DC 37, Local 376, 6 OCB2d 18 (BCB 2013)

(IP) (Docket No. BCB-3023-12)

Summary of Decision: The Union alleged that the City retaliated against a member because he was elected shop steward and for making a safety report by requiring him to perform work before donating blood and to work eight days in a nine-day period. The City argued that the Union did not establish a *prima facie* case because there was no anti-union animus, and the allegedly retaliatory actions were not adverse employment actions. Further, the City argued that it had legitimate business reasons for its actions. The Board found that the Union was able to establish a *prima facie* case with regard to the allegation concerning working eight days in a nine-day period, and that the City did not demonstrate a legitimate business reason. The Board further found, however, that the record did not establish the alleged practice concerning the assignment of work on the day of a blood drive. Accordingly, the petition was granted in part, and denied in part. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

DISTRICT COUNCIL 37, LOCAL 376, AFSCME, AFL-CIO,
on behalf of KEVIN HARRIS

Petitioner,

-and-

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

Respondents.

DECISION AND ORDER

On June 15, 2012, District Council 37, Local 376, AFSCME, AFL-CIO ("Union"), filed a verified improper practice petition against the City of New York

("City") and the New York City Department of Environmental Protection ("DEP"), on behalf of its member Kevin Harris. The Union claims that the City and DEP violated §12-306(a)(1) and (3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by retaliating against Harris for becoming shop steward and for making a safety report. The Union alleges that in retaliation for his protected activity, Harris was required to work eight days in a nine-day period and to perform work early in the work day before donating blood at a blood drive. The City argues that the Union did not establish a *prima facie* case because there was no anti-union animus, and the allegedly retaliatory actions were not adverse employment actions. Further, the City argues that it had legitimate business reasons for all of its actions. The Board finds that the Union was able to establish a *prima facie* case, that the City did not demonstrate a legitimate business reason for its actions, but that the record did not establish that not assigning work early in the work day on the day of a blood drive was an established practice. Accordingly, the petition is granted in part, and denied in part.

BACKGROUND

The Trial Examiner held two days of hearings and found that the totality of the record established the following relevant facts.

DEP is responsible for operating and maintaining water supply systems and enforcing noise, air, and hazardous material safety codes. DEP's Bureau of Water and Sewer Operations maintains the City's water and sewer system.

Harris is employed as a Construction Laborer at DEP's Bronx Repair Yard, and a member of the Union. He has worked for DEP for about eight years. At the Bronx Repair Yard, Construction Laborers are responsible for repairing water mains, sewers, catch basins, and hydrants. At the beginning of the workday, Construction Laborers receive their assignments from a direct supervisor and then report to their first job site.

Union Shop Steward Campaign

In March 2012, Harris posted a notice in the Bronx Repair Yard announcing his candidacy for shop steward. He ran unopposed. Harris and another Union witness, Construction Laborer William Jackson, testified that one day after Harris posted the notice but before he assumed the shop steward position, while awaiting job assignments, District Supervisor Gerard Tangredi passed them and asked Harris whether he was running for shop steward. According to Harris and Jackson, when Harris affirmed that he was, the District Supervisor stated, "If you give me any problems, I'll make it hard for you."[1] (Tr. 15, 122-28) According to Harris, after he assumed the shop steward position, a few weeks later, the District Supervisor repeated his earlier remark. Harris stated that he did not reply to the District Supervisor on either occasion. The District Supervisor denied ever making that remark or any other threatening remarks and testified that he has no animosity toward Harris or the Union.

Truck Latch Safety Report

On April 5, 2012, Harris notified the District Supervisor that there was a defective latch on a truck, which Harris believed constituted a safety issue. The District Supervisor testified that he determined that the defective latch created the possibility that items

[1] Harris and Jackson testified that another Construction Laborer whose identity they could not recall was standing with them in the garage doorway awaiting job assignments.

stored in the rear compartment of the truck could fall out. Therefore, the District Supervisor ordered the rear compartment cleared so that the truck could be used for a limited purpose that would not implicate the vehicle's safety issue. He also informed the Borough Manager of the truck's condition.

Harris called DEP's Environmental Health and Safety Office ("EHS"). An EHS manager determined that the truck should not be operated until his department examined it. The District Supervisor was aware that Harris contacted EHS and that EHS sent someone to the yard to inspect the truck. EHS told the District Supervisor that the truck should not leave the yard until the EHS inspection took place. The District Supervisor then discussed the issue with the Borough Manager, who decided that the truck should be dispatched in order to use its air compressor, and then taken to the repair shop. The District Supervisor complied with the Borough Manager's directive.[2]

May 2012 Schedule

The May 2012 schedule for the Bronx Repair Yard, prepared by the District Supervisor, assigned Harris to work eight days in a nine-day period: May 21, 22, 23, 24, 26, 27, 28, and 29. May 28, 2012 was Memorial Day. Work assignment schedules are generally circulated one month in advance.

The Department rotates the assignment of holidays among all Construction Laborers so that the work is distributed equitably, and thus, the District Supervisor testified that such a schedule is not unusual, particularly during periods including a holiday. The District Supervisor noted that during this period, Harris was scheduled at least one regular day off per calendar week, as is the norm.

[2] The Union did not file a grievance alleging that DEP failed to comply with any EHS directive or finding regarding the defective truck latch.

The record does not contain any additional instances where the monthly schedule created by the District Supervisor assigned an employee to work eight days in a nine-day period. The City produced two examples of instances of other employees who worked eight days within a nine-day period in January 2012 and February 2012. However, these instances resulted from employees switching their schedules voluntarily. Voluntary switching of schedules had to be approved by the District Supervisor.

Harris testified that he did not volunteer for and did not desire his assigned schedule from May 21 through 29, 2012 and attempted to trade his weekend shifts with another employee, Paul Garbarino. The District Supervisor did not permit Harris and Garbarino to trade shifts, but approved four other workers engaged in voluntary switches of their schedules over the weekend of May 26 and 27,

The record establishes that prior to Harris' safety complaint about the defective latch, the District Supervisor had approved swaps involving Harris, and also establishes that in February 2012, the District Supervisor permitted Garbarino to work another employee's President's Day weekend shift. Garbarino testified that he had been granted swaps on many occasions, and has been granted swaps a few times since the proposed swap with Harris in May 2012 was refused.

The District Supervisor testified that he denied Harris' request to switch with Garbarino reliable because he did not consider Garbarino reliable and that he had attendance issues for which he was disciplined. The City presented evidence to demonstrate that Garbarino had over 100 absences during the period from June 1, 2011 through June 1, 2012. The District Supervisor stated that he considers an employee's attendance record when deciding whether to grant a shift swap request because he needs

to maintain a certain level of staffing. During the week, there are at least three Construction Laborers on the schedule, and thus concerns for absences due to insufficient staffing are less of an issue. Garbarino acknowledged that he was subject to disciplinary charges including a 15-day suspension resulting from unexcused absences.[3]

Blood Drive

In June 2012, on the day of a blood drive, the District Supervisor directed Harris' supervisors to have Harris' entire team inspect hydrants before going to give blood. It is undisputed that Harris gave blood on the day in question.

Pursuant to DEP's Employee Handbook, employees are permitted to donate blood during working hours and are granted three hours of compensatory time in addition to the time used to donate blood. Employees may use their compensatory time immediately after donating blood. According to the Union witnesses, on the day of a blood drive, Construction Laborers usually sign in, go directly to the blood donation site, and then take the rest of the day off; they are not assigned work. The District Supervisor stated that blood drives take place over the course of three days, and he limits the number of Construction Laborers who can participate on any given day in order to maintain necessary staffing. He stated that he routinely assigns work to Construction Laborers before they leave to give blood. On behalf of the Union, Harris and Garbarino both testified that they had never been sent out into the field or heard of anyone being sent out into the field on a day when they were giving blood. All three of the Construction

[3] The City presented evidence of Jackson's disciplinary record to challenge his credibility, specifically, records of his discipline for failing to comply with an order to move his vehicle, being under the influence of marijuana, and absences.

Laborers testifying on behalf of the Union stated that they have never been assigned to perform field work before going to donate blood.

The District Supervisor explained that inspection includes the repairs the laborer can perform with the equipment on his truck, or repairs the laborer is specifically instructed to perform. The District Supervisor stated that hydrant inspection work orders are generally vague, and therefore, Construction Laborers are dispatched to examine the condition of the hydrant. If the hydrant needs minor repairs and the laborer has the necessary parts, the repair can be made immediately in about 10 or 15 minutes. According to the District Supervisor, if a hydrant needs major repairs, the work is not undertaken immediately, but instead referred for later service. The hydrant would be taken out of service and the Fire Department would be notified.

On the day of the blood drive, the District Supervisor told Harris' supervisors to order him to perform only minor, simple repairs. He was not certain, however, what instructions the supervisors actually gave to Harris. Harris testified that he was instructed to inspect the hydrants, which he understood to mean that he should make any repairs that he was capable of performing. He stated that this was the first time that he was assigned only to inspect hydrants, but understood the directive to mean that he should both inspect and repair. Repairing a hydrant could possibly, but not necessarily, require time-consuming tasks, such as replacing a valve. Such a task could potentially take several hours, and, as a result, would prevent Harris from being able to give blood.

Harris stated that even if he were able to handle the repairs in less time, hydrant repair is a "greasy job," requiring that he change his clothes before donating blood, which he had never had to do before. (Tr. 50)

POSITIONS OF THE PARTIES

Union's Position

The Union alleges that DEP violated NYCCBL § 12-306(a)(1) and (3) by threatening and retaliating against Harris. The Union asserts that both of the District Supervisor's alleged anti-union statements constitute independent violations of NYCCBL § 12-306(a)(1). Harris' testimony was direct and forthright, and the Union noted that it would be "difficult to imagine what motive Harris would have to make up the two incidents out of whole cloth." Further, another Construction Laborer, Jackson, corroborated Harris' account. (Union's Br. at 5) Jackson "had nothing to gain and everything to lose by testifying against his supervisor's supervisor." (Union's Br. at 5) The Union also noted several decisions of this Board in which DEP was found to have anti-union animus.

As to the alleged violation of NYCCBL § 12-306(a)(3), the Union claims that the District Supervisor threatened Harris, and then followed through on his threat. In keeping with his responsibilities as shop steward, Harris told the District Supervisor that he objected to the use of an unsafe truck. When the District Supervisor ordered workers to operate the truck while it remained in unsafe condition, Harris went over the District Supervisor's head to EHS. According to the Union, it is immaterial which person made the final decision to take the truck out. Harris made "problems" for the District Supervisor by countermanding his orders, and the District Supervisor responded by retaliating against Harris.

The District Supervisor responded by giving Harris a "crushing" work schedule. (Union Br. at 6) DEP could not find another initial schedule in which any employee was scheduled with only one day off out of nine of the weekly schedules for any of the 17 Construction Laborers' who work the day shift, which, according to the Union, is no coincidence. Moreover, after scheduling him in this retaliatory way, the District Supervisor refused to allow Harris to switch his schedule, even though five other laborers switched their schedules that weekend. The Union notes that Garbarino, the Construction Laborer with whom Harris proposed a shift swap, has swapped shifts, including weekend shifts, many times, both before and after this attempt. The District Supervisor has approved other schedule shifts involving Harris, which may have been sought by the employees with whom Harris switched shifts. This fact does not detract from the retaliatory motive on the day when Harris was required to work on days he preferred not to work, which resulted in his working eight out of nine days in a row.

Both Harris and Garbarino testified that they had not been required to work in the field on a day on which they would give blood, and had never heard of anyone else being so required. Although the District Supervisor said that Harris was only instructed to do minor repairs in five or six locations, he did not know what the direct supervisors actually told Harris to do. Whatever the District Supervisor directed, the City does not dispute that Harris did not understand that he was expected only to "minor repairs." (Union Br. at 7) As a result, Harris took his instructions to mean that he was responsible for performing any repairs he was equipped to perform.

The Union argues that retaliatory motive is established by the following: Harris' testimony was corroborated by two disinterested witnesses, the timing of the protected

activity and the retaliatory actions, the District Supervisor's actions were unprecedented, and Harris was singled out. The Union asserts that the "chilling effect on [the Union] will never be fully known." (Union Br. at 7)

City's Position

The City argues that the petition should be denied because the Union did not establish a *prima facie* case of retaliation. The Union did not substantiate that the District Supervisor made threatening statements to Harris and did not demonstrate that DEP took adverse employment actions against Harris because of any protected activity. In fact, the actions the Union alleges to have been retaliatory were taken pursuant to DEP's managerial authority and would have occurred in the absence of protected activity.

The City acknowledges that Harris was appointed as shop steward and has been engaged in Union activity, but asserts that there is no link between that activity and Harris' work schedule in May 2012 or his assignment of duties on the morning of the blood drive. Moreover, the fact that DEP assigned Harris work before being released to give blood does not constitute an adverse action. Assigning employees to perform their duties falls clearly within management's right to direct its employees pursuant to NYCCBL § 12-307(b).

The City argues that scheduling Harris to work during the week of May 27, 2012, was not excessive and was due to DEP's policy to equitably distribute holiday assignments. Considering Garbarino's poor attendance record, DEP had a legitimate business reason to decline the weekend swap between Harris and Garbarino.

The City argues that the only protected activity alleged here is a report to the DEP Environmental Health and Safety Office about a defective latch on a truck. The City

asserts that there is no evidence linking Harris' safety report to EHS with any allegedly retaliatory actions. Harris and the District Supervisor both agreed that the latch was defective. The District Supervisor believed that even given this defective latch, the truck would be safe to transport the mounted compressor while Harris disagreed with that assessment. Ultimately, the Borough Manager decided to use the truck to transport the compressor to a job site before having the truck repaired. Although Harris appears to believe that he has the authority to determine whether a piece of equipment may be used, in fact, DEP management has authority to make decisions about the use of its equipment. Moreover, if Harris believed that the safety review by the DEP Environmental Health and Safety Office was not being applied, he had the right to file a grievance addressing this concern, yet no such grievance was filed.

Regarding the threatening statements that the Union alleges the District Supervisor made to Harris, the record does not support a finding that the District Supervisor made these statements. Although Harris claims two other laborers witnessed the District Manager make the offending statements, he could only recall the identity of one of the laborers, Jackson.[4] Moreover, Jackson also could not recall the identity of the other laborer, which, according to the City, calls his testimony into question. The City questions why the District Supervisor would make such a statement, and notes that there is no evidence that he had a hostile or uncooperative relationship with the Union. Further, the alleged statement is so vague and non-specific that it cannot be deemed

[4] Harris also claims that he reported the District Supervisor's statements to the Union President. According to the City, had Harris actually reported the incident to the Union President, the Union would have been able to recall the identity of the other laborer Harris claims he reported was present.

inherently destructive. It also notes that Harris' report of the defective truck latch occurred in April 2012, after the District Supervisor's alleged remarks.

Although the Union alleges that Harris' schedule in May 2012 deviated from a policy of not giving employees eight days of work within a nine-day period, there is no evidence to suggest such a policy existed. The City produced two examples of instances where other employees worked eight days within a nine-day period, January 2012 and February 2012. The Department rotates the assignment of holidays among all Construction Laborers so that the work is distributed equitably, and thus, an employee that is assigned a particular holiday may have a more strenuous schedule during the week in which the holiday falls. Workers are given one month's notice of their schedule, and Harris had more than a full month to arrange a swap. However, he only proposed one possible swap, which the record indicates was not a viable option; the proposed swap involved an employee with a demonstrably poor attendance record. The District Supervisor explained that he would be less concerned about scheduling an employee with a poor attendance record if there would be a sufficient number of other employees to cover; however, this was not the case on a weekend swap. The City presented evidence to demonstrate that Garbarino had over 100 absences during the period from June 1, 2011 through June 1, 2012, even excluding the absences in October and November of that year resulting from a fifteen-day suspension. Given these circumstances, it was reasonable for the District Supervisor to deny the swap.

As to the work assignment on the day of a blood drive, the City asserts that the District Supervisor directed that Harris' entire work team begin their day performing hydrant inspections before Harris gave blood. There is no reason why Harris should have

been exempted from a work assignment while his co-workers would be required to comply. Moreover, DEP has the right and obligation to make appropriate work assignments to all employees on duty, and the Union has not alleged that the Construction Laborers were in any way restricted from changing clothes and cleaning up before going to the blood drive. Construction Laborers do not have a right to do nothing during a period when they are on duty before going to give blood.

DISCUSSION

The Union alleges that DEP violated NYCCBL § 12-306(a)(1) and (3) when the District Supervisor required Harris to work early in the day before giving blood and scheduled him to work eight days in a nine-day period in retaliation for his protected activity. For the reasons stated below, we find that the Union established a violation as to the eight-day work schedule. However, as to the work assignment on the day of the blood drive in contravention of a prior practice, we do not find a violation of the NYCCBL because as a matter of proof, the alleged practice is not established by the record evidence.

To establish discrimination under the NYCCBL, we apply the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), adopted by this Board in *Bowman*, 39 OCB 51 (BCB 1987). Pursuant to the test, a petitioner must demonstrate that:

> 1. The employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and
>
> 2. The employee's union activity was a motivating factor in the employer's decision.

Bowman, 39 OCB 51, at 18-19; *see also DC* 37, 1 OCB2d 6, at 27 (BCB 2008).

Regarding the first prong, it is undisputed that Harris was engaged in protected union activity as a candidate for shop steward, and as shop steward, he reported his safety concerns about the defective truck latch. *See UFA*, 1 OCB2d 10 at 21(BCB 2008) (holding that employees are engaged in protected activity when they act "in their capacity as Union officers sanctioned by their Union to protect the interests of their members' safety, and . . . they were not acting in their own interest"); *see also SBA*, 4 OCB2d 50 (BCB 2011) (holding that an employee was engaged in protected activity when he reported an employer's order to participate in conduct that employees believed could expose them to legal liability). Further, it is undisputed that the District Supervisor was aware of all of Harris' protected activity.

As to the motivation behind the employer's actions, "typically, [motivation] is proven through the use of circumstantial evidence, absent an outright admission." *Burton*, 77 OCB 15, at 26 (BCB 2006); *see also CEU, L. 237*, 67 OCB 13, at 9 (BCB 2001); *CWA, L. 1180*, 43 OCB 17, at 13 (BCB 1989). However, to establish motive, "a petitioner must offer more than speculative or conclusory allegations." *SBA*, 75 OCB 22, at 22 (BCB 2005). Rather, "allegations of improper motivation must be based on statements of probative facts." *Ottey*, 67 OCB 19, at 8 (BCB 2001); *Kaplin*, 3 OCB2d 28 (BCB 2010).

We find that the Union has established facts sufficient to satisfy the second element of the *Bowman/Salamanca* test. *See Colella*, 79 OCB 27, at 55 (BCB 2008) (citing *SSEU, L. 371*, 77 OCB 35, at 15-16 (BCB 2006)). The allegedly retaliatory actions took place within one or two months of Harris' known protected activity. Harris ran for shop steward in March 2012 and made the truck safety report in April 2012. The

employment actions alleged to have been retaliatory took place within a few months of Harris' protected activity; the eight-day work schedule in a nine-day period took place in May 2012; the work assignment on the day of a blood drive in June 2012. This temporal proximity between the protected union activity and the retaliatory action, in conjunction with other facts, such as the District Supervisor's anti-union statement, supports a finding of improper motivation.

We find that the record establishes that the District Supervisor effectively told Harris that if his work as a shop steward caused problems, Harris would have difficulties on the job. Harris testified that one day after he had posted his notices regarding his shop steward candidacy, the District Supervisor said to him "you give me any problems, I'll make it hard for you." Jackson, who was present when this statement was made, corroborated this testimony. On the other hand, the District Supervisor testified that he made no such statement. Of the two versions, we find Harris' version more credible. It was corroborated by another Construction Laborer, Jackson, who had no apparent interest to testify against his supervisor. We do not find that the evidence the City presented regarding Jackson's disciplinary record adversely affects his credibility. The offenses to which he admitted were not matters that established a propensity for lying, but rather proof that his being disciplined by management could have biased him and given him an incentive to lie. However, he testified frankly and accepted responsibility readily for his prior infractions, and gave no indication of bias.

Where a petitioner makes out a *prima facie* case, the employer may to attempt to refute the showing on one or both elements or demonstrate that legitimate business motives would have caused the employer to take the action complained of even in the

absence of protected conduct. *Local 621, SEIU*, 5 OCB2d 38 (BCB 2012); *DEA*, 79 OCB 40 (BCB 2007).

We do not find the City's assertion that it had a legitimate business reason for scheduling Harris to work an eight-day schedule in a nine-day period to be persuasive. The District Supervisor testified that this shift swap request was denied because the employee with whom Harris asked to swap, Garbarino, was not reliable. However, the record establishes that other employees had been permitted to swap shifts with Garbarino in the past, as recently as February 2012, three months prior to Harris' request. Although Garbarino had a history of attendance issues in previous years, there is no evidence that his attendance was a problem between February 2012, when a holiday swap with him was permitted, and May 2012, when such a swap was denied. *Local 621, SEIU*, 5 OCB2d 38 (BCB 2012); *DEA*, 79 OCB 40, at 29 (BCB 2007) (noting that "unconvincing justifications offered by the City's witnesses support a finding of pretext"). *See also District Council 37, AFSCME*, 77 OCB 33, at 35 (BCB 2006) (noting that "when a public employer offers, as a legitimate business defense, a reason that is unsupported by or inconsistent with the record, the defense will not be credited by this Board.")

The record does not show that Construction Laborers are scheduled to work eight days in a nine-day period with regularity, if ever. Instead, all of the examples the City presented of employees working eight days in a nine-day period resulted from an employee opting to take such a schedule in order to swap shifts with another employee. We therefore do not find that the City has established a legitimate business reason for to assign Harris the eight-day work schedule or deny his day swap.

We do not find, however, that the Union has established a practice that members were not required to work prior to giving blood. The Union witnesses testified that they have never before been required to work on a day on which they were scheduled to give blood. We find that the limited experiences of these witnesses without a more developed factual record does not establish a consistent DEP or Bronx Yard policy or practice of prohibiting the assignment of work on days when employees would give blood. The record includes no written policy expanding DEP's rules concerning the blood drive beyond that described in the DEP Employee Handbook permitting three hours of compensatory time to employees giving blood. Moreover, to the extent that giving blood is a benefit that Harris enjoyed, he was not deprived from so doing. In fact, the record demonstrates that he was able to give blood after inspecting hydrants on the day in question. Accordingly, we need not address the City's argument of whether this allegation, in any event, would constitute an adverse consequence.

Based on the above, we find that the Union has established a violation of NYCCBL § 12-306(a)(1) and (3). Accordingly, the petition is granted as to the eight-day work schedule in a nine-day period, but, it is dismissed as to the assignment of work on the day of a blood drive.

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 docketed as BCB-3023-12 be and the same hereby is, granted as to the eight-day work schedule in a nine-day period, but dismissed as to the assignment of work on the day of a blood drive; and it is further

ORDERED, that the City of New York and the New York City Department of Environmental Protection post appropriate notices detailing the above violation of the New York City Collective Bargaining Law.

Dated: July 10, 2013
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

PETER B. PEPPER
MEMBER

GWYNNE A. WILCOX
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 6 OCB2d 18 (BCB 2013), determining an improper practice petition between the District Council 37, Local 376, 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, Local 376, AFSCME, AFL-CIO against the City of New York and the New York City Department of Environmental Protection, docketed as BCB-3023-12, be, and the same hereby is, granted to the extent that it involves claims that Respondents violated NYCCBL § 12 306(a)(1) and NYCCBL § 12 306(a)(3) by retaliating against Kevin Harris for his actions as shop steward in reporting a safety complaint, and it is further

ORDERED, that the City of New York and the New York City Department of Environmental Protection post appropriate notices detailing the above-stated violation of the New York City Collective Bargaining Law.

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.