Local 376, DC 37, 4 OCB2d 64 (BCB 2011)

(IP) (Docket No. BCB-2883-10).

Summary of Decision: The Union alleged that DEP insisted on interviewing an employee at an investigatory interview after the employee requested Union representation, in violation of NYCCBL § 12-306(a)(1). DEP argued that the meeting was not an investigatory interview but an instructional one, aimed at educating two employees with a history of conflict about workplace rules and options to help resolve the conflict. DEP also argued that the employee did not have a reasonable belief that the meeting would result in disciplinary action and that the Union made it impossible to hold the meeting at a time where a representative could be present within a reasonable amount of time. The Board found that the employee had a reasonable belief that the meeting would result in disciplinary action and that the delay that would have resulted in obtaining Union representation was not unreasonable. Therefore, the Board found that the City violated the NYCCBL, and the City was ordered to not retain or utilize any information obtained from the employee during the meeting for any disciplinary purposes. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

LOCAL 376, DISTRICT COUNCIL 37,

Petitioner,

- and -

NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

DECISION AND ORDER

On August 6, 2010, Local 376, District Council 37 ("Union"), filed verified Improper Practice Petition against the Department of Environmental Protection ("DEP"). The Union alleges that DEP insisted on interviewing an employee at an investigatory interview after the

employee requested Union representation, in violation of § 12-306(a)(1) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"). DEP argues that the meeting was not an investigatory interview but an instructional one, aimed at educating two employees with a history of conflict about workplace rules and options to help resolve the conflict. DEP also argues that the employee did not have a reasonable belief that the meeting would result in disciplinary action and the Union made it impossible to hold the meeting at a time where a representative could be present within a reasonable amount of time. The Board finds that the employee in question had a reasonable belief that the meeting would result in disciplinary action and that the delay that would have resulted in obtaining Union representation was not unreasonable. Therefore, the Board finds that the City violated the NYCCBL, and the City was ordered to not retain or utilize any information obtained from the employee during the meeting for any disciplinary purposes.

BACKGROUND

The Trial Examiner held a one day hearing in this matter and found that the totality of the record established the relevant facts as follows.

John Civitano has been employed by DEP since 1996 and was appointed to the title of Construction Laborer on March 2, 2000. On February 23, 2010, DEP served Civitano with disciplinary charges alleging that he "engaged in conduct prejudicial to good order and discipline" during an incident on January 27, 2010 involving Richard Schnell, a supervisor at Civitano's work location. (Ans., Ex 2). The DEP Disciplinary Counsel's charges alleged that, on January 27, Civitano raised a fist towards Schnell, attempted to initiate a physical altercation with Snell by

inviting him to "go downstairs" so that he could "take him outside," shook a water bottle in close proximity to Schnell, getting him wet on purpose, and used improper language towards Snell by mimicking him while Schnell was speaking to someone else. (*Id.*).

An informal conference was held on March 10, 2010, which the grievant attended. The Conference Leader determined that the charges should be upheld and recommended that Civitano be suspended without pay for three days. On March 12, 2010, DEP received a request for a Step II hearing from the Union, appealing the Step I determination.

On April 18, 2010, Schnell created a written report "For the Record" describing further incidents with Civitano. (Ans., Ex. 6). The report detailed a number of alleged incidents where Schnell was provoked and taunted by Civitano since the January 27 incident. (*Id.*). Dennis Delaney, the DEP Chief of Maintenance, Repairs and Emergency Operations for Manhattan, Bronx, and Staten Island received Schell's report at an undetermined date after April 18. After reading the report, Delaney testified that he became concerned about the prospect of a physical confrontation or a potentially disruptive workplace dispute between Civitano and Schnell, since the Union had raised the issue of workplace violence, generally, at DEP labor-management meetings, and both Civitano and Schnell were trained in martial arts. (Tr. 49).

As a result, on April 27, Delaney asked his assistant to direct both Civitano and Schnell to attend a meeting with him on that afternoon. Delaney testified that his intent behind the meeting was to explain the Agency's Code of Discipline and rules regarding violence in the workplace to ensure that both men knew the resources available to them, such as Employee Assistance Program ("EAP"), the employee concerns hotline, or talking to a supervisor. (Tr. 50-51). Delaney testified credibly that he called the meeting with the intention to resolve the conflict between the

two and explain to them their responsibilities as DEP employees. (Tr. 52, 54).

Delaney testified that the morning of the meeting, he called Gene DeMartino, the President of the Union, to request that he or other Union representation attend the meeting, but neither DeMartino nor anyone else from the Union was available that day. (Tr. 54). DeMartino testified that Delaney called him "in the later part of the afternoon" that day and that he offered the following day as an option for the meeting. (Tr. 10, 16). Delaney testified that DeMartino raised the issue of having a higher-ranking Union representative present and Delaney agreed. (Tr. 55). Delaney stated that he did not want a shop steward handling the grievance, "I wanted somebody of weight, somebody that was going to say, you know, look, you guys have to . . . behave yourself." (*Id.*). Delaney testified that the first date that he could get from DeMartino to hold the meeting was "maybe a week from Thursday." (Tr. 55). Complicating matters was the fact that due to their work schedules, DeMartino could attend only during the day, and Civitano during the late afternoon or evening, and changing Civitano's schedule would take at least two weeks and involve overtime. (*Id.*). Delaney testified that he decided to go ahead with the meeting that day, and without Union representation present, because he felt that the chances that violence could erupt between Civitano and his supervisor were too great and he wanted to try to resolve the animosity between them as soon as possible. (Tr. 63).

When Civitano arrived for his 3:00 pm shift, District Supervisor William Brunell informed Civitano that he was to attend a meeting at DEP's headquarters in LeFrak City, Queens ("LeFrak") that afternoon and that if he did not attend the meeting, DEP would discipline Civitano for his refusal. (Tr. 19, 21). Civitano testified that he immediately requested Union representation and called DeMartino several times over a half hour. (Tr. 21). DeMartino advised him not to go to

LeFrak, but Brunell told him to get in the vehicle or else he would be written up on charges. (*Id.*). Civitano then got in to the car to go to LeFrak. (*Id.*).

At LeFrak, Delaney presided over the meeting, which included the Acting Manager for the Borough of the Bronx, Schnell's union representative, Civitano, and Schnell. An Acting Director arrived late. The DEP Assistant Disciplinary Counsel who was handling the charges against Civitano testified that no one from the DEP's Disciplinary Counsel's office was present or aware of the meeting.

Civitano testified that he stated that he "didn't really want to be there because [he] didn't have a Union rep" and repeated that request multiple times. (Tr. 23, 57). Both Civitano and Delaney testified that after Civitano raised his concerns, Delaney told Civitano that "this wasn't discipline" and he did not "have to say anything but you had to listen." (Tr. 28-29). However, at some point afterwards Delaney asked Civitano and Schnell, "[W]hat's the beef, what's the problem[?]. . ." between the two. Civitano testified that he interpreted the question to mean that they wanted to "find out more or less what was going on between Richie and myself. . . . [t]hey wanted to know–they wanted to know more or less what was going on with the issue, I mean, what the bottom line was, what the whole scenario what was going on." (Tr. 24). Civitano, in response, described Schnell as "out of control," a "bad supervisor," and noted that DEP had required Schnell to undergo a psychiatric examination. (Tr. 60, 74-75, 77). Schnell would respond in kind, and the two men went back and forth. (Tr. 60-61). The meeting lasted 45 minutes to one hour. (Tr.. 25). Civitano testified that he believed he was there because of the charges pending against him. (*Id.*).

Delaney testified that at the meeting he handed out the Uniform Code of Discipline, talked

about the Employee Assistance Program, the possibility of a federal monitor, and the employee concerns hotline. (Tr. 56-57). He testified that he also asked Civitano and Schnell what the issues were between them, and that in so doing, he was just trying to resolve the conflict, if it was possible, and that he didn't ask specifically about either the incident that led to the charges against Civitano or the incident that led to Schnell's April 18 report. (Tr. 57-61). Delaney testified that he had done this type of session before and there's usually a root cause that incites hatred between two employees, such as one man sleeping with the other man's wife, or that two men used to drink together and now they don't. (Tr. 74-75). However, Delaney testified that both Schnell and Civitano each raised complaints about each other, but neither would get to the root of the problem as to why they disliked each other. (*Id.*). Civitano testified that Delaney also asked him if he knew what a hostile work environment was. (Tr. 29). Delaney denied asking Civitano if he knew what the definition of a hostile workplace was, and that any reference made to a hostile workplace was regarding "health and safety . . . with violence in the workplace." (Tr. 76-77).

Civitano testified that he was not given the Code of Discipline at the meeting, but that he received it by fax after the meeting was over. (Tr. 26). Civitano testified that during the meeting, he was told about the EAP but that he did not recall being told about a Federal Monitor. (Tr. 27).

On May 4, 2010, a Step II hearing was held, and on May 25, 2010, the Hearing Officer issued a decision upholding the determination at Step I. The events of April 27 were not mentioned in the Step II decision. The DEP Disciplinary Counsel testified that the first time she had heard of the April 27 meeting was during the Step II hearing, when the Union's counsel asked a witness about a possible Weingarten violation that occurred at a meeting on April 27.

POSITIONS OF THE PARTIES

Petitioner's Position

The Union argues that the Respondents violated NYCCBL § 12-306(a)(1) by questioning Civitano after he requested Union representation.[1] The Union argues that the circumstances in this matter constitute a textbook Weingarten violation. It contends that DEP summoned Civitano to a meeting to discuss alleged conduct for which Civitano not only might be the subject of potential discipline, but for which DEP had already decided would be the subject of actual discipline. Civitano was compelled to speak about issues underlying pending charges. A disciplinary hearing officer had recommended a suspension for charges involving a Civitano-Schnell confrontation. The root causes of that confrontation certainly would be an important aspect of any investigation conducted by the prosecution or defense in the ongoing disciplinary process. An uncounseled interrogation of an employee facing disciplinary action is, indeed, a far more egregious Weingarten violation than where the employee is only a potential target of disciplinary action. The only apparent reason the case law does not more explicitly deal with such a situation is that no other employer has so brazenly contravened fundamental precepts of due process.

The Union argues that Delaney's proviso that Civitano was not required to answer his

[1] NYCCBL § 12-306(a)(1) provides, in pertinent part, that "[i]t shall be 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."

NYCCBL § 12-305 provides, in pertinent part, that "[p]ublic 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."

questions is immaterial. Under the Taylor Law, NY Civil Service Law ("CSL") § 209-a(1)(g), the Weingarten rule prohibits the questioning itself, not any requirement to answer. The Union contends that the whole point of the rule is that, when questioned, the employee may consult his union representative regarding, among other matters, whether the employee should respond.

The Union contends that Delaney's testimony that DeMartino demanded a postponement of more than a week is not credible. Delaney wanted to hold the meeting that afternoon and nothing was going to prevent him from doing so. The Union and DEP deal with each other every day in many areas, and it is not the Union that engages in delay. Delaney's testimony was an attempt to craft a defense to the Petition by falsely accusing the Union of unreasonable behavior.

City's Position

The City argues that based on the record evidence adduced at the hearing, the April 27, 2010 meeting was not an investigatory interview. The City contends that the meeting was of an instructional nature aimed at educating two employees with a history of conflict about workplace rules and options to help resolve the conflict. Civitano did not have to answer any questions or say anything at all. DEP did not ask any investigatory questions, and did not ask any questions about the events of January 27, 2010, or any specific incidents between Civitano and Schnell. The stated purpose of this meeting simply does not fall within the realm of those investigatory interviews that give rise to representation rights pursuant to Board precedent. As the April 27, 2010 meeting was instructional and not an investigatory interview, Civitano did not have a right to representation, and DEP was under no obligation to delay a necessary instructional meeting aimed at avoiding a potential physical altercation.

The City argues that even if the instant Petition is not summarily dismissed because the

meeting in question was not an investigatory interview, the Petition must still fail as Civitano did not have a reasonable belief that the meeting would result in disciplinary action. Civitano was told the meeting was not disciplinary in nature and was assured that all he had to do was listen. Civitano was only asked a single, rhetorical, and non-disciplinary question of "what's the beef between you." (Tr. 60). Civitano had not been disciplined in the past for negative conduct in an instructional meeting such as the one in question, and nor would he have been. Further, Civitano was not alone, both he and Schnell were present, and Delaney addressed both of them in the same manner. Also, no employee involved in the disciplinary process was present during the meeting, a fact which strongly suggests the non-investigatory nature of the meeting to Civitano.

Furthermore, Civitano was not disciplined for anything he said at the meeting. While Civitano was suspended on May 25, 2010, after a Step II disciplinary hearing held on May 4, 2010, the events are completely unrelated. Civitano was disciplined as a result of his January 27, 2010 altercation with Schnell. The DEP Disciplinary Counsel who handled Civitano's charges and Delaney both testified that Disciplinary Counsel was neither present nor aware of the April 27 meeting prior to the Step II hearing. After the meeting, the charges against Civitano were not amended, the penalty did not change, and nothing which was said in the meeting had any effect on the Step II decision. Therefore, Civitano had no basis for an objectively reasonable belief that the April 27 instructional meeting at LeFrak could have resulted in discipline when he requested representation.

Finally, even if Civitano had a reasonable belief that discipline would result from the April 27 meeting, the Union cannot unreasonably delay an interview. A Union cannot invariably delay a meeting between management and labor due to claimed unavailability. The Board should use a

standard that balances the availability of the chosen representative and the length of delay occasioned by an effort to accommodate that request. Here, Civitano's request for Union representation would have unquestionably resulted in an unreasonable delay. Based upon Daley's credible testimony, DeMartino made it clear that neither he nor another Union representative would be available for an afternoon meeting for a week or more. Therefore, the City asks that the Union's claims be dismissed in their entirety.

DISCUSSION

On the facts of the instant case, this Board finds that DEP violated Civitano's right to Union representation, known as *Weingarten* rights. In *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251, 257 (1975), the Supreme Court held that the National Labor Relations Act accords private sector employees the right to refuse to submit to an employer's investigatory interview without the presence of a union representative if the employee reasonably believes that the interview could result in disciplinary measures, and the employee requests such representation. In *New York City Transit Authority,* 35 PERB ¶ 3029 (2002), *affd* 27 A.D.3d 11 (2d Dept 2005), *rev'd*, 8 N.Y.3d 226 (2007), the New York State Public Employee Relations Board ("PERB") adopted the *Weingarten* rationale and recognized that "there is no clearer expression of participation in an employee organization than the request for union representation at an investigatory interview which may result in discipline." *Id.* at 3081. PERB found in the Taylor Law the right of an employee to a union representative at a meeting where the employee reasonably believes that the interview could result in disciplinary measures. This Board adopted PERB's rationale and recognized *Weingarten* rights under the NYCCBL in *Assistant Deputy Wardens' Association*, 71 OCB 9 (BCB 2003).

However, in *New York City Transit Authority v. Public Employment Relations Board*, 8 N.Y.3d 226 (2007) ("*NYCTA*"), the Court of Appeals ruled that the Taylor Law did not provide for *Weingarten* rights, prompting the New York State Legislature to amend the Taylor Law to overrule *NYCTA* by adding subsection (g) to CSL § 209-a(1) ("2007 Amendment")."[2] *See DC 37, L. 375*, 2 OCB2d 26, at 13 (BCB 2009). We construe our law in accordance with the public policy clearly enunciated by the Legislature with the 2007 Amendment that public employees should have *Weingarten* rights. *DC 37, L. 1549*, 3 OCB2d 2 (BCB 2010); s*ee DC 37, L. 375*, 2 OCB2d 26, at 14.

The 2007 Amendment provides that it shall be an improper practice "to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, . . . at the time of questioning by the employer of such

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[2] Section 209-a(1)(g) provides that it shall be an improper practice:

> to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, or the designee of such organization, which has been certified or recognized under this article when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action. If representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation. It shall be an affirmative defense to any improper practice charge under paragraph (g) of this subdivision that the employee has the right, pursuant to statute, interest arbitration award, collectively negotiated agreement, policy or practice, to present to a hearing officer or arbitrator evidence of the employer's failure to provide representation and to obtain exclusion of the resulting evidence upon demonstration of such failure. Nothing in this section shall grant an employee any right to representation by the representative of an employee organization in any criminal investigation.

employee it reasonably appears that he or she may be the subject of a potential disciplinary action." CSL § 209-a(1)(g). The 2007 Amendment further provides that "[if] representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation." *Id.*.

On the facts of the instant case, this Board finds that DEP violated Civitano's right to Union representation. It is undisputed that Civitano requested Union representation and that Delaney asked Civitano questions after he made the request. The issue before us, therefore, is whether, from an objective standard, at the time Civitano requested Union representation, he reasonably believed that the meeting with him and Delaney and Schnell, among others, "could have resulted in discipline." *DC 37, L. 1549*, 3 OCB2d 2, at 24; *DC 37, L. 1113*, 77 OCB 25, at 11 (BCB 2006). In the instant matter, we find that Civitano had a reasonable belief that discipline could have resulted from the April 27, 2010 meeting.

In *DC 37, L. 1549*, we examined the circumstances surrounding a meeting between an employee and her superiors to determine whether the petitioner's belief that discipline could result from a meeting was reasonable. 3 OCB2d, at 25. In examining those circumstances, we have recognized that prior confrontations between an employee and his or her supervisors can support a finding that the employee's belief that subsequent questioning could lead to discipline was reasonable. *See also DC 37, L. 1113*, 77 OCB 25, at 11 (citing and explaining *Assistant Deputy Wardens' Assn.*, 71 OCB 9; *Burton*, 77 OCB 15 (BCB 2006); *Consol. Edison Co. of New York, Inc.*, 323 NLRB 910; and *New York City Transit Auth.*, 35 PERB ¶ 3029).

The Board is persuaded that the supervisor did not intend the interview to be disciplinary in nature. Delaney credibly testified that he did not intend the interview to be disciplinary, and we

do not believe that he was trying to be deceptive when he stated as much. Indeed, Delaney was believable when he testified that he only intended the session to be instructional in nature, and we have no doubt that he intended to get to the root of the problem between Schnell and Civitano to resolve the issue. However, our evaluation of what transpired during the meeting, despite Delaney's genuine intent, must be approached from Civitano's viewpoint and the circumstances surrounding that meeting from Civitano's perspective. The issue before us is the reasonableness of the employee's belief that discipline could have resulted, not whether the employer actually intended to discipline the employee. *See DC 37, L. 375*, 2 OCB2d 26, at 16 ("That the . . . conference did not lead to discipline is not determinative; the issue is whether [petitioner] reasonably believed that it could have."); *see also State of New York (Department of Correctional Services)*, 42 PERB ¶ 4552 (ALJ 2009) (explaining scope of discipline under NLRB and PERB case law and the 2007 Amendment and finding that it may "encompass a range of adverse employment actions" and is not "tied to the existence of contractual or statutory disciplinary procedures.").

Here, the following facts critical to our understanding of the reasonableness of Civitano's belief that the meeting could result in discipline are undisputed. By April 27, 2010, Civitano and Schnell, his supervisor, had reached a certain level of animosity. That animosity had already led to DEP's filing of disciplinary charges against Civitano for actions he allegedly took against Schnell, and those charges were still pending at that time. After the charges had been filed against Civitano, Schnell and Civitano had a further altercation, about which Schnell complained in a report dated April 18. Not long after that fresh altercation, Civitano arrived at work on April 27, was immediately told to report to DEP headquarters for a meeting, and that if he refused, he would

be disciplined.

When Civitano arrived at LeFrak, he entered a room with a DEP Chief, the supervisor with whom he had problems in the past, Schnell, Schnell's union representative, and another supervisor present, for a total of three of Civitano's supervisors. We have previously held that meeting with more than one superior supports a reasonable belief that discipline could result. *DC 37, L. 1549,* 3 OCB2d 2, at 25; *see also DC 37, L. 375*, 2 OCB2d 26, at 16.

At the meeting, Civitano was asked questions about his poor relations with Schnell, including, "What's the beef?" and also asked if he knew what a Federal Monitor was. The questions he was asked formed the subject matter of then-pending disciplinary charges. Moreover, Schnell made an additional complaint against Civitano only nine days prior, and was the impetus for the meeting. Both of these issues comprise the "beef" between Civitano and Schnell. Under these circumstances, the Board cannot find Civitano's belief that discipline could have resulted from the meeting to be unreasonable.

We find unpersuasive the City's assertions that since Civitano was told that he did not have to answer any questions, that he was not asked any investigatory questions, and was not specifically asked about the conflict that became the subject of his disciplinary charges, the meeting did not fall into the category of an investigatory interview. The evidence before the Board establishes that the "beef" between the two had already resulted in one set of disciplinary charges against Civitano, and Schnell had made a new complaint against Civitano only nine days prior to the LeFrak meeting. Therefore, Delaney's instruction that Civitano did not have to talk does not remove the burden from the City to grant a request for Union representation in an investigatory interview in these circumstances, which include Civitano being questioned only

moments after that instruction.

We find that Civitano's belief that he may be subject to discipline was objectively reasonable and, therefore, DEP violated the NYCCBL, which requires, upon the valid invocation of the right to union representation, that the questioning cease or the employer grant the request for union representation. *See DC 37, L. 1549*, 3 OCB2d 2, at 26-27; *DC 37, L. 1113*, 77 OCB 25, at 12.[3] We also note that the 2007 Amendment explicitly requires that the employee be afforded "a reasonable period of time . . . to obtain such representation." CSL § 209-a(1)(g).

As to the amount of time that the employee is afforded to obtain representation, the City claims that even if the Board finds that Civitano had a right to representation when he made a request at the instructional meeting, DEP did not violate the NYCCBL by continuing with the meeting, as the Union had made it clear that they would not be available at a mutually practicable date and time for a week or more. When considering the time necessary to obtain representation, PERB employs a balancing test between the availability of the chosen representative and the length of delay occasioned by an effort to accommodate that request. *Albany Police Supervisors' Assn.*, 44 PERB ¶ 4535 (2011).

The City correctly recites the holding in *Albany Police Supervisors' Assn.*, but we find that it differs in a significant respect. 44 PERB ¶ 4535, at 8. In *Albany Police Supervisors' Assn.*, the sense of urgency in interviewing the employee was far greater, as a potential weapons-related crime was in question: the employee requesting representation had handed his weapon to another employee, who then pointed it at a civilian employee. Here, although Delaney was rightly

[3] Alternatively, the employer can offer the employee the choice between continuing the meeting unaccompanied by a union representative or having no meeting at all. *DC 37, L. 1113*, 77 OCB 25, at 10-13.

concerned that Civitano and/or Schnell could resort to violence, nothing in the record indicates that a serious crime had already been committed, unlike the circumstances in *Albany Police Supervisors' Assn.*

Additionally, there is nothing in the record that shows that Civitano requested a specific representative. The record indicates that he asked merely for "a" representative. It was Delaney, after DeMartino suggested the idea, who decided on having a Union representative of sufficient *gravitas* present at the meeting, before Civitano even requested representation. There is also no indication that an alternate Union representative would have been unavailable within a reasonable time frame. Since the delay in obtaining a representative was not solely occasioned by the employee or the Union, we find that any delay was not unreasonable in this matter. Therefore, we find that the City has violated NYCCBL § 12-306(a)(1) by denying Civitano Union representation at the April 27, 2010 meeting.

As for remedy, we order DEP not to retain or utilize any information obtained from Civitano during the April 27, 2010 meeting for any disciplinary purposes.

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, Docket No. BCB-2883-10, filed by District Council 37, Local 376, AFSCME, AFL-CIO, against the New York Department of Environmental Protection, and the same hereby is, granted; and it is further

ORDERED, that the New York City Department of Environmental Protection not retain or utilize any information obtained from Civitano during the April 27, 2010 meeting for any disciplinary purposes; and it is further

ORDERED, that the New York City Department of Environmental Protection cease and desist from interfering with employees' right to request union representation during investigatory interviews that they reasonably believe may lead to their discipline.

Dated: New York, New York
December 20, 2011

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER