

City Employees Union, Local 237, 77 OCB 3 (BCB 2006)

[Decision No. B-3-2006(IP)] (Docket No. BCB-2437-04).

Summary of Decision: The Union filed an improper practice petition alleging that Parks violated NYCCBL § 12-306(a)(1) and (3) when, in retaliation for a grievance concerning out-of-title work, it transferred two Union members and threatened a third with such a transfer. The Union also claimed that this retaliation has had a chilling effect on union activity. The City claimed that Parks' actions were necessary to comply with the arbitration award and to maintain efficiency of its operations. The Board held that the Union demonstrated that Parks' actions were based on anti-union animus, that the City failed to demonstrate that these actions were based on legitimate business reasons, and that these actions have had a chilling effect on union activity. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Improper Practice Proceeding

-between-

**CITY EMPLOYEES UNION, LOCAL 237, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO,**

Petitioner,

-and-

**CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF PARKS & RECREATION,**

Respondents.

DECISION AND ORDER

On October 18, 2004, the City Employees Union, Local 237, International Brotherhood of Teamsters, AFL-CIO ("Union"), filed a verified improper practice petition against the City of New York and the Department of Parks and Recreation ("City" or "Parks"). The Union alleges that Parks 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”) when, in retaliation for a grievance concerning out-of-title work, it transferred two Union members and threatened a third with the same transfer. The Union also claims that this retaliation has had a chilling effect on union activity. The City argues that Parks’ actions were necessary to comply with the arbitration award and to maintain efficiency of its operations. After a hearing, this Board finds that the Union has demonstrated that Parks’ actions were based on anti-union animus, that the City has failed to demonstrate that these actions were based on legitimate business reasons, and that these actions have had a chilling effect on union activity.¹ Therefore, we grant the petition.

BACKGROUND

The Union represents a variety of employees including individuals employed by Parks in the title of maintenance worker. On May 15, 2003, three maintenance workers, Ralph Biscotti, Angelo Gerbasio, and Mitch Rippe (collectively “Grievants”), filed an out-of-title grievance alleging that they were being ordered to drive Parks’ vehicles and that driving is a duty substantially different from the duties stated in their job specification. The grievance was processed by the Union and taken to arbitration. A nine day hearing was held before an arbitrator between November 11, 2002, and January 15, 2004. At the arbitration, Biscotti and Gerbasio testified; Rippe did not appear.

In April or May 2004, Parks initiated a refresher road test after a child was hit by an employee driving a Parks’ vehicle. In Forest Park Shops in Queens (“Forest Park”), an electrician, a carpenter, a blacksmith, a plumber, and a maintenance worker (Gerbasio) refused to take the

¹ A hearing was held on June 20 and 22, 2005. Post hearing briefs were filed in August 2005.

driver's test. Gerbasio refused because he did not think his job required him to drive. According to Greg Monaghan, the Supervisor of Mechanics in Forest Park, Parks' policy is not to force someone who does not want to drive to do so. All who refused, including Gerbasio, were given drivers.

On May 18, 2004, the arbitrator issued an Opinion and Award ("Award"), which sustained the grievance and found that driving was a duty substantially different from those duties stated in the maintenance worker job specifications. The Award ordered the City to cease and desist requiring Grievants to drive Parks' vehicles. At the time of the Award, Biscotti and Gerbasio were working at Forest Park. Rippe, who worked out of Flushing Meadows Park, was on workers' compensation/medical leave between May 25 and August 16, 2004.

At the Board hearing, Biscotti testified that he has been a Parks employee for 21 years and that he worked for ten years at Forest Park. On average he performed eight to ten work orders, or assignments, a day. Biscotti's primary responsibility was repairing playground equipment in Queens. According to Monaghan, Biscotti was very skilled at inspecting and repairing playground equipment and had more expertise than anyone else. In addition, Biscotti performed other jobs such as minor carpentry, electrical work, plumbing, and the repair of benches and chain link fences. Biscotti traveled to his job assignments in a van called Dr. Playground, which held tools such as saws, wrenches, vice grips, hammers, generators, extension cords, ladders, plywood, bench slats, chainlink fence, and caulk for windows.

According to the Award, in 1991, Biscotti drove almost everyday. In 1992 and 1993, Biscotti drove about half the time. From 1994 to 1999, he had a steady driver who assisted him. In 2000, Biscotti was ordered to drive and that is when the grievance was filed. Prior to the issuance of the

Award, Biscotti worked often with Bill Campion, who did most of the driving. Biscotti drove a couple of times a week.

Gerbasio testified that he has been a maintenance worker for over 19 years. He worked at Forest Park for nine years doing general maintenance including putting up signs, fixing benches and chain link fences, and repairing playground equipment. According to Monaghan, Gerbasio was the “sign person” in Queens. He changed approximately 777 playground signs and 2000 other signs over a three year period. Gerbasio testified that between May 2003 and June 2004 he completed 864 work orders at Forest Park. Prior to the Award, Gerbasio had a variety of drivers who assisted him as needed. Sometimes Monaghan paired Gerbasio with Biscotti when the latter was willing to drive.

On June 18, 2004, Philip Sparacio, the Deputy Chief for Operations in Queens, was told by the borough Commissioner that as a result of the Award, Biscotti and Gerbasio could not drive and that Parks had to find appropriate duties for them. On June 21, 2004, Sparacio sent Monaghan the following e-mail:

I have been informed that Effective Monday June 21, 2004 neither Ralph Biscotti or Angelo Gerbasio are permitted to drive agency vehicles nor am I authorized to provide them with a driver. The option at this time is to assign them to District 14, upon their arrival please advise both of them to report to Prm Cafaro at B 86 street and Shore front Parkway to the district headquarters with any and all tools which they may require to perform their normal duties.

That day, Monaghan told Biscotti and Gerbasio that Parks would cease and desist asking them to drive and that it would not provide them with drivers. Monaghan told them to report to Far Rockaway which, until then, did not have a full time maintenance worker and was serviced on an as-needed basis by one who had a driver. When they arrived, the supervisor asked them what he was supposed to do with them without tools and a truck. The supervisor gave them a hammer and told them to walk on the boardwalk and bang down the nails which had popped up.

The following day, another employee drove to Far Rockaway in a truck that contained tools signed out to Gerbasio. Since other people had been using his tools, Gerbasio turned them in because he did not want to be responsible for them.

Biscotti was assigned to Far Rockaway for approximately one month and Gerbasio for four. When they arrived, there was no backlog of work. Biscotti and Gerbasio had one assignment to patch sheet rock on June 22, 2004, which took about one hour. On another occasion, Gerbasio assisted two maintenance workers to repair three park benches, even though this job is usually performed by two people. Biscotti's and Gerbasio's primary duty was to walk together on the boardwalk looking for loose nails which they would pound down with a hammer. Eventually, they got a second hammer and a screw driver but got no other tools to make repairs to the boardwalk. They would walk as far as they could, about 1 hour each way, twice a day.

On July 20, 2004, Biscotti was transferred to Bowne Park where he kept the aerator in a fish pond clear. The aerator shoots water into the air and provides oxygen to the fish. He had a rake and a shovel to keep the algae from clogging the grill and to keep the overflow grill cleared. He performed this task, which took 15-20 minutes, two to three times a day. Sometime in August, Monaghan built a frame to stop the clogging. Biscotti had no other work assignments. Prior to Biscotti's arrival, there were no permanent maintenance workers at Bowne Park.

On August 17, 2004, Rippe returned from his leave. According to Randy Klein, a business agent for the Union, Rippe contacted him that day about a conversation Rippe had with Sparacio. The Union alleges that Sparacio told Rippe that either he drives or "pound nails" on the boardwalk. At the Board hearing, Sparacio testified that he had conversations with Parks' personnel that he did not understand why Rippe had gotten involved in the grievance because he was always willing to

drive. At the time Sparacio spoke with Rippe, Sparacio knew that Biscotti and Gerbasio were “unhappy” in Far Rockaway. Sparacio tried to get Rippe to drive and told him:

I thought he would be absolutely bored – and I knew Ralph [Biscotti] and Angelo [Gerbasio] were absolutely bored banging in nails at the boardwalk – that would he consider driving; and he said he couldn’t go against his union and that he had an obligation to stick with it and see it through, that he was going to continue to do it.

Rippe did not agree to drive, and according to Biscotti, Rippe has been assigned to work with a driver. Rippe did not testify before the Board. Biscotti stated that Rippe was unwilling to appear because he had gotten a seasonal step-up for two months working as a pool supervisor and was afraid of losing this job.

On October 1, 2004, Gerbasio was assigned to Sorrentino Recreation Center (“Sorrentino”) where he is currently located. Prior to Gerbasio’s arrival, there were no maintenance workers assigned on a permanent basis and there was no work waiting for him. The supervisor thought Gerbasio would clean but that is not in his job specification. Currently, Gerbasio arrives at Sorrentino at 6:30 a.m. and opens the building. He performs a walkthrough looking for any maintenance problems which takes about 40 minutes. From 8:30 to 10:00, Gerbasio sits at a desk and checks the passes of people coming into Sorrentino. From 1:00 to 1:30 p.m. he takes lunch and from 1:30 to 3:00 he sits at the desk again. Since he left Forest Park, he has done four work orders.

In November 2004, Biscotti was transferred to Fort Totten, where he currently is located. Dr. Playground was recently brought to Biscotti and is now parked at Fort Totten. Biscotti performs some bench work and works on the buildings there. The summer months are busier, and he has done about 56 work orders. Sometimes he works with a seasonal maintenance worker who transports him to job sites. According to Biscotti, when he goes to Forest Park to pick up his check, he sees a provisional and a seasonal maintenance man paired up fixing playground equipment.

At the Board hearing Sparacio testified that he is the third in command in the borough of Queens. He stated that he has known Biscotti and Gerbasio for many years, that he was not upset by their union activity, and that the transfers were not intended as discipline. According to Sparacio, Parks had two options: Biscotti and Gerbasio could remain at Forest Park, which would mean they would work inside the shop, or they would be given a driver. Since there was no shop work or work that did not require driving, they were transferred. Sparacio acknowledged that other employees who refused to drive are provided with drivers and were not transferred but stated that drivers are in short supply. Sparacio also stated that other maintenance workers were still being asked to drive because they had not expressed a desire not to and because the Award only concerned Grievants. He also acknowledged that Gerbasio's inability to drive was not affected by the Award because he was not driving prior to its issuance.

With regard to the various assignments, Sparacio testified that Parks had operational needs at the locations where Biscotti and Gerbasio were assigned. Since there was no one assigned to monitor the boardwalk and there was a need to have it repaired, Biscotti and Gerbasio were sent to Far Rockaway. Also the aerator at Bowne Park needed repair and no full-time maintenance worker was available to do this job. Monaghan testified that the pond was important because it had just been opened at a great expense and it would have been an embarrassment not to have the aerator working. Sparacio also testified that the buildings at Fort Totten were old and in need of maintenance work. The administrator at Fort Totten knew Biscotti and wanted him there because Parks is hoping to get funding to do capital improvements in the future. Gerbasio went to Sorrentino, an old recreation center, because Parks needed someone full-time rather than occasionally.

Monaghan testified that he is responsible for the operation of the shops in Queens. Forest Park is the hub of operations in Queens and has the most work orders. He reviews job requests from 16 districts daily and, if appropriate, issues work orders based on employee availability and what will be required to complete the job. Workers are sent out in pairs or singly, depending on the job and staff availability. Traditionally, the workers who go out alone are plumbers, maintenance workers, and occasionally carpenters. Blacksmiths, who carry torches, must be accompanied by someone with a certificate of fitness to put out a fire. According to Sparacio, electricians should not work alone.

Monaghan testified that after the Award, he could have “operationally” provided Biscotti and Gerbasio with drivers by pulling drivers from other workers. He has approximately 28 mechanics, including four or five maintenance workers, and 12 assistant titles. There are not enough drivers to assign to each worker. If he could not put Biscotti and Gerbasio in one vehicle, he would have to supply an additional vehicle and a person for each of them. Monaghan cannot order the four men who refused to drive to do so. He can assign a driver to anyone except Gerbasio and Biscotti. According to Monaghan, they were transferred because they would not drive; driving is an essential function since almost no work is done in the shop.

Monaghan testified that there are not as many signs to be repaired, so if Gerbasio were at Forest Park now he would not be doing sign work but rather whatever else is needed. Monaghan also stated that he has not done a playground survey in two years. Now, playground repairs are under the jurisdiction of sector maintenance men.

Klein testified that the Union intended to file a group grievance concerning driving on behalf of maintenance workers. After Biscotti and Gerbasio were transferred, members contacted Klein and asked him how the Union could allow this to happen. Klein stated that since other members are

unwilling to put their jobs on the line, he has not filed the grievance. Biscotti also testified that he is a Union shop steward and that none of the maintenance workers he has spoken to want to file a grievance concerning driving because of the transfers.

The Union seeks an order that the City: cease and desist from retaliating against Biscotti, Gerbasio, and Rippe; rescind the transfers of Biscotti and Gerbasio; cease and desist threatening adverse employment actions against Rippe; authorize and/or release sick leave payments to Rippe; and be ordered to bargain with the Union regarding the implementation of the Award.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the record demonstrates that Parks committed an improper practice in violation of NYCCBL § 12-306(a)(1) and (3).² The Union has established that Grievants were engaged in union activity, that the City was aware of the activity, and that it was the motivating factor in Parks' actions. Here, as a result of the grievance being sustained, Gerbasio and Biscotti were transferred and Rippe was threatened with such a transfer. Monaghan admitted that he could

² NYCCBL § 12-306(a) provides, in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

* * *

(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 relevant part:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing

neither assign them to drive nor transport them to assignments even though he has the discretion to make assignments and to assign drivers.

According to the Union, the record does not support the City's claim that Parks' actions were necessitated by operational needs. Prior to the Award, five workers, including Gerbasio, were not assigned to drive because they refused to take a driver's test. If employees who refuse to drive cannot work at Forest Park, then all should have been transferred. After the Award, Gerbasio was the only one of the five transferred. It is undisputed that the Award had no impact on Gerbasio's ability to drive since he was not driving prior to the Award. Moreover, the City failed to distinguish Biscotti's inability to drive with that of the other employees who refused to drive. It is undisputed that Biscotti and Gerbasio were highly regarded and experienced employees who completed high volumes of work each day. As a result of the transfers, they were underutilized and not given the tools needed to complete their work. There was no evidence of a backlog of work at the new locations, and the City's argument concerning operational efficiency has no merit.

The Union contends that the City's claim that the transfers were necessary to bring Parks into compliance with the Award also has no merit. The Award finds that driving is outside the job of maintenance worker. If the City were seeking to comply with the Award, Parks would no longer assign maintenance workers to the task of driving as it continues to do. Thus, the record shows that Biscotti and Gerbasio were singled out because of their union activity.

The Union also argues that Parks' actions have had a chilling effect. Sparacio's testimony demonstrates that he threatened Rippe with having to pound nails on the boardwalk if he did not drive. The Union provided unrebutted testimony that members have not only refrained from filing grievances concerning driving but have actively pressed it not to do so even though Parks continues

to assign driving, contrary to the Award's finding that driving is a duty substantially different from those duties stated in the maintenance worker job specifications.

City's Position

The City argues that the Union has failed to demonstrate that the reassignments were motivated by anti-union animus. The decision to reassign Biscotti and Gerbasio was made to comply with the Award, which ordered Parks to cease and desist requiring them to drive. Since Forest Park is the hub in Queens and covers a large territory, it made sense to reassign Biscotti and Gerbasio because they could not drive to the necessary locations to perform their work. Keeping them in Forest Park would have required a daily examination by Monaghan of how to assign the work, based on the availability of staff and the nature of the jobs. This would have imposed an additional burden to the demands of assigning jobs to workers either in pairs or alone because driving is an essential function. Parks is under no obligation to provide Gerbasio and Biscotti with drivers. Also, the fact that Biscotti's and Gerbasio's work loads decreased is not evidence of anti-union animus. Other locations have different work loads. Maintenance work is required at each location and the work assigned to them was productive.

The City also argues that Parks' actions were not inherently destructive of employee rights. No other maintenance worker has expressed a desire not to drive, and the Union has not filed any such grievance between 2000 and 2004. Nothing in the record shows that Parks tried to sabotage the filing of a grievance.

DISCUSSION

This Board finds that Parks' reassignment of Biscotti and Gerbasio out of Forest Park and that Sparacio's conversation with Rippe regarding driving in contravention to the Award were based on anti-union animus and that these actions have had a chilling effect on union activity.

In determining if an action violates NYCCBL § 12-306(a)(1) and (3), this Board applies the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and adopted by the Board in *Bowman*, Decision No. B-51-87. 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.

If a petitioner alleges sufficient facts concerning these two elements to make out a *prima facie* case, the employer may attempt to refute petitioner's 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. See *Grennock*, Decision No. B-19-2004 at 15; *United Probation Officers Ass'n*, Decision No. B-4-90 at 27-28.

Here, since the filing of a grievance is considered protected activity under the NYCCBL, *Fabbricante*, Decision No. B-30-2003 at 27; *Doctors Council*, Decision No. B-12-97 at 10, and since the City was a party to the arbitration, the employer had knowledge of the activity at issue. Therefore, the Union has satisfied the first element of the *Salamanca* test.

For the second prong of the test, a petitioner must show a causal connection between the protected activity and the anti-union animus underlying the management act complained of. See *Sergeant's Benevolent Ass'n*, Decision No. B-22-2005 at 22; *Committee of Interns and Residents*, Decision No. B-26-93 at 44. Proof of the second element must necessarily be circumstantial absent

an outright admission. *City Employees Union, Local 237*, Decision No. B-13-2001 at 9; *Communications Workers of America, Local 1180*, Decision No. B-17-89 at 13. At the same time, petitioner must offer more than speculative or conclusory allegations. Alleging an improper motive without showing a causal link between the management act and the union activity fails to state a violation of the NYCCBL. *Ottey*, Decision No. B-19-2001 at 8; *Correction Officers' Benevolent Ass'n*, B-19-2000 at 8.

We find a causal connection between Biscotti's and Gerbasio's protected activity and Parks' actions. It is undisputed that Parks assigned Biscotti and Gerbasio to Far Rockaway because they prevailed in the arbitration. Sparacio testified that as a result of the Award, he was told that Biscotti and Gerbasio could not drive and that Parks had to find appropriate duties for them to perform. Sparacio then sent Monaghan an e-mail stating that he was not authorized to provide Biscotti and Gerbasio with a driver and that Monaghan was to transfer them immediately. Monaghan admitted that Biscotti and Gerbasio were transferred because they refused to drive. Therefore, we conclude that Parks acted with anti-union animus when it transferred Biscotti and Gerbasio.

We also find a causal connection between Rippe's protected activity and Sparacio's actions. Sparacio testified that could not understand why Rippe had gotten involved with the grievance concerning driving. On the day Rippe returned from leave, Sparacio tried to convince Rippe to drive, and Rippe responded that "he couldn't go against his union." Rippe immediately reported this conversation to the Union's business agent. Although Sparacio testified that he did not intend this conversation to be a threat, he admitted that when he spoke to Rippe, he knew that Gerbasio and Biscotti were "unhappy" in Far Rockaway. We find that Sparacio's statements that Rippe would be bored "banging in nails at the boardwalk" constituted a threat that Rippe would be sent to Far

Rockaway if he did not agree to drive. Even though Rippe was subsequently provided with a driver, we conclude that Sparacio was motivated by anti-union animus when he tried to induce Rippe to drive in contravention to the Award.

Since the Union has made a *prima facie* case for retaliation, the burden shifts to the City to refute this showing or to demonstrate legitimate business reasons for Parks' actions. *Grennock*, Decision No. B-19-2004 at 16. We find that the City has failed to meet this burden.

The City's claim that the decision to reassign Biscotti and Gerbasio was made to comply with the Award is without merit. The Award found that driving is a duty substantially different from the duties stated in the maintenance worker job specifications and ordered the City to cease and desist requiring Grievants to drive Parks' vehicles. Nothing in the Award required that Biscotti and Gerbasio be reassigned or transferred out of Forrest Park. Despite the Award, Parks continues to assign maintenance workers to the task of driving.

The City also contends that because Parks could not assign Biscotti and Gerbasio to drive, operational needs required that they be assigned to locations where driving is not necessary. This assertion is not supported by the record. Prior to the Award, five employees at Forest Park, an electrician, a carpenter, a blacksmith, a plumber, and Gerbasio, were given drivers because they refused to drive. After the Award, Gerbasio was the only one in this group transferred. Furthermore, before the Award, Parks sometimes provided Biscotti with a driver. The City has failed to distinguish Biscotti's and Gerbasio's refusal to drive with that of other workers who also refused to drive and were given drivers, and were not transferred. The only discernable difference between Gerbasio and Biscotti and these other employees is union activity. The record is devoid of any changes in Parks' operations that justified the reassignment of these particular individuals. In fact,

Monaghan acknowledged that it is Parks' policy not to force someone to drive and that he can assign a driver to anyone except Gerbasio and Biscotti. Monaghan also testified that he issues work orders on a daily basis based on employee availability and the job requirements. Thus, the City's argument that keeping Gerbasio and Biscotti at Forest Parks would interfere with the manner in which Monaghan makes assignments is contrary to the record.

Moreover, prior to the Award, Gerbasio and Biscotti performed numerous work orders at Forest Park, worked with a variety of tools on multiple jobs, and earned the high praise of their supervisor, Greg Monaghan. While the record shows that maintenance is required at Far Rockaway, Bowne Park, Sorrentino, and Fort Totten and that the work assigned to Gerbasio and Biscotti may have been necessary, no evidence was presented that these locations required full-time maintenance workers to perform these tasks. Indeed, these locations were previously serviced on as-needed basis by maintenance workers who generally arrived with a driver. The record demonstrates that when Biscotti and Gerbasio arrived at these new locations, there was no backlog of work waiting for them, that they were given rudimentary tools to work with, and that they performed little or no maintenance work. We find that the business reasons for the transfers asserted by the City are not supported by the facts and are logically inconsistent with the record. *See Sergeant's Benevolent Ass'n*, Decision No. B-22-2005. Moreover, the City provided no business reasons for Sparacio's attempt to induce Rippe to drive in contravention to the Award.

The City's reliance on *Savona Faculty Ass'n*, 20 PERB ¶ 3055 (1987) and *Civil Service Employees Ass'n*, 25 PERB ¶ 4677 (1992), is misplaced. In those cases, management's actions were natural consequences of the grievance decisions, and there was no evidence of improper motivation. In this case, the transfers of Biscotti and Gerbasio were not necessary to comply with the Award, and

the record demonstrates that Parks' actions were motivated solely by anti-union animus.

Finally, we address the Union's claim that Parks' actions have had a chilling effect on union activity. The Board has held that actions taken for the purpose of frustrating a union's representation of its members are inherently destructive and may have a chilling effect on employees' right to engage in union activity. *Committee of Interns and Residents*, Decision No. B-26-93; *see also Greenburgh #11 Union Free School District*, 33 PERB ¶ 3018 (2000). A party is presumed to have intended the consequences that it knows or should have known would inevitably flow from its actions. *Local 1180, Communication Workers of America, AFL-CIO*, Decision No. B-28-2003 at 10; *Assistant Deputy Wardens Ass'n*, Decision No. B-19-95 at 35.

We find that Parks' actions with regard to Grievants was inherently destructive of union rights and that these actions have had a chilling effect on union activity. Klein and Biscotti presented credible testimony that the Union intended to file a group grievance concerning driving. However, after Biscotti and Gerbasio were transferred, the Union did not file because other maintenance workers were unwilling to participate in the grievance process for fear of putting their jobs at risk. Moreover, Rippe did not appear at the Board hearing to testify on the Union's behalf. We credit Biscotti's explanation that Rippe was unwilling to engage in union activity because he had gotten a seasonal step-up working as a pool supervisor and was afraid of losing this job.

Accordingly, this Board finds that Parks violated NYCCBL § 12-306(a)(1) and (3) and we grant the petition. Parks is ordered to cease and desist from retaliating against Biscotti, Gerbasio, and Rippe; to cease and desist threatening adverse employment actions against Rippe; and to rescind

the transfers of Biscotti and Gerbasio and return them to Forest Park.³ Parks is directed to make assignments to Biscotti, Gerbasio, and Rippe without consideration of their union activity and in the same manner that it makes assignments to other similarly-situated employees who have refused to drive. Moreover, because Parks' actions have had a demonstrable chilling effect on union activity, we order a posting of the attached notice.

ORDER

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

ORDERED, that the improper practice petition filed by the City Employees Union, Local 237, International Brotherhood of Teamsters, AFL-CIO against the City of New York and the Department of Parks and Recreation Docket No. BCB-2437-04 is granted; and it is further

ORDERED, that the Department of Parks and Recreation is ordered to cease and desist from retaliating against Ralph Biscotti, Angelo Gerbasio, and Mitch Rippe; and it is further

ORDERED, that the Department of Parks and Recreation cease and desist threatening adverse employment actions against Mitch Rippe; and it is further

ORDERED, that the Department of Parks and Recreation rescind the transfers of Ralph Biscotti and Angelo Gerbasio and return them to Forest Park Shops in Queens; and it is further

ORDERED, that the Department of Parks and Recreation make assignments to Ralph

³ With regard to the Union's request that Parks be ordered to release payments to Rippe, no evidence was presented to support this claim. With regard to the Union's request that the City bargain over the implementation of the Award, there is no basis to grant such relief. We also note that these issues were not addresses in the Union's post-hearing brief.

Biscotti, Angelo Gerbasio, and Mitch Rippe without consideration of their union activity and in the same manner that it makes assignments to other similarly-situated employees who have refused to drive; and it is further

ORDERED, that the Department of Parks and Recreation post the attached Notice to Employees for no less than thirty days at all locations used by Parks for written communications with bargaining unit employees.

Dated: January 23, 2006
New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER

BRUCE H. SIMON

MEMBER

I dissent.

M. DAVID ZURNDORFER

MEMBER

I dissent.

ERNEST F. HART

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 in the matter of *City Employees Union, Local 237, International Brotherhood of Teamsters, Decision No. B-3-2006 (Docket No. BCB-2437-04)*:

The Department of Parks and Recreation committed an improper practice when, in retaliation for a grievance concerning out-of-title work, it transferred Ralph Biscotti and Angelo Gerbasio and threatened to transfer Mitch Rippe.

It is hereby:

ORDERED, that the improper practice petition filed by the City Employees Union, Local 237, International Brotherhood of Teamsters, AFL-CIO against the City of New York and the Department of Parks and Recreation Docket No. BCB-2437-04 is granted; and it is further

ORDERED, that the Department of Parks and Recreation is ordered to cease and desist from retaliating against Ralph Biscotti, Angelo Gerbasio, and Mitch Rippe; and it is further

ORDERED, that the Department of Parks and Recreation cease and desist threatening adverse employment actions against Mitch Rippe; and it is further

ORDERED, that the Department of Parks and Recreation rescind the transfers of Ralph Biscotti and Angelo Gerbasio and return them to Forest Park Shops in Queens; and it

is further

ORDERED, that the Department of Parks and Recreation make assignments to Ralph Biscotti, Angelo Gerbasio, and Mitch Rippe without consideration of their union activity and in the same manner that it makes assignments to other similarly-situated employees who have refused to drive.

The Department of Parks and Recreation

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.