* * *
(4) to refuse to bargain collectively in good faith on matters within the scope of
(continued...)

employment of the Union's members at DEP. Furthermore, communication between a union and its members, as well as among union members, constitutes protected union activity and as such, affects employees' working conditions. Similarly, when an employer authorizes use, either expressly or implicitly, for union communication, a past practice is established. This practice is protected and therefore falls under the scope of a mandatory subject of bargaining. DEP issued the Clarification Memorandum, which expressly prohibited the use of DEP's office and technology resources for any union-related activity. This memorandum affects the terms and conditions of employment and differs from the Policy, which contains no mention of union-related communication. Therefore, DEP violated the NYCCBL.

The Union further argues that DEP's actions in the instant matter also interfered with the statutory rights of the Union's members in violation of NYCCBL § 12-306(a)(1). Based upon statutory and decisional law, as well as the Policy, union members have a right to use the employer's property in furtherance of its statutory rights. More specifically, the law allows the use of the employer's communication systems to discuss union-related business through the use of bulletin boards, telephones, and email systems. Though this right is not unfettered, when an employer allows its employees occasional personal use of the employer's communication systems, the employer cannot lawfully exclude union activities during those times permitted by the employer. The

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[3](...continued)
collective bargaining with certified or designated representatives of its public employees; . . .

Further, § 12-305 of the NYCCBL provides, in pertinent part:
Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. . . .

Clarification Memorandum states explicitly that DEP's communication systems cannot, without exception, be used in furtherance of any union-related activities. Additionally, the Union has members working within DEP located throughout the State of New York, and the use of DEP's office and technology resources by Union members is necessary to communicate with all DC 37's constituents. Thus, the blanket prohibition contained in the Clarification Memorandum impinges upon the Union members' rights to self-organization, to form, join or assist public employee organizations and to bargain collectively.

City's Position

The City argues that, under NYCCBL § 12-307(b), DEP is authorized to decide unilaterally the methods and means by which its operations are conducted, including issuing clarifications to existing rules and regulations to ensure compliance.[4] Simply, DEP has the basic right to regulate and restrict employee use of its property and employees have no statutory right to use its property, such as bulletin boards, telephones, copiers, or computers, for purposes deemed unauthorized by the employer. DEP, thus, can dictate how its employees can use its office and technology resources because the property belongs to the agency, not the employee. Restrictions such as the one contained in the Clarification Memorandum are the same as restrictions on union use of office space, telephones, and email systems that have been found to be lawful restrictions of employees organizational rights by the Courts and administrative agencies.

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[4] NYCCBL § 12-307(b) states, in pertinent part:
It is the right of the City, or any other public employer, acting through its agencies to determine the standards of service to be offered by its agencies; . . . direct its employees; take disciplinary action; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; . . . and exercise complete control and discretion over its organization . . . .

The City further contends that DEP did not violated § 12-306(a)(1) of the NYCCBL because NYCCBL § 12-305 does not guarantee members of the Union the right to use DEP's equipment, property, or technology in any way they deem necessary. The Clarification Memorandum does not restrict or interfere with these members' rights to self-organization and collective bargaining, rather it serves as a deterrent to DEP employees who would utilizes these systems in an inappropriate manner. In addition, DC 37 members within DEP still have access to other Union members and the Union itself. Local 375 has an office, telephone and facsimile numbers, an email address, and a website. Further, due to the proliferation, popularity, and relative low cost of personal computers, personal emails, cellular telephones, and handheld wireless devices, Union members can, without any difficulty, communicate with each other and DC 37 regarding union-related business. To argue that these members' ability to discuss labor-related topics and organize meetings has been infringed upon would be implausible. In addition, DEP did not interfere with the rights of DC 37's members by issuing the Clarification Memorandum because the Union did not demonstrate either that this memorandum was inherently destructive to the statutory rights of the Union members, or that anti-union animus was the motivation behind the issuance of this memorandum.

Finally, the City contends that no violation of NYCCBL § 12-306(a)(4) occurred when DEP issued the Clarification Memorandum because the Union did not demonstrate that the instant matter involves a mandatory subject of bargaining and/or that there was a change to such a subject. Not every decision by an employer that affects terms and conditions of employment constitutes a mandatory subject of bargaining. The Policy and the Clarification Memorandum applies only to Union business and "does not have a material affect on a term or condition of employment." (Ans. ¶ 108). Further, this memorandum was merely a clarification of the Policy and did not materially

alter the original prohibition contained in the Policy. The Clarification Memorandum was issued in response to a Union member's claims that DEP's email system was being improperly used by some Union members. Thus, there can be no violation found in the instant matter.

DISCUSSION

The Union first claims that DEP interfered with the statutory rights of Union members when it issued the Clarification Memorandum, which unequivocally bans the use of its office and technology resources by employees for union-related activities. According to NYCCBL § 12-306(a)(1), it is an improper practice for a public employer or its agents "to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter." Those rights encompass the "right to self-organization, to form, join or assist public employee organizations, [and] to bargain collectively through certified employee organizations of their choosing." NYCCBL § 12-305.

We have held that the adoption and/or enforcement of policies, procedures, or rules by an agency that specifically prohibit employee involvement in union activity constitutes interference, as defined by NYCCBL § 12-306(a)(1). *See DC 37*, 69 OCB 23, at 12 (BCB 2002) *affd.*, *District Council 37 v. City of New York*, No. 112450/03 (Sup. Ct. N.Y. Co. Mar. 15, 2004), *affd.*, 22 A.D. 3d 279 (1st Dept. 2005) (unilaterally instituting a policy that targeted a group of employees for filing a representation petition constituted interference with these employees' rights under NYCCBL § 12-305); *see also Seabrook*, 55 OCB 7, at 7 (BCB 1995) (finding interference when "plainly stated" limiting union communication with its constituents was implemented against an individuals running for an internal union position).

Relatedly, we have also held that an employer's "decision not to allow the Union to hold its schedule meeting because the Union intended to discuss organizing is a violation of the NYCCBL." *CWA, L. 1180*, 71 OCB 28, at 11 (BCB 2003) ("[e]mployees' rights to conduct and attend union meetings are fundamental . . . to their rights to engage in union activity" as well as "employees' rights to discuss employment issues with other employees on their employer's premises"). S*ee generally DC 37, L. 376*, 73 OCB 6, at 11 (BCB 2004).

While the Board has repeatedly applied this general principle to a variety of claims of interference by an employer, we have not yet had occasion to apply it to the content of employee's use of employer communications media under a policy permitting employees' personal and other non-business related usage. However, the National Labor Relations Board ("NLRB") has found the principle against interference with union activity to apply to such usage. Although the standards set forth in the private sector case law below are not binding on this Board in applying the NYCCBL, we find the reasoning in these decisions on this particular point to be persuasive.

The NLRB has stated that "disparate treatment of activities or communications of a similar character because of their union . . . status" is unlawful under the National Labor Relations Act ("NLRA"). *Guard Publ. Co.*, 351 NLRB 1110, at 1118 (2007) ("*Register-Guard*") *affd. in part and revd. in part on other grounds*, *Guard Publ. Co. v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009). In this case, an employee, who was also the union president, sent an email to other employees clarifying the facts surrounding a rally that the union held the day before. The employee was issued a written warning for using the company's email system to conduct union business. The NLRB, finding that the only difference between this email and other employee emails permitted by the company was that this email was union-related, concluded that issuance of the warning was unlawful and, therefore

constituted an unfair labor practice. This portion of the NLRB's decision was ratified by the D.C. Circuit, which further stated that disciplining an employee for sending a particular union-related email constituted interference because the employer "admonished her for using the company's email system expressly for the purpose of conducting [union] business."[5] *Guard Publ. Co.*, 571 F.3d at 59 (D.C. Cir. 2009); *see also Eaton Tech, Inc.*, 322 NLRB 148 (1997); *Union Carbide Corp. v. NLRB*, 714 F.2d 657, 661 (6th Cir. 1983); *Champion Intl. Corp. v. Scogin*, 303 NLRB 102 (1991) ("an employer may not invoke rules designed to protect its property from unwarranted use in furtherance of pro-union activities, while, at the same time, freely permit such use for non business related reasons").

Here, we hold that DEP's prohibition of the use of its office, communication, and/or computer equipment, property, or technology for purposes of union activity while permitting other non-work related usage explicitly treats union activity in a disparate manner and thereby constitutes interference with the statutory rights memorialized in NYCCBL § 12-305. *See CWA, L. 1180*, 71 OCB 28, at 10; *DC 37*, 77 OCB 8, at 11-12; *see also Guard Publ. Co. v. NLRB*, 571 F.3d at 59; *Eaton Tech., Inc.*, 322 NLRB 148.

DEP's issuance of the Clarification Memorandum violated § 12-306(a)(1) of the NYCCBL because it interfered with the Union members' rights under NYCCBL § 12-305. Under the Policy, DEP permits employee use of its office and technology resources for personal, non-DEP related purposes, with some limitation. The Policy specifically prohibits use that: causes congestion or delay; is prohibited by law, rule, regulation or policy; is related to sexually-explicit material; is

[5] The union in this case did not challenge "the lawfulness of a company policy that bars union access to e-mail on a neutral basis" and simply addressed the question of whether the employer could "selectively enforce[] its e-mail policy against the union." *Id.*, 571 F.3d at 58.

connected with non-DEP business transactions; is related to political activity; or concerns distribution of private or confidential material. The Clarification Memorandum expands the stated prohibitions to include use in connection with "the dissemination of information relating to any type of Union business." (Pet., Ex. B). It further provides that DEP's email system "should not be used in connection with any type of Union activity." (*Id.*). DEP prohibited use of its office and technology resources in a manner that expressly focused on union activity while permitting other non-DEP related use. Accordingly, we find that the Clarification Memorandum interfered with the employees' statutory rights and that DEP violated § 12-306(a)(1) of the NYCCBL; and we order rescission of the Clarification Memorandum.

The City's argues that DEP was authorized by NYCCBL § 12-307(b) to institute a policy that governs employee use of its office and technology resources. While the City correctly highlights the management rights provision contained in the NYCCBL, we reject the notion that this provision allows DEP, or any agency, to impermissibly single out protected union activity while acting in furtherance of its right to determine the standards of service, to direct its employees or to maintain the efficiency of governmental operations. We have held that a rule that appears neutral on its face can still be applied in a manner that is inimical to the NYCCBL. *See SSEU, L. 371*, 3 OCB2d 47, at 15-16 (BCB 2010) (finding that the mere application of the one-in-three rule does not insulate promotions from claimed violations of the NYCCBL because the rule permits the agency to exercise discretion in its selection of promotional appointees); *see also Guard Publ. Co. v. NLRB*, 571 F.3d at 59. Here, the Clarification Memorandum does not even purport to be neutral on its face.

Accordingly, though DEP may appropriately promulgate a rule that governs employee use of its office and technology resources under the authority provided by § 12-307(b) of the NYCCBL,

such as the Policy, the mere recitation of such a provision does not absolve the agency of all responsibility for its action that disparately affect the exercise of protected rights. We find, in this case, that the Clarification Memorandum singularly prohibits the use of DEP's office and technology resources in connection with union activity, which we find violative of the NYCCBL.

In addition to the Union's interference claim, DC 37 further contends that DEP breached its duty to bargaining in good faith over a mandatory subject when it issued the Clarification Memorandum and seeks to bargain over the topic addressed in this memorandum. However, since we order that the Clarification Memorandum be rescinded in its entirety, there remains no basis for us to consider the remaining claims raised by the Union. Accordingly, we do not reach the issue of whether there was a violation of the duty to bargain under NYCCBL § 12-306(a)(4).

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2822-09 be, and the same hereby is, granted with respect to the violation of NYCCBL § 12-306(a)(1); and it is further

ORDERED, that New York City Department of Environmental Protection and its management cease and desist from interfering with, restraining, and/or coercing its employees from invoking their statutory rights under NYCCBL § 12-305; and it is further

ORDERED, that the New York City Department of Environmental Protection rescind the Clarification Memorandum and the prohibition of using its office and technology resources for union-related activity contained therein; and it is further

ORDERED that the New York City Department of Environmental Protection post appropriate notices detailing the above-stated violations of the NYCCBL.

Dated: New York, New York
November 29, 2010

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

PETER PEPPER
MEMBER

(Concurring in result; see attached opinion)

CHARLES G. MOERDLER
MEMBER

_DC 37_, 3 OCB2d 56 (BCB 2010)
(IP) (Docket No. BCB-2822-09).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Petitioner,

-and-

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

CONCURRING OPINION OF CHARLES G. MOERDLER

I concur in the result. However, to the extent, if any, that the reasoning turns upon so-called "managerial rights or "prerogatives" under § 12-307(b) of the NYCCBL, I decline to join in that reasoning for the reason, among others, that no such "rights" or "prerogatives" are authorized as a matter of State law and the cited statutory predicate is invalid as a matter of law. *See* dissenting opinion in *UFA*, 77 OCB 39 (BCB 2006), Docket No. BCB-2531-06.

Dated: New York, New York
November 29, 2010

CHARLES G. MOERDLER
MEMBER

NOTICE
TO
ALL EMPLOYEES
PURSUANT TO
THE DECISION AND ORDER OF THE
BOARD OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK
and in order to effectuate the policies of the
NEW YORK CITY COLLECTIVE BARGAINING LAW

We hereby notify:

That the Board of Collective Bargaining has issued 3 OCB2d 56 (BCB 2010), determining an improper practice petition between District Council 37, AFSCME, AFL-CIO, and the City of New York and the New York City Department of Environmental Protection.

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby:

ORDERED, that the improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2822-09 be, and the same hereby is, granted with respect to the violation of NYCCBL § 12-306(a)(1); and it is further

ORDERED, that New York City Department of Environmental Protection and its management cease and desist from interfering with, restraining, and/or coercing its employees from invoking their statutory rights under NYCCBL § 12-305; and it is further

ORDERED, that the New York City Department of Environmental Protection rescind the Clarification Memorandum and the prohibition of using its office and technology resources for union-related activity contained therein; and it is further

ORDERED that the New York City Department of Environmental Protection post appropriate notices detailing the above-stated violations of the NYCCBL.

The New York City Department of Environmental Protection
(Department)

Dated:

_____
(Posted By)
(Title)

This Notice must remain conspicuously posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.