CSTG, L. 375, 7 OCB2d 16 (BCB 2014)

(IP) (Docket Nos. BCB 3085-13 & BCB-4001-13)

Summary of Decision*:** Petitioners alleged that DEP violated NYCCBL § 12-306(a)(1) and (3) by retaliating against a Union official for engaging in protected union activity by failing to promote him, restricting his ability to conduct Union business, disciplining him, and refusing to grant him release time. The City argued that Petitioners failed to establish a *prima facie* case of retaliation because they have not demonstrated a causal link between the alleged protected activity and DEP's alleged retaliatory actions, and that DEP had legitimate business reasons for the disputed actions. The Board found that the Union established a *prima facie* case for each claim; that the City rebutted the *prima facie* case with regard to the refusal to grant the Union official release time and had provided a legitimate business reason for not promoting him but had neither rebutted the *prima facie* case nor established a legitimate business reason for disciplining the Union official and restricting his ability to conduct Union business. 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-

CIVIL SERVICE TECHNICAL GUILD, LOCAL 375, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and HARRY DONAS,

Petitioners,

-and-

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

Respondents.

DECISION AND ORDER

On June 25, 2013, the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO ("Local 375" or "Union") and Harry Donas, a Union official, filed a verified improper practice petition against the City of New York ("City") and the New York City

Department of Environmental Protection ("DEP").[1] Petitioners allege that DEP violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") by retaliating against Donas for engaging in protected union activity by failing to promote him, restricting his ability to conduct Union business, disciplining him, and refusing to grant him release time. The City argues that Petitioners failed to establish a *prima facie* case of retaliation because they have not demonstrated a causal link between the alleged protected activity and DEP's alleged retaliatory actions, and that DEP had legitimate business reasons for the disputed actions. The Board finds that the Union established a *prima facie* case for each claim; that the City rebutted the *prima facie* case with regard to the refusal to grant Donas release time and has provided a legitimate business reason for the not promoting him but has neither rebutted the *prima facie* case nor established a legitimate business reasons for issuing Donas a Warning Memorandum and restricting his ability to conduct Union business. Accordingly, the Board grants the petition, in part, and denies the petition, in part.

BACKGROUND

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

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

[1] This petition was docketed as BCB-3085-13. On August 26, 2013, Petitioners filed a second petition, docketed as BCB-4001-13, alleging additional acts of retaliation, including that Donas had been threatened with possible discipline. These two petitions were consolidated for the purpose of the hearing and for this decision and order. On October 17, 2013, before the hearings in these matters began, Donas received a Warning Memorandum which Petitioners allege was an act of retaliation. This decision also addresses that allegation.

quality, hazardous waste, and critical quality of life issues; and oversees large capital construction projects related to these goals. Local 375 is the certified collective bargaining representative for City employees in various scientific and engineering titles.

Donas was hired by DEP in January 1987 in the Civil Service title of Chemical Engineering Intern and became an Assistant Chemical Engineer ("ACE"), his current title, in September 1987. Donas works in the Mechanical Engineering and Quality Assurance Section of DEP's Bureau of Water and Sewer Operations ("BWSO"). BWSO maintains and protects the City's drinking water and sewer systems. Donas has a Master's degree in Chemical Engineering and earned his Professional Engineering ("P.E.") license in 2003.

Union Activity

Donas became a Union delegate in 1998. In 2008, he was elected President of Chapter 8 of Local 375, and as such serves on Local 375's Executive Board. Donas is also Local 375's Civil Service Chair and a Grievance Representative and testified that he meets with people regarding Union issues "[a]nywhere from zero to maybe ten times a day." (Tr. 28)

Examples of Donas' his union activity in the record include his advocacy on behalf of Victor Berlyavsky, a Union member. On September 28, 2012, Donas emailed Deborah Singer, DEP's Director of Labor Relations, to complain that DEP had been threatening Berlyavsky with discipline. On October 15, 2013, Donas emailed DEP Deputy Commissioner of Organizational Development Diane Ritter to allege that two managers lied at Berlyavsky's 2013 Office of Administrative Trials and Hearings ("OATH") hearing.

Another example of Donas' union activity occurred on March 29, 2013, when Donas requested that the Chief of his Section, Tarlock Sahansra, rescind his recent instruction that all employees under him sign out for lunch, which Donas described as "a change in working

conditions and needs to be collectively bargained." (Union Ex. B) On April 2, 2013, Donas met with Alexander Frenzel, the First Vice President of Chapter 8 and a Grievance Representative, to discuss filing a grievance, a meeting that was witnessed by Sahansra.[2]

Alleged Retaliatory Acts

Petitioners allege that, in retaliation for Donas' union activity, DEP: (i) in March 2013, refused to place Donas on two days per week release time; (ii) in April 2013, in violation of the Civil Service Rules, refused to promote Donas to the Chemical Engineer ("CE") title; (iii) in July 2013, prohibited Donas from leaving his work location without management's permission to meet with a Union representative during his working hours; and (iv) in August 2013, drafted a Warning Memorandum, amended and issued in October 2013, claiming that Donas' July 2013 email complaint about the restriction on his union activity and his October 2013 email advocating on behalf of Berlyavsky were inappropriate.

i. March 2013 Refusal to Place Donas on Release Time Two Days Every Week

On February 13, 2013, District Council 37 ("DC 37") requested that Donas be released for two days every week to perform Union business. On March 11, 2013, DEP responded that it will agree to release "Donas for two days per week if he agrees to give up his compressed time for the duration of his release."[3] (City Ex. 11) Under Donas' compressed schedule, by working longer days, he only works nine out of ten workdays, having every other Monday off. Instead of working 35 hours each week, Donas works eight hour days for five days the first week (40 hours) and then seven and a half hours days for four days the second week (30 hours).

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[2] Sahansra so testified in a related matter, *CSTG, L. 375 v. City/DEP*, BCB-3087/4002-13.

[3] In response to the same request in 2010, DEP conditionally agreed to one day per week release time for "Donas on the condition that he be removed from a compressed schedule and work 5 days a week, 7 hours a day." (City Ex. 8; *see also* City Ex. 27: "Donas is on compressed time. Any release would be contingent upon him giving it up.") In response, the Union withdrew its 2010 request for release time for Donas.

On February 8, 2010, DEP granted release for two days per week to another Local 375 official, Michael Rosenberg, who had a compressed schedule. On May 28, 2010, DEP agreed to extend Rosenberg's release time to three days per week on the condition that he relinquish his compressed schedule for the duration of his release. Aaron Feinstein, DEP Deputy Director of Labor Relations, testified that since the City Office of Labor Relations ("OLR") had required Rosenberg to relinquish his compressed schedule as a condition of being released for three days per week, DEP believed that OLR would similarly require Donas to relinquish his compressed schedule. Feinstein did not know why Rosenberg was initially allowed to maintain his compressed schedule when granted release time for two days per week; he presumed that the issue had not been flagged until Rosenberg requested three days per week of release time. Rosenberg corroborated Feinstein's conclusion, testifying that a Local 375 official informed him that DEP had made a mistake when it allowed him to keep his compressed schedule when he was granted two days per week release time.

Feinstein also testified that the operational needs of the employee's area was a factor in deciding to grant or reject a request for release time and that Donas' unit had complained that granting Donas *ad hoc* release time in the past had impacted its ability to send personnel into the field. Feinstein noted that granting release time to someone on a compressed schedule exaggerated the impact of release time as the employee is already only working nine out of ten workdays. If Donas was granted two days per week release time while maintaining his compressed schedule, every other week he would only work two days at DEP.

ii. April 2013 Failure to Promote

Donas scored a 100 on both the 2013 Open Competitive CE examination and the 2013 Promotional CE examination, tying him with two others for the highest score. Donas has been

trying to attain an appointment to the CE title for over a decade.[4] He testified that he would consider any CE position at DEP and was willing to leave his current unit to secure a promotion.[5]

The rules governing Civil Service appointments are found in the Personnel Rules and Regulations of the City of New York ("Personnel Rules"). Personnel Rule IV, § VII, sets out the "one-in-three" rule that states, in pertinent part: "Appointment or promotion from an established eligible list to a position in the competitive class shall be made by the selection of one of the three persons . . . standing highest on such established list who are qualified and willing to accept such appointment or promotion." (City Ex. 2)

On April 3, 2013, the New York City Department of Citywide Administrative Services ("DCAS") generated the 2013 Promotional CE list. The list consisted of five people, three of whom scored 100.[6] The other four candidates all had higher in-house titles than Donas. At the time the list was generated, three of the five (Yulinsky, Gordon, and Sedutto) were serving as Provisional Administrative Engineers ("AE"), the managerial title above CE.[7] The fourth,

[4] After Donas received his P.E. license in 2003, Sahansra sought to promote him to the CE title but was unsuccessful. The City did not rebut Donas' testimony that every other DEP employee working in an engineering title with a P.E. license was either provisionally promoted or paid at the rate of the higher title within months of receiving their P.E. license. Donas scored high on both the 2008 Open Competitive and the 2008 Promotional CE examinations; he was the only one on the 2008 Promotional CE list not promoted when it expired around August 2012.

[5] In 2009, Donas declined an interview for a CE position in DEP's Bureau of Engineering Design and Construction ("BEDC") because it would place him in another Chapter of Local 375 and require him to resign his Presidency.

[6] The 2013 promotional CE list consisted of: William A. Yulinsky (#1, score = 100); Donas (#2, score = 100); Albert S. Gordon (#3, score = 100); William E. Sedutto (#4, score = 85); and Jasmin I. Rivera (#5, score = 85). (*See* Union Ex. F)

[7] Yulinsky became a Provisional AE in April 2002, Gordon became a Provisional AE in October 2007; Sedutto became a Provisional AE in July 2013, having been a Provisional CE since January 2010.

Rivera, was made a Provisional CE in BEDC in September 2009 and, as of January 2013, was serving as a Provisional CE, Level 3, which is the highest CE level.

On April 12, 2013, Frenzel asked Herbert Roth, DEP's Deputy Director for Human Resources Management, if DEP was going to promote Donas to the CE title. Roth responded that he was "not aware of any vacancies." (Union Ex. F) Three days later, on April 15, DEP appointed the other four people on the list to the CE title.[8] Of the five, only Donas worked in BWSO and Roberts testified that he does not believe there is a need for a CE in BWSO. Donas disputed that there is no need for a CE in BWSO.

Roth testified that he told Frenzel that there were no vacant CE positions because, after the 2013 Promotional CE List was generated, he sent out emails to every DEP Bureau asking if it had any CE vacancies to fill and, according to Roth, the Bureaus responded by email that there were no vacancies. DEP was asked to produce these emails but was unable to locate them. Roth testified that the appointment decisions are made independently by the Bureaus. Roth testified that he considered a position currently filled by a provisional as only "[p]otentially open" because the "provisional serving is potentially replacing themselves," although he acknowledged that a provisional appointment "would be forced to end when a viable civil service list is established for that particular title" and that a provisional serving in a position is not automatically appointed to that position. (Tr. 158)

[8] Roth testified that since Yulinsky, Gordon, and Sedutto were serving as Provisional AEs, the managerial title above CE, he did not consider them as being appointed to a CE position but as having their underlying civil service status changed from ACE to CE. Roth testified that a person who has served provisionally in a title higher than his underlying permanent title gets credit for time served in that higher title and thereby can be promoted in his underlying, permanent title.

Roth described DEP procedures regarding civil service appointments and testified in detail as to how the 2013 Promotional CE list should have been managed.[9] Roth testified that he believed there was a hiring pool, which is the group of individuals to be interviewed, that Donas should have been interviewed three times, and that documentation regarding this should exist. DEP was asked to produce this documentation but was unable to locate it. Donas testified that in 2013 he was never interviewed despite his ranking.

Personnel Services Bulletin ("PSB") 200-7, § I(A), states, in pertinent part, that: "CSL § 61.3 requires that the appointment authority notify candidates certified for appointment or promotion from civil service eligible lists in writing when they are considered and not selected (passed over)." (City Ex. 19) PSB 200-7, § II(A), states, in pertinent part, that: "Each appointing agency is required to notify eligibles of the above actions in writing prior to submitting the disposition of certification to DCAS." (*Id.*) Roth testified that it was DEP's practice to send out the notice required by PSB 200.7 but could not recall if DEP actually sent the required notices to Donas. DEP was asked to produce these notices but was unable to locate them. Donas testified that in 2013 he did not receive any of the required notices.

iii. Sahansra's July 2013 Email restricting Donas' Union Activity

On July 31, 2013, Donas' immediate supervisor, Sahansra, sent Donas an email that reads, in pertinent part: "Please make sure that you obtain permission from me or anyone acting in my place to leave your office for any meeting with the Union Representative at any time

[9] Roth acknowledged having no direct knowledge of how the appointment process for the 2013 Promotional CE list was actually managed as he did not review the records of DEP prior to testifying and the process was handled by a subordinate who has left DEP. Roth has worked in DEP's Human Resources department since March 1985, has been Deputy Director of Human Resources for 15 years, and his duties include the administration of the civil service appointment.

during your working hours. You may meet them during your lunch period or in your off hours. Please confirm that you have read this message." (Union Ex. G)

Sahansra was acting upon instructions from Roberts, who testified that on July 31 he was outside of the cafeteria at 10:15 am speaking with Deputy Commissioner of Human Resources Zoe Ann Campbell when they noticed Donas enter the cafeteria and meet with people on Union matters.[10] Campbell asked Roberts if Donas' supervisor was aware that Donas was working on non-DEP matters and told Roberts that he should ensure that Donas knew that it was unacceptable to perform non-DEP tasks on DEP time. Roberts then asked Sahansra if he was aware of what Donas was doing and Sahansra indicated that he was not. Roberts testified that he asked Sahansra to "remind [Donas] if he leaves his workstation that he needs your permission to do that" and instructed Sahansra to "[m]ake sure you follow up with an e-mail to that effect." (Tr. 221) Sahansra then sent Donas the July 31 email.

On July 31, Donas forwarded Sahansra's email to Singer, noting that: "Restricting our members to meeting with a grievance representative during lunch-time only would cause a backlog, given the mistreatment by this agency. Many of our members would not be able to be serviced; therefore, the agency would be considered as 'interfering in union matters.' This email shall serve as notice to DEP regarding this situation, for which the agency has the opportunity to immediately rectify." (Union Ex. G) No response to Donas' request is in the record.

Roberts testified that Sahansra's email was an overstatement "that tied the issue more specifically to Union stuff as opposed to just a general get permission when you leave your workstation." (Tr. 222) Roberts testified that DEP's policy is that employees should notify their supervisors when they leave their workstation for any reason and that he has given similar

[10] Donas testified that he was meeting with a Local 375 grievance representative to discuss his own grievance. Donas' meeting in the cafeteria lasted only few minutes.

instructions to other supervisors regarding other employees. Roberts described this as "a general agency perspective on how supervisors should manage employees." (Tr. 254) Roberts acknowledged that an employee would not need to notify a supervisor if they were going to use the bathroom.

Feinstein testified that there is no written policy at DEP regarding employees informing their supervisor of their whereabouts. Feinstein testified that it is the general policy at DEP for an employee to let someone, but not necessarily a superior, know if they would be away from their workstation for an extended period of time for any reason. Donas testified that employees can come and go and as they please without notifying supervisors and gave, as examples, people leaving the building to smoke or going to the cafeteria to get a cup of coffee.

Donas testified that this was not the first time DEP interfered with his conducting Union business. A September 2012 email from Sahansra to Donas reads, in pertinent part: "Please be advised that all union related activities are not permitted during your regular working hours unless specifically permitted by the management. Please avoid any meeting in your office during your working hours." (City Ex. 12) Donas acknowledged that in the past a co-worker had complained to Sahansra about the noise from his meetings with Union members. In February 2013, Donas learned that Feinstein had called a Union official to complain about Donas conducting Union business during working hours. In response, on February 12, 2013, Donas emailed Feinstein requesting an immediate response or Labor/Management meeting on the topic. No response from DEP is in the record.

iv. August/October 2013 Warning Memorandum

On October 17, 2013, Donas was served a Warning Memorandum, dated August 20 and amended on October 17, stating that DEP found that Donas engaged in unacceptable conduct

regarding the improper use of DEP email. Specifically, the tone and comments in Donas' July 31 email to Singer and his October 15 email to Ritter were found to be inappropriate.

Donas' July 31 email to Singer referred to in the Warning Memorandum reads:

> [Roberts], Deputy Commissioner BWSO, just ordered my supervisor, [Sahansra], to issue the following email after [Roberts] noticed me walking into the cafeteria this morning to briefly discuss my Grievance with my Union Rep.
>
> Is this a legal order? If so, is every employee in BWSO/DEP subjected to this order, or is this being selectively applied to me (and [Berlyavsky], who has received a similar instruction, and has been brought up on disciplinary charges several times upon [Roberts'] orders).
>
> This order is ironic to us aware of the infamous behavior [Roberts] engaged in for many years while working unsupervised in the field, during City working hours and abetted by City vehicles. Thus far it appears that the agency supports or willfully ignores [Roberts'] abusive, hypocritical behavior. Creating a hostile work environment is not acceptable, and should not be tolerated by DEP.
>
> This is just another instance in the continuing saga of [Roberts'] harassment of me, and it must stop—a Workplace Violence incident report shall be submitted shortly.
>
> Also **NOTE-** Restricting our members to meeting with a grievance representative during lunch-time only would cause a backlog, given the mistreatment by this agency. Many of our members would not be able to be serviced; therefore, the agency would be considered as "interfering in union matters." This email shall serve as notice to DEP regarding this situation, for which the agency has the opportunity to immediately rectify.

(Union Ex. G) (emphasis in original) Donas copied DEP attorneys, Union officials, and Berlyavsky on his the email. Donas' October 15, 2013 email to Ritter reads:

> Forwarded to you is an email below w/attachments, where [Berlyavsky] has documentation that indicates Management lied on the stand at his recent OATH trail.
>
> Unfortunately, my suggestion to [Berlyavsky] that he check his personal records to perhaps document his whereabouts on April 26

> came after the conclusion of his OATH trial and I do not believe that he can use this evidence for the trial.
>
> Nonetheless, a serious allegation has been made. Why would two Managers (both provisional Administrative Engineers) lie on the stand? Who put them up to it?"
>
> As head of the Disciplinary Counsel, are you going to pursue the matter? Or will you shoot the messenger again (*i.e.* investigate the accuser) like you are doing to me this Thursday [October 17]?

(Union Ex. I) Donas copied Union officials and the City Comptroller's Office on the email.

On Thursday, October 17, Ritter presented the Warning Memorandum, which she drafted, to Donas. It reads, in pertinent part:

> In [your July 31] email you spoke disparagingly about [Roberts]. You stated [Roberts] is "abusive, hypocritical" and has created a "hostile work environment"' for you by "harassing" you. Your tone in this email was abusive and derogatory and therefore unacceptable. As you are well aware, there is a formal grievance procedure in your collective bargaining agreement that allows you to grieve what you believe are Management's infractions of the contract or [DEP's] rules and regulations. The use of [DEP's] email system is for business use only and shall not be used for harassing or insulting messages that are sent inside or outside the agency.[11] Rules regarding proper use of [DEP] email and internet can be found on Pipeline [citation omitted].
>
> Specifically, emails shall not include your personal views of your Deputy Commissioner or any other agent of [DEP]. I believe that a common goal for your local and [DEP] is to continue healthy labor relations with respectful dialogue and input. Your communications in your 7/31/13 email to me does little to advance an environment where this can occur. Henceforth, please refrain from using [DEP] email for any improper purpose.
>
> Please note that you were warned via email by [Singer] on November 21, 2012, to stop making incendiary allegations against [DEP] that were untrue. This was in response to your email to

[11] Feinstein clarified that the reference to "business use only" was to an outdated policy and that DEP policy does allows for limited personal use of email as long as there is no violation of any other DEP policy concerning computer usage or information security. DEP changed its email policy to comply with the Board Order issued in *DC 37*, 3 OCB2d 56 (BCB 2010).

> [Singer] on September 28, 2012, whereby you accused the [DEP] of "threatening" [Berlyavsky].

(Union Ex. J) The following handwritten paragraph was added to the Warning Memorandum:

> Amended: On Oct. 15, [Donas] sent [Ritter] another email which she considers inappropriate in the same context as the July 31, 2013 email. [Donas] is being warned to cease sending this inappropriate [email].

(Union Ex. J)

Donas testified that he asked DEP to produce the November 21 email referred to in the Warning Memorandum in which Singer allegedly instructed him "to stop making incendiary allegations against the agency that were untrue." (Union Ex. J) Donas testified that DEP has not done so, that Singer made no such comment to him, and that the November 21 email was addressed to Berlyavsky, not him.

At the hearing, Donas explained the content and tone criticized in the Warning Memorandum. Donas explained that he made the reference to Roberts' "abusive, hypocritical behavior" because he had learned from Sahansra that Roberts had recently complained to Sahansra about Donas' alleged inappropriate use of a DEP vehicle.[12] Donas considered this to be hypocritical in light of the allegations of Roberts' inappropriate use of DEP vehicles. Regarding his statements that Roberts created a "hostile work environment" and was "harassing" him, Donas provided several examples of Roberts' alleged harassment, starting in 2007 when Roberts allegedly "went after" Donas for over two hours at a meeting. (Tr. 92-93) Donas also claimed that in a 2008 meeting, Roberts allegedly screamed at Donas for a half an hour when Donas raised issues regarding how flex band schedules would work with Citytime. Donas

[12] Specifically, according to Donas, Roberts complained to Sahansra about witnessing Donas in a DEP vehicle with the engine running talking on his cell phone. Donas testified that Roberts never asked him to explain the incident. According to Donas, he was going into the field to take some samples and had forgotten the sample bags, so he called a co-worker to bring them to him.

described that meeting in detail, naming participants and alleged witnesses to Roberts screaming at him. Donas also described a 2011 encounter when he was meeting with another Union official in the cafeteria when Roberts spotted him, lectured him in front of other employees, demanded to know if Donas had permission from his supervisor to be there, and ordered him back to his desk.

POSITIONS OF THE PARTIES

Petitioners' Position

Petitioners argue that the DEP retaliated against Donas in violation of the NYCCBL § 12-306(a)(l) and (3).[13] Roberts acknowledged that Donas' union activity was well known. Donas is both Chapter 8's President and Local 375's Civil Service Chair. Roberts' witnessing Donas meeting with a grievance representative led to Sahansra's July 31, 2013 email. Donas' emails to Singer, Ritter, and Feinstein all referenced his union activity. Petitioners argue that the City must establish that DEP's actions were the result of a legitimate business reason and would have taken place even in the absence of protected conduct. According to Petitioners, the City's

[13] NYCCBL § 12-306(a) provides, in pertinent part, that:

> 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 [§] 12-305 of this chapter;
>
> * * *
>
> (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

NYCCBL § 12-305 provides, in pertinent part, that: "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."

assertion of management rights under NYCCBL § 12-307(b) does not provide DEP with unlimited protection from claims that its decisions violate the NYCCBL.[14]

Regarding release time, according to Petitioners, the Board is faced with the denial of a request to engage in union activity and that denying Local 375 use of an officer requires greater justification than that offered by DEP. DEP's alleged business reason, that every other week Donas would only work two days, Petitioners argue, is insufficient as DEP currently allows another Union official, Rosenberg, three days of release per week (*i.e.*, Rosenberg only works two days every week).

Regarding the denial of a promotion, Petitioners argue that Donas was not accorded any of the rights he should have been accorded under Civil Service laws. Roth testified that successful test takers are interviewed; Donas tied for first but was never interviewed. Roth testified that there was a hiring pool, indicating that there were vacancies. DEP did not dispute that Donas is the only ACE with a P.E. license who has never been promoted. Donas has worked at DEP for over 26 years. In the 2013 round of promotions, Donas was the only one of the five on the list who was not appointed to a CE position. Donas also was the only one of the five active in a union. The City put on no direct evidence to justify its selection, only Roth's uncorroborated hearsay, and DEP could not produce any supporting documentation. Donas was not sent the notices required by PSB 200-7.[15]

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[14] NYCCBL § 12-307(b) states, in relevant part: "It is the right of the city . . . acting through its agencies, . . . determine the standards of selection for employment; 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; . . ."

[15] On February 27, 2014, Petitioners requested that the record be reopened to allow them to call as a witness a DCAS Executive Director because, based on an affidavit the Executive Director provided in an unrelated matter, they believe that the Executive Director would testify that Personnel Rule 5.2.8(b), which requires that annual leave and sick leave not be counted towards

Regarding the restrictions on Donas' union activity in Sahansra's July 31 email, Petitioners argue that since Sahansra's email singles out meetings with Union representatives, DEP cannot claim that it would have issued the same warning even in the absence of protected conduct. Petitioners argue that requiring permission for a meeting with a Union representative but not for other reasons employees leave their work station, such as going to the bathroom, cafeteria, or outside to smoke cigarettes, is a *per se* violation of NYCCBL § 12-306(a)(l).

Regarding the Warning Memorandum, Petitioners note that the email policies Donas allegedly violated were themselves found to be a violation of the NYCCBL in 2010. The Warning Memorandum was issued after Donas filed his two improper practice petitions. Petitioners argue that the emails involved protected union activity. Donas' July 31 email addressed Roberts' inappropriate behavior, including Roberts' baseless complaint that Donas was inappropriately using a DEP vehicle. The October 15 email concerned DEP managers lying at an OATH proceeding. Donas' language in these emails, Petitioners argue, did not come

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a probationary period, is not waivable. Petitioners' Counsel states that until he read the affidavit, he believed Personnel Rule 5.2.8(b) was waivable and argues that this is relevant because it may establish that two employees appointed to the CE title were not eligible. The Trial Examiner denied the request, citing the Board's long-standing position that it "will not reopen and reconsider a case based on the mere failure of a party to present relevant evidence and argument which was available to it upon the initial litigation of the matter." *PBA*, 21 OCB 10, at 7 (BCB 1978), *affd., Matter of Patrolmen's Benevolent Assn. v. Anderson*, N.Y.L.J., Feb. 22, 1979, at 6 (Sup. Ct. N.Y. Co. Aug. 7, 1979). Petitioners have not established that the witness was not available to them prior to the close of the record, or even that the testimony is anything other than an opinion as to the legal import of the Personnel Rules, which Petitioners acknowledge being aware of. Petitioners' Counsel's belief that that Personnel Rule 5.2.8(b) was waivable is insufficient to justify reopening the record. Moreover, Petitioners have not disputed that the eligibility dates were provided to DEP by DCAS and, thus, they have not established relevancy of proposed testimony as any error in the calculation of the eligibility dates by DCAS is not probative of any element, including discriminatory intent on the part of DEP, of the NYCCBL claims at issue here. We do not opine as to the pertinence of the proposed testimony to claims under any other statute, including, but not limited to, the civil service laws.

anywhere near the line of what is and is not protected and disciplining Donas because of his messages violated NYCCBL § 12-306(a)(3).

City's Position

The City argues that Petitioners have failed to establish a *prima facie* case regarding the alleged failure to promote, as they have not identified the managers who made the 2013 CE appointment decisions, nor shown that they were aware of Donas' union activity. The City argues that there is no evidence that any laws or regulations were broken or that interviews were required or even held. Additionally, the City argues that it had a legitimate business reason in not appointing Donas to the CE title—there were no vacancies. No new positions were being filled from the appointments made from the CE list. Three of those appointed to the CE title in 2013 were provisionally serving, and continued to serve, in the managerial title above the CE title. The fourth had been serving provisionally as a CE for three years and there was no change in her position as a result of her permanent appointment to the CE title.

Regarding the conditioning of release time upon Donas relinquishing of his compressed schedule, the City argues it has shown it was not motivated by anti-union animus but by DEP's understanding of OLR's policy. Rosenberg testified that a Union official had informed him that it was a mistake for him to have been granted release time without relinquishing his compressed schedule and OLR required Rosenberg to relinquish his compressed work schedule as a condition of being granted three days per week release time. The City also argues that there is no temporal proximity since, in 2010, DEP conditioned granting Donas release time upon his relinquishing his compressed schedule. The City further argues that DEP had a legitimate business reason. Feinstein testified as to the disruption that granting release time to an employee

on a compressed work schedule would cause, noting that in Donas' case, his unit had already expressed complained regarding the impact of granting Donas' *ad hoc* release time.

Regarding Sahansra's July 31, 2013, email instructing Donas not to leave his work area without notifying a supervisor, Roberts testified that he has given similar instructions to other supervisors regarding other employees and that the rationale behind the policy is so that supervisors can be accountable for their subordinates. Feinstein testified that it is DEP policy for an employee leaving their desk for an extended period of time to let someone know. The City argues that it had legitimate business reasons as NYCCBL § 12-307(b) reserves to management the right to direct its employees and maintain the efficiency of governmental operations. DEP has to be able to account for its employees at all times and has the right to require that its employees are doing the work of the organization.

Regarding the Warning Memorandum, the City argues this claim should be dismissed as Donas' comments were inappropriate; they attacked and vilified personnel, in a snide and provocative tone, that was not reasonably related to any legitimate business or union purpose. The City cites Board precedent holding that an employer has the right to discipline an employee for derogatory comments made to a supervisor during protected activity and that a petitioner's status as a union delegate does not confer immunity from otherwise appropriate and proper disciplinary procedures, nor in anyway diminish the employer's right to take such action. The City argues that there is a distinction between an employer objecting to the expression of union positions, which may evince animus, and objecting to the manner of such expression, which does not. The City also argues that DEP had a legitimate business reason; Donas' tone and comments reflects poorly on DEP and were disruptive to business, which has an interest to ensure that

employees understand that they cannot undermine the exercise of supervisory authority by behaving disrespectfully toward managers.

Finally, the City argues that there is no independent NYCCBL § 12-306(a)(1) violation as none of DEP's actions in the instant matter are of the type the Board has found to be inherently destructive of employee rights; DEP's actions did not directly and unambiguously penalizes or deter protected union activity, nor create an obstacle to the future exercise of employee rights.

DISCUSSION

Petitioners claim that DEP retaliated against Donas because of his union activity in violation of NYCCBL § 12-306(a)(1) and (3). The Board finds that the Union has established a *prima facie* case for each claim. The Board finds that the City rebutted the *prima facie* case for DEP's refusal to grant Donas release time and provided a legitimate business reason for not promoting Donas but has neither rebutted the *prima facie* case nor established legitimate business reasons for restricting Donas' ability to conduct Union business or issuing the Warning Memorandum. Thus, the Board grants the petition, in part, and denies the petition, in part.

In *Bowman*, 39 OCB 51 (BCB 1987), the Board adopted the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), to determine whether an action constitutes impermissible discrimination or retaliation. To establish a *prima facie* case of a violation of NYCCBL § 12-306(a)(1) and (3), 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 Local 376, DC 37*, 4 OCB2d 58, at 11 (BCB 2011).

Regarding the first prong, for union "activity to be protected under the NYCCBL, it must be related, even if indirectly, to the employment relationship and must be in furtherance of the collective welfare of employees." *Local 1087, DC 37*, 1 OCB2d 44, at 25 (BCB 2008) (citing *Finer*, 1 OCB2d 13 (BCB 2008) (other citations omitted). If the employer is shown to have knowledge of the protected union activity, the first prong of the *prima facie* case is satisfied. *See Local 376, DC 37*, 4 OCB2d 58, at 11; *Local 376, DC 37*, 73 OCB 15, at 13 (BCB 2004).

Regarding the second prong, causation, absent an "outright admission of any wrongful motive, proof of the second element must necessarily be circumstantial." *CWA, L. 1180*, 77 OCB 20, at 15 (BCB 2006) (citing *Local 237, CEU*, 67 OCB 13, at 9 (BCB 2001)). While "proximity in time, without more, is insufficient to support an inference of improper motivation, timing may also be considered together with other relevant evidence." *SSEU, L. 371*, 75 OCB 31, at 13 (BCB 2005), *affd., In re Soc. Serv. Empl. Union, L. 371 v. N.Y.C. Bd. of Collective Bargaining*, Index No. 116054/05 (Sup. Ct. N.Y. Co. May 30, 2006), *affd.*, 47 A.D.3d 417 (1st Dept. 2008); *see also CWA, L.. 1180*, 77 OCB 20, at 14 (BCB 2006).

If a petitioner establishes a *prima facie* case, "the employer may attempt to rebut petitioner's showing on one or both elements, or may attempt to rebut this showing by demonstrating that legitimate business reasons would have caused the employer to take the action complained of even in the absence of protected conduct." *SSEU*, 77 OCB 35, at 18 (BCB 2006); *see also Local 376, DC 37*, 4 OCB2d 58, at 11.

Refusal to Grant Release Time

Regarding the claim that DEP violated the NYCCBL by refusing to grant Donas release time two days per week unless he relinquished his compressed work scheduled, the Board finds that Petitioners have established a *prima facie* case but that the City has rebutted the second

prong thereof, causation. Knowledge of Donas' union activity is undisputed and there is temporal proximity. In addition, DEP had granted another Union official two days per week release time without requiring that employee to relinquish his compressed work schedule.

However, we find that the credible testimony of Feinstein rebuts the causation prong of the *prima facie* case. Feinstein explained that the decision to condition the granting of release time to Donas upon his relinquishing his compressed work schedule was not motivated by Donas' union activity but reflected DEP's understanding of OLR policy. Feinstein did not know why Rosenberg had been granted two days per week release time while maintaining his compressed schedule in February 2010 but he was aware that OLR had subsequently conditioned the granting of additional release time to Rosenberg upon his relinquishing his compressed work schedule. Feinstein reasonably concluded that OLR would similarly demand that Donas relinquish his compressed work scheduled, and his conclusion is buttressed by Rosenberg, who credibly testified that he was informed by a Union official that OLR had made a mistake when it previously granted him release time while allowing him to maintain his compressed schedule.

Failure to Promote

Regarding the claim that DEP violated the NYCCBL by failing to promote Donas to a CE position, the Board finds that Petitioners have established a *prima facie* case but that the City has shown a legitimate business reason. DEP's knowledge of Donas' union activity is undisputed and there is temporal proximity with Donas' March 29, 2013 email regarding employees having to sign out when leaving for lunch.[16] In addition to temporal proximity, it is

[16] The City argues that Petitioners have not established a *prima facie* case because they have not identified the specific managers who made the decisions to appoint employees to the CE title. While a *prima facie* case may be rebutted by showing that the decision makers were unaware of the union activity, the knowledge element of the *prima facie* case is established where, as here, it is undisputed that the agency was aware of the union activity. We note that, in the instant matter,

undisputed that Donas was not interviewed, even though Roth testified that there was a hiring pool and that there was a potential vacancy, since provisional do not automatically replace themselves. We find that this is sufficient to establish the *prima facie* case concerning DEP's failure to promote Donas.

We find that the City has established a legitimate business reason for DEP's failure to appoint Donas to the CE title—there was no open CE position for which Donas could have been considered. While the underlying civil service title of the other four employees on the list was changed to CE, there was no change in their actual positions or their in-house titles. They served in the same position after their appointment to the CE title as they had served before their appointment. Indeed, three of the four continued to serve as Provisional AEs, the managerial title above CE. There was only one CE position that could conceivably have been considered to be open, the CE position in BEDC occupied by Rivera since 2009. However, at the time the 2013 Promotional CE List was generated, that position was a CE, Level III—the highest level in the CE title. Rivera was provisionally appointed to the CE title in 2009 and promoted to a Provisional CE, Level III, months before the 2013 Promotional CE List was generated. Accordingly, as the City has shown that DEP would not have appointed Donas to a CE position in 2013 even if he had not been engaged in union activity, we find no violation of the NYCCBL. *See SSEU, L. 371*, 3 OCB2d 47, at 20-21 (BCB 2010).

Sahansra's July 31, 2013 Email Restricting Union Activity

Regarding the claim that DEP violated the NYCCBL by restricting Donas' union activity by requiring him to obtain permission from management to leave his work station to meet with Union representatives during his working hours, the Board finds that Petitioners have established

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Petitioners requested from DEP documents that the City's witness stated would identify the decision makers and DEP was unable to produce the documents.

a *prima facie* case that the City has not rebutted nor has the City established a legitimate business reason. Roberts acknowledged that he decided to instruct Sahansra to send the July 31 email to Donas after observing Donas meeting with a Union representative. Thus, both the knowledge and causation prongs of the *prima facie* case are established.

The City argues that it has rebutted the *prima facie* case because Roberts testified that his instruction to Sahansra to send the July 31 email was not motivated by a desire to restrict union activity but to ensure that established DEP policy is followed. Specifically, according to Roberts, it is DEP policy that supervisors are to be made aware when an employee will not be at their workstation regardless of the reason.[17]

However, we find that Roberts' testimony is insufficient to rebut the *prima facie* case. First, Roberts' testimony established that his motivation to have the email sent was that Donas was engaged in union activity during work hours away from his workstation. Second, Sahansra's July 31 email only addressed union activity. Donas responded to it immediately but when DEP had the opportunity to conform the instruction in the email to what Roberts testified he intended Sahansra to convey, DEP declined to do so. Third, the language of Sahansra's July 31 email does not reflect DEP policy as described by either Roberts or Feinstein. The email is contrary to the policy described by Roberts because it is clearly limited to union activity. The email is contrary to the policy described by Feinstein because it requires notification to a supervisor regardless of how brief the absence from the workstation is expected to be.

We also find that the City has not established a legitimate business reason for the instruction in Sahansra's July 31 email. The City argues that NYCCBL § 12-307(b) reserves to

[17] While Feinstein also testified that DEP had a notification policy, his testimony contradicted Roberts'. Roberts' testified that an employee had to notify a supervisor whenever they leave their workstations, while Feinstein testified that an employee had to notify someone, which could be a co-worker, when they would be away for several minutes.

management the right to direct its employees and maintain the efficiency of governmental operations and to do so DEP has to be able to account for its employees at all times. The City further argues that DEP has the right to require that its employees are doing the work of the organization and that union related matters are not handled at unauthorized times.

However, the "statutory authority to create a policy does not render such policy immune from scrutiny under the NYCCBL because such a policy can be applied in a discriminatory manner." *Feder*, 4 OCB2d 46, at 41 (BCB 2011) (citing *SSEU, L. 371*, 3 OCB2d 47, at 15-16 (BCB 2010)); *see also DC 37*, 3 OCB2d 56, at 14 (BCB 2010). That is, "[w]hile we acknowledge that an employer has the right to promulgate rules and restrictions regarding use of its facilities and resources, rules and/or enforcement of those rules cannot discriminate based on union activity." *Feder*, 4 OCB2d 46, at 46 (citing *DC 37*, 3 OCB2d 56 (BCB 2010); *Town of Henrietta*, 25 PERB 3040 (1992); *Guard Publishing Co.*, 351 NLRB 1110, 1118 (2007), *enf'd in part*, 571 F.3d 53 (D.C. Cir. 2009)). Employee work time is a resource of the employer, and an employer can restrict an employee's use of work time on non-work matters, but if an employer allows an employee to attend to non-work matters during the workday, he cannot treat the time spent on union activities different than time spent on other matters. *See Cotov*, 53 OCB 16 (BCB 1994). In *Cotov*, the Board found that Bellevue, a hospital, had a legitimate business reason for issuing negative performance evaluations against union officials who failed to adhere to release time rules as the action would have been taken even if the employees had absented themselves from their work stations for non-union related reasons because the "lack of communication and resultant adverse impact on staffing is of great concern since, first and foremost, Bellevue is obligated to meet the needs of its patients." *Cotov*, 53 OCB 16, at 18-19.

In contrast to *Cotov*, in the instant matter, DEP has not shown that it would have taken the same action had Donas absented himself from his workstation to attend to non-union business. Nor has DEP shown that Donas' absenting himself for a few minutes to hand a grievance to a Union representative negatively impacted DEP's ability to fulfill its mission. Feinstein's testimony that employees do not have to notify anyone when leaving their workstation for brief periods corroborates Donas' testimony that employees regularly leave their workstation for short breaks without notifying anyone. Thus, Sahansra's July 31 email treats work time spent on union activity differently than work time spent other non-work related activities. On the record before us, we are constrained to find that it violated NYCCBL § 12-306(a)(1) and (3) by impermissibly discriminating based upon union activity.

Warning Memorandum

Regarding the claim that DEP violated the NYCCBL by issuing Donas a Warning Memorandum, the Board finds that Petitioners have established a *prima facie* case that the City has not rebutted and that the City has not established a legitimate business reason. Knowledge of Donas' union activity is undisputed. The Warning Memorandum was in response to the content and tone of Donas' July 31 and October 15 emails. Both were sent to raise concerns regarding labor relations and addressed issues that impacted more than just Donas. The July 31 email addressed Donas' ability to represent his members; the October 15 email was written on behalf of a member. We find that those emails constitute union activity and, thus, the causation prong is satisfied and the Petitioners have established a *prima facie* case. The City presented no direct evidence of the decision to issue, the drafting of, or the presentation of the Warning Memorandum and, thus, did not rebut the *prima facie* case.

The City argues that DEP had a legitimate business reason for issuing the Warning Memorandum—DEP's right to discipline Donas for the derogatory comments in, and the tone of, his emails which reflected badly upon DEP and were disruptive to its operations. The City argues that these comments, even if made in course of otherwise protected activity, are not themselves protected.

We reaffirm our prior holdings that an employee is not immunized against otherwise appropriate and proper disciplinary procedures merely because the actions leading to discipline occurred during otherwise protected activity. *See Ornas*, 65 OCB 12, at 7 (BCB 2000). Thus, we must analyze whether the specific grounds of the Warning Memorandum—the tone of and comments within Donas' emails—are themselves protected.

When analyzing speech made during otherwise protected activity, we, like the Public Employment Relations Board ("PERB") and the National Labor Relations Board, have recognized that the labor relations process "must tolerate robust debate of employment issues, even if occasionally intemperate." *Local 376*, 4 OCB2d 58, at 13 (BCB 2011) (quoting *Village of Scotia*, 29 PERB ¶ 3071 (1996)) (citing *Hawthorne Mazda, Inc.*, 251 NLRB 313, 319-20 (1980) (the "use of strong language in the course of protected activities supplies no legal justification for disciplining an employee except in those circumstances where the conduct is flagrant or egregious")). When analyzing employee speech, "it is not necessarily the specific words used, but the context in which the remarks are made that is often dispositive of when an employee's comments are considered protected." *Local 376*, 4 OCB2d 58, at 13; *see also City of Utica*, 33 PERB ¶ 3039 (2000) ("We are cognizant of the need to consider the context and the recipients of the words and the message conveyed to them in determining whether statements are protected by the [Taylor] Act.") (citing *Village of Scotia*, 29 PERB ¶ 3071).

In the instant matter, the context was an exchange of emails between those involved in labor relations. *See Village of Scotia*, 29 PERB ¶ 3071 (PERB noted that the recipients of the message is a factor when assessing the context and found that statements in a letter to those involved in the collective bargaining process, as opposed to the general public, to be protected).[18] In the context of the July 31 and October 15 emails, we find that their tone and the comments within are not so flagrant or egregious as to lose protection within the NYCCBL. As for the specific comments noted in the Warning Memorandum, Donas' explanations as to why they were pertinent to the labor issues he was raising was unrebutted. *See Id.* (PERB found the comments at issue to be protected because they concerned circumstances that the union official "believed should diminish the weight which the Village's Board of Trustees would normally give to the opinion of the Chief concerning a departmental matter."). As for the tone, nothing Donas' stated was so strong or hostile as to lose the protections of the NYCCBL as it was no more robust than that of the letter at issue in *Village of Scotia*, in which a union official described the Chief of Police as out to "shaft his men and the P.B.A. and suck up to the Mayor." 29 PERB ¶ 3071. While not condoning the union official's "unfortunate choice of words," PERB found the letter "is not particularly controversial or offensive in a labor relations setting." *Id.* Accordingly, as we find that the tone and comments in Donas' July 31 and October 15 email are protected, we order the DEP to rescind the Warning Memorandum issued to Donas on October 17, 2013.

[18] *Village of Scotia* concerned the demotion and discipline of a police officer for comments he made as a union official in a letter he wrote to the Village's Board of Trustees which were critical of the Village's Chief of Police and Mayor.

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 Petitions filed by the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO, and Harry Donas, docketed as BCB-3085-13 and BCB-4001-13, be, and the same hereby, is granted as to the claims that the New York City Department of Environmental Protection violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law by requiring Donas to obtain permission of a supervisor before leaving his office for any meeting with a Union Representative at any time during his working hours and by issuing Donas a Warning Memorandum on October 17, 2013 for engaging in protected activity; and it is further

ORDERED, that the Improper Practice Petitions filed by the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO, and Harry Donas, docketed as BCB-3085-13 and BCB-4001-13, be, and the same hereby, is denied as to the claims that the New York City Department of Environmental Protection violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law by failing to appoint Donas to the Civil Service title of Chemical Engineer and by conditioning the granting of two days per week release time upon Donas' relinquishing his compressed work schedule; and it is further

ORDERED, that the New York Department of Environmental Protection rescind the requirement that Donas obtain permission of a supervisor before leaving his office for any meeting with a Union Representative at any time during his working hours and that the New York City Department of Environmental Protection rescind the Warning Memorandum issued to Donas on October 17, 2013; 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 violations of the New York City Collective Bargaining Law.

Dated: June 24, 2014
New York, New York

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CAROLE O'BLENES
MEMBER

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 7 OCB2d 16 (BCB 2014), determining improper practice petitions between Petitioners Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO, and Harry Donas and Respondents 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 Petitions filed by the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO, and Harry Donas, docketed as BCB-3085-13 and BCB-4001-13, be, and the same hereby, is granted as to the claims that the New York City Department of Environmental Protection violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law by requiring Donas to obtain permission of a supervisor before leaving his office for any meeting with a Union Representative at any time during his working hours and by issuing Donas a Warning Memorandum on October 17, 2013 for engaging in protected activity; and it is further

ORDERED, that the Improper Practice Petitions filed by the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO, and Harry Donas, docketed as BCB-3085-13 and BCB-4001-13, be, and the same hereby, is denied as to the claims that the New York City Department of Environmental Protection violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law by failing to appoint Donas to the Civil Service title of Chemical Engineer and by conditioning the granting of two days per week release time upon Donas' relinquishing his compressed work schedule; and it is further

ORDERED, that the New York Department of Environmental Protection rescind the requirement that Donas obtain permission of a supervisor before leaving his office for any meeting with a Union Representative at any time during his working hours and that the New York City Department of Environmental Protection rescind the Warning Memorandum issued to Donas on October 17, 2013; 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 violations of the New York City Collective Bargaining Law.

The New York Department of Enviromental 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.