In the Matter of UNITED STEELWORKERS OF AMERICA

and

MARK A. MUNIAK

Case No. MUPL-4282

69.1 requirements under civil service law

72.24 duty to notify employees of rights of appeal under the terms of a collective bargaining agreement

March 3, 2005
Allan W. Drachman, Chairman
Hugh L. Reilly, Commissioner

Warren H. Pyle, Esq.	*Representing the United*
Joseph A. DeTraglia, Esq.	*Steelworkers of America*
Raymond W. Zenkert Jr., Esq.	*Representing Mark A. Muniak*

DECISION[1]

STATEMENT OF THE CASE

Mark A. Muniak (Muniak) filed a prohibited labor practice charge with the Labor Relations Commission (Commission) on August 16, 2000 alleging that the United Steelworkers of America (Union) had violated Section 10(b)(1) of M.G.L. c. 150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, the Commission investigated the charge and, on January 9, 2002, issued a Complaint of Prohibited Practice alleging that the Union had acted arbitrarily, perfunctorily, and in a manner reflective of inexcusable neglect by failing to properly advise Muniak about his choice of remedies for appealing his termination as set forth in the collective bargaining agreement, in violation of Section 10(b)(1) of the Law. On January 18, 2002, the Union filed an answer to the Commission's complaint.

On July 12, 2002, the Union filed a Motion to Defer Trial on Issue of Damages. The Union filed a substitute Motion to Defer Trial on Issue of Damages on July 16, 2002 to correct a typographical error in its original Motion. Muniak did not respond to the Union's Motion. On August 14, 2002, Ann T. Moriarty, Esq., a duly designated Commission hearing officer (Hearing Officer), deferred a hearing on the issue of the Union's monetary liability, if any, until after the Commission decided whether the Union violated the Law. On August 21, 2002, the Union unequivocably elected to wait until after a finding of liability to present evidence showing that, even if Muniak's grievance is found to be arguably meritorious, the grievance would have been lost at arbitration for reasons not attributable to the Union's misconduct.

Pursuant to notice, the Hearing Officer conducted a two-day evidentiary hearing on August 26 and August 27, 2002. Both parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The Commission received both parties' briefs on December 23, 2002. In accordance with Section 13.02(2) of the Commission's rules, the Hearing Officer issued Recommended Findings of Fact on August 21, 2003.

FINDINGS OF FACT[2]

Neither party challenged the Hearing Officer's Recommended Findings of Fact. Therefore, we adopt them in their entirety, supplement them where required, and summarize the relevant portions below.

The Union is the exclusive collective bargaining representative for a bargaining unit of supervisory employees of the City of Springfield (City) working in its Department of Public Works (DPW), including Muniak, who has worked in various capacities for the City since about 1987.

In July 1998, the Union hired George J. Magnan III (Magnan) as a Union staff representative. As a Union staff representative, Magnan negotiates and administers collective bargaining agreements for both public and private sector employees, including City employees working in the DPW and employees of the Springfield Water and Sewer Commission. Magnan has no training or experience in dealing with issues involving Massachusetts civil service law or procedure.[3] Magnan has represented the Union before the National Labor Relations Board, but he has never handled any disciplinary hearings before the Massachusetts Civil Service Commission, nor has he represented bargaining unit members in unemployment compensation hearings or before the Massachusetts Commission Against Discrimination.[4]

Shortly after Magnan started working for the Union, he attended two, ten to fourteen day training courses: 1) a Union-sponsored leadership training course that provided an overview of the Taft-Hartley Act, labor history, organizing skills, and the grievance-arbitration process; and, 2) an arbitration course sponsored by Cornell University. Those two courses did not include any training in Massachusetts public sector civil service law or proce-

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission issues a decision in the first instance. 456 CMR 13.02(2).

2. Neither party contests the Commission's jurisdiction in this matter.

3. Prior to July 1998, Magnan was employed by Ansonia Copper & Brass (Ansonia) for about twenty-two years. The Union was the exclusive representative for about 450 Ansonia employees including Magnan, and Magnan held various local Union positions while working for Ansonia, including shop steward, executive board member, and vice-president. In 1991, after an employee buy-out of Ansonia, Magnan sat on the company's board of directors until he left that position in July 1998 to work full-time as a Union staff representative.

4. The Union hired Magnan in July 1998 and assigned him to work with the thirty-three Union locals that had been serviced previously by the Union's Sub-District Director Charles McLaughlin (McLaughlin), who had died suddenly. The record is silent on whether McLaughlin represented bargaining unit members at City contemplated action hearings or hearings conducted on appeals of five-day suspensions, Massachusetts Civil Service Commission hearings, unemployment hearings, or before the Massachusetts Commission Against Discrimination.

dure, nor did the Union offer or provide Magnan with any training in those areas. Staff at the Union's international headquarters in Pittsburgh, PA are available to answer questions from Union staff representatives about workplace issues. Magnan did not consult with the Union's international staff about Muniak's termination case.

The Collective Bargaining Agreement

The Union and the City are parties to a collective bargaining agreement (the Agreement) effective July 1, 1997 to and including June 30, 2000. Notwithstanding the fact that the parties signed the Agreement on or about July 20, 2000, its terms were in effect at all times material to the issues raised in this case. Article 7 *Civil Service* of the Agreement, in part, provides:

> 7.01 The Employer and the Union shall recognize and adhere to all Civil Service and State labor laws, rules and regulations, relative to seniority, promotions, transfers, discharges, removals and suspensions.
>
> 7.02 The Union further reserves the right to represent employees under any such established procedure. Any employee not covered by any statute relative to the above matters shall have recourse to the grievance procedure contained herein.
>
> 7.03 In the event of the abolishment or modification of Civil Service Law and rules wherein employee coverage is lessened or changed during the life of this Agreement, this contract shall be reopened upon notification to the City by the Union to permit negotiations of such pertinent matters into the scope of this Agreement.

Article 8 *Grievance Procedure* of the Agreement, in part, provides:

> 8.01 Only matters involving the question whether the Employer is complying with the expressed provisions of this Agreement shall constitute a grievance under this article.
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> 8.02 Grievances shall be processed as follows:
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> *Step 1.* The Union representative with or without the aggrieved employee shall present the grievance orally to the employee's immediate supervisor outside of the bargaining unit, who shall attempt to adjust the grievance informally.
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> *Step 2.* If the grievance is not settled at Step 1, it shall be presented in writing to the Department Head within eight (8) calendar days from the date of the presentation at the Step 1 level.
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> *Step 3.* If the grievance is not settled within ten (10) calendar days from the date of written presentation at the Step 2 level, the grievance shall be submitted within ten (10) calendar days to the Labor Relations Department of the City.
>
> *Step 4.* If the grievance is not settled within ten (10) calendar days from date of presentation at the Step 3 level, the Union may submit the grievance to arbitration. Such submission must be made within sixty (60) calendar days after the expiration of the ten (10) calendar days referred to herein.
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> Within the aforesaid sixty (60) calendar days period, written notice of said submission must be given to the Employer by delivery in hand, or by mail to the office of the Mayor.
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> 8.08 *Choice of Remedy*:
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> If, as a result of the written Employer response in Step 2 the grievance remains unresolved, and if the grievance involves the suspension, demotion, or discharge of a permanent Civil Service employee, the grievance may be appealed either to Step 3 (Labor Relations Department) of the grievance procedure or a procedure such as: Civil Service, Veterans Preference, or Fair Employment. If appealed to any procedure other than Step 3 of Article 8, the grievance is not subject to the arbitration procedure as provided in Step 4 of Article 8. The aggrieved employee shall indicate in writing directly or through the Union which procedure is to be utilized - Step 3 of the Grievance Procedure or another appeal procedure and shall sign, or cause a statement to be signed, to the effect that the choice of any other hearing precludes the aggrieved employee from making a subsequent appeal through Step 4 of this Article.[5]

The grievance procedure contained in Article 8, above, is the same grievance procedure that appears in Article 8 of the prior collective bargaining agreement between the City and the Union. McLaughlin started the successor contract negotiations with the City over the terms of the 1997-2000 Agreement, and Magnan took over those negotiations on behalf of the Union at some point after July 1998. The Union and the City reached an agreement on the 1997-2000 Agreement and Magnan signed the Agreement on July 20, 2000. During the negotiations for the 1997-2000 Agreement, neither the City nor the Union proposed any changes in the grievance procedure.

M.G.L. c. 31 - Civil Service Law

Section 41 of M.G.L. c. 31 (the Civil Service Law), in part, provides:

> Section 41. Discharge; removal; suspension; transfer; abolition of office, reduction of rank or pay; hearings; review.
>
> Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion

5. The record is silent on whether Muniak signed such acknowledgment either directly or through the Union.

of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor. …

… If it is the decision of the appointing authority, after hearing, that there was just cause for an action taken against a person pursuant to the first or second paragraphs of this section, such person may appeal to the commission as provided in section forty-three.

Section 42 of the Civil Service Law, in part, provides:

Section 42. Complaints; hearings; jurisdiction; filing of civil action.

Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the requirements of section forty-one. …

Section 43 of the Civil Service Law, in part, provides:

If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission. Said hearing shall be commenced in not less than three nor more than ten days after filing of such appeal and shall be completed within thirty days after such filing unless, in either case, both parties shall otherwise agree in a writing filed with the commission, or unless the member or hearing officer determines, in his discretion, that a continuance is necessary or advisable. If the commission determines that such appeal has been previously resolved or litigated with respect to such person, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with such section, the commission shall forthwith dismiss such appeal.

Muniak's January 28, 2000 Reassignment/Demotion

For about two years prior to January 28, 2000, Muniak worked for the City as an intermittent water construction foreman earning $17.75 per hour. On January 28, 2000, the City's Deputy Director of the DPW, John Rooney (Rooney), demoted Muniak to his former position of working maintenance foreman effective the next pay period because Rooney could not justify paying Muniak the internmittent water construction foreman hourly pay rate any longer.[6]

Muniak told Rooney that he intended to file a grievance over this demotion that reduced his hourly pay to about $15.06. On February 18, 2000, Magnan filed a grievance on Muniak's behalf challenging the January 28, 2000 demotion.[7] On or about February 24, 2000, Rooney talked with Muniak about the grievance, and Muniak told Rooney that he intended to pursue it to the final step.

The Union processed the grievance through the first three steps of the grievance-arbitration procedure. At some point after March 7, 2000, Magnan decided not to file for arbitration because the Union accepted the City's position that the City could permissibly change Muniak's intermittent or temporary work assignment at any time despite the fact that Muniak held that position for about two years. Muniak was satisfied with Magnan's explanation for not pursuing that demotion grievance to arbitration.

At some point after February 21, 2000, but before February 29, 2000, DPW supervisory employee Robert Brady (Brady) asked Muniak to report with him to Rooney's office. During this meeting with Rooney and Brady, Rooney asked Muniak about the slow progress on a job site. Muniak told Rooney that he was at the job site waiting for Brady to get there with instructions before beginning work. According to Muniak, Rooney was angered by that response and told Muniak that he [Muniak] was still a boss and that Rooney expected Muniak to make decisions. Muniak interpreted Rooney's comments to mean that the City was telling him to continue to perform his job as he always had, but for less pay. Muniak also interpreted Rooney's remarks as a reflection of the City's agitation over his demotion grievance.

February 29, 2000 - March 5, 2000

On or about March 1, 2000, Brady again asked Muniak to report to Rooney's office. During this meeting, Rooney asked Muniak about his conduct on February 29, 2000. Muniak asked what the questions were about, and Rooney said "you'll know in time," or words to that effect. Later in the meeting Rooney told Muniak that there were allegations that Muniak had poured sugar into the gas tank of one of the City's trucks. Muniak denied those allegations.

On or about March 2, 2000, Southwick police officers went to Muniak's home by order of the Southwick Police Chief to remove all firearms and to notify Muniak that his license to carry firearms had been suspended. The police officers told Muniak that the Southwick Police Chief issued his order at the request of the City of Springfield Police Department, which was investigating allegations that Muniak had threatened someone at his workplace. This was the first time Muniak became aware of these allegations.[8]

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6. Within the same general timeframe, the City also demoted one other similarly situated bargaining unit member who had been working as an intermittent water construction foreman.

7. Although Muniak did not receive assistance from the Union's shop steward in filing this grievance, after Muniak contacted the Union's office in Milford, MA, Magnan met with Muniak at his worksite and assisted Muniak by completing and filing the grievance.

8. On May 17, 2000, Muniak filed a Petition for Review of Suspension of License to Carry Fireams with the District Court of Westfield, MA. On December 1, 2000, Muniak and the Southwick Police Chief filed a stipulation of dismissal with the court. Subsequently, the Southwick Police Department notified Muniak that his license to carry firearms had been reinstated.

Muniak's Suspension and Termination

By letter dated March 6, 2000, the City notified Muniak of an immediate suspension without pay for five days, effective March 7, 2000 through March 13, 2000. The City's March 6, 2000 suspension notification letter, in part, provides:

> This action is taken on the basis of your willful destruction of City property and threatening and intimidating remarks on February 29, 2000. On this date you were observed pouring sugar into the fuel tank of Truck 446038. The Department also has evidence that you made threatening and intimidating remarks. The Department does not tolerate acts of vandalism and intimidation, this act or further acts may result in your termination of employment with the City of Springfield.
>
> If you so desire, you may, but are not required by law, file a counter statement. You have the right to request a hearing in accordance with the Collective Bargaining Agreement within 48 hours of your receipt of this notice. Said request must be in writing. If you request a hearing it will be held in conjunction with your contemplated action hearing on Monday, March 13, 2000 at 3:00, in the conference room of Bldg. "E" at Tapley St. You may have representation at said hearing. Attached is a copy of Section 41 thru 45 inclusive, of the Massachusetts General Laws, Chapter 31, which explains your rights under Civil Service Law.

Rooney, who signed the City's March 6, 2000 suspension letter, did not send a copy of that letter to Magnan.

In a separate letter dated March 6, 2000, the City notified Muniak of a contemplated action hearing. The City's March 6, 2000 notice states:

> You are hereby informed that the Appointing Authority Allan R. Chwalek, has received certain allegations that concern you, which if true could result in disciplinary measures.
>
> The specific allegations are your willful destruction of City property and threatening and intimidating remarks on February 29, 2000. On this date you were observed pouring sugar into the fuel tank of Truck 446038. The Department also has evidence that you made threatening and intimidating remarks. The Department does not tolerate acts of vandalism or intimidation, this act or further acts may result in your termination of employment with the City of Springfield.
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> Your employment history is as follows:
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> September 17, 1990 - hired by the Water Department
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> May 18, 1993 - 1 day suspension for unauthorized use of City equipment and material
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> March 27, 1997 - Transferred to the DPW
>
> March 7, 2000 - 5 day suspension for willful destruction of City property and making threatening and intimidating statements to fellow employees
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> If you so desire you may file a counter statement, but it is not required by law.
>
> If these allegations are substantially proven you may be subject to suspension, transfer, reduction of rank or pay, or removal or discharge.
>
> You are hereby notified that you have a right to a full hearing regarding these allegations. The hearing will take place on Monday, March 13, 2000, 3:00, in the conference room of Bldg "E" at Tapley St. You may have representation at said hearing.
>
> Attached you will find a copy of Section 41-45 of Chapter 31 of the Civil Service Laws which detail your rights.

Immediately after receiving the March 6, 2000 letters and the referenced attachments to both letters, Muniak talked with Magnan. Muniak read the City's letters to Magnan, and Magnan told Muniak to request a hearing on the five-day suspension.[9]

Magnan also told Muniak that he did not handle civil service matters and suggested that Muniak retain an attorney. At the time they talked, Magnan did not have a copy of the City's March 6, 2000 letters.[10] Shortly after that conversation, Magnan called the City and asked the City to copy him on all letters relating to Muniak's suspension and termination. At some point before mid-March 2000, the City sent a copy of both March 6, 2000 letters to Magnan, but the City did not include with those letters the referenced attachments of Sections 41-45 of M.G.L. c. 31 (the civil service law). The first time Magnan saw a copy of those referenced attachments was on August 26, 2002 when they were admitted into evidence during the hearing in this case.

By letter dated March 8, 2000, Muniak requested a hearing on the five-day suspension.[11] By letter dated March 9, 2000, the City notified Muniak that it would conduct the five-day suspension appeal hearing simultaneously with the contemplated action hearing scheduled for March 13, 2000.[12] Muniak and Magnan talked on more than one occasion during the week just prior to the contemplated action hearing. During one of those conversations, Muniak asked Magnan if he was going to be at the hearing, and Magnan told Muniak that he planned on attending.

On or about March 7, 2000, Muniak retained the services of Attorney Philip Castleman (Castleman), an experienced criminal attorney, to get his license to carry firearms reinstated and his firearms returned to him, and to look into the allegations made against him about threats and vandalism in the workplace that were under in-

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9. The record is silent on whether Muniak, or the Union, on Muniak's behalf, filed a grievance contesting Muniak's five day suspension.

10. Muniak testified that Magnan told him that he had received copies of the City's two March 6, 2000 letters during this telephone conversation, but his testimony conflicts with Magnan's on this point. The hearing officer credited Magnan's testimony that he did not have these letters in his possession at the time of this conversation because Magnan's testimony was corroborated, in part, by Rooney's credible testimony that he did not send a copy of his March 6, 2000 five-day suspension letter to Magnan. Further, unlike the notation on the City's March 17, 2000 letter that indicates that the City concurrently sent a copy to Magnan, the two March 6, 2000 letters do not contain a similar notation. Magnan's testimony is also internally consistent with his other credible testimony that, shortly after this conversation, he called the City and asked the City to copy him on all letters dealing with Muniak's suspension and termination.

11. At some point, Muniak provided Magnan with a copy of this letter.

12. The evidence does not indicate if the City either concurrently or at a later date provided the Union with a copy of its March 9, 2000 letter to Muniak.

vestigation by the Springfield Police Department. Muniak did not retain Castleman for the specific purposes of representing him in any civil service or labor-related matter,[13] but Castleman either suggested,[14] or Muniak requested, that Castleman represent him at the City's contemplated action hearing. Muniak and Castleman did not discuss Muniak's choices or options if, following the hearing, the City decided to terminate Muniak. On March 12, 2000, Muniak called Magnan and told him that he was bringing his own attorney to the hearing.

The City conducted the contemplative action hearing on March 13, 2000. Muniak attended that hearing with Castleman. Castleman did not have any contact with Magnan before the hearing. Muniak introduced Castleman to Magnan just before the hearing started. During a conversation that occurred either just prior to the start of the hearing or just after the hearing opened, Muniak told Magnan that Attorney Castleman would represent him during the hearing.[15] Immediately after the hearing, Magnan told Muniak that he was going to attempt to meet with Rooney before the situation got out of control.

If a bargaining unit member decides to retain private counsel to represent him/her at an arbitration hearing or other proceeding rather than a Union representative, it is the Union's policy to have that bargaining unit member sign a Union form that demonstrates that election.[16] The Union's form also contains language that the bargaining unit member has agreed to hold the Union harmless regarding the outcome of the proceeding. Because Magnan did not have that Union form with him on March 13, 2000, he asked the City's hearing officer to include in the record that Muniak was represented by his personal attorney, not by the Union representative.[17] At no time after this hearing did Magnan ask Muniak to execute this waiver form.[18]

A few days after the March 13, 2000 hearing, a City attorney contacted Castleman with a settlement offer. Specifically, the City offered to demote Muniak, not terminate him, if Muniak admitted wrongdoing. Castleman rejected the settlement offer because Muniak denied all the charges and he would not admit to guilt to retain his job.

By letter dated March 17, 2000, the City notified Muniak that his five-day suspension was supported by just cause, and that there was just cause to terminate his employment with the City, effective March 20, 2000. The City sent a copy of its March 17, 2000 letter to Magnan and Castleman. The City's letter contains no express statement of any rights Muniak had under the civil service law, nor does the letter contain any reference to any attachments or enclosures.

Muniak telephoned Magnan on or about March 18, 2000, after he had received the City's termination letter. Magnan told Muniak that he would file a grievance under the contract.[19] Muniak expressed his preference to pursue the matter before the Civil Service Commission.[20] Magnan told Muniak that he did not handle civil service matters and that Muniak would have to retain his own attorney. During this conversation, Muniak told Magnan that he had read the sections of the civil service law and asked Magnan about the ten-day period to appeal the termination to the Civil Service Commission.[21] Magnan did not answer Muniak's question about the time limits for filing an appeal with the Civil Service Commission because Magnan did not know the civil service law. Magnan, having read the Agreement's grievance-arbitration procedure, in-

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13. The hearing officer credited Muniak's testimony and Castleman's testimony that Muniak did not retain Castleman for any civil service or labor-related matter.

14. Castleman explained that he attended the March 13, 2000 hearing as a source of discovery for any future criminal proceeding. According to Castleman, he anticipated that during this hearing the City would bring witnesses to support their reasons for terminating Muniak, including the allegations of vandalism of City property and threatened violence, and these witnesses would be subject to his cross-examination. The City did not produce those witnesses during the hearing. The only witness that Castleman recalled the City produced was a garage mechanic who testified that he drained the gas from the City vehicle that Muniak allegedly put sugar into, and that the mechanic found no evidence of sugar in the gas tank.

15.Muniak explained that he made the final decision to have Castleman, an attorney, represent him at the hearing because there were potential criminal proceedings, the City had two attorneys present, and he didn't want to say something that he shouldn't say during the hearing. Muniak knew that Magnan was not an attorney.

16. The record is silent on whether Muniak was aware of this Union policy.

17. Magnan does not usually have a Union waiver form with him. If Magnan had known before the hearing date that Muniak would decide to be represented by his own personal attorney during the contemplated action hearing, Magnan would have retrieved a Union waiver form from his office and brought it with him to the hearing.

18. According to Magnan, it probably would have been good policy to follow-up and have Muniak sign a Union waiver form after the City terminated Muniak and during the time that he and Muniak discussed challenging Muniak's termination before an arbitrator or under civil service law. However, Magnan had asked other Union staff in his office about civil service and they had told him that the Union staff does not handle civil service matters. Therefore, Magnan didn't think to have Muniak execute a waiver because he understood from his co-workers that employees retain their own attorneys for civil service matters.

19. This was the first termination case that Magnan handled under Article 8, the grievance-arbitration provision of the Agreement. Magnan had reviewed Article 8, including its choice of remedy section, before the March 13, 2000 contemplative action hearing.

20. Muniak explained that he wanted to go to civil service "because that's all that's known to me, everyone that's ever been in a situation, they go to civil service, because it's a civil service shop, because I'm a veteran." Muniak served as a military police officer in the United States armed forces.

21. From reading the sections of the civil service law that he had received from the City, Muniak knew that the civil service law required that a written appeal of the City's decision to terminate him had to be filed with the Civil Service Commission within ten days after receipt of the City's March 17, 2000 letter. At the time of this conversation, Muniak believed that Magnan had also received these statutory excerpts from the City, but the City did not include them with the copies of the letters they had sent to Magnan. Although Magnan testified that Muniak did not ask him about a ten-day appeal period, the hearing officer credited Muniak's testimony that he did ask Magnan about this issue. Based on his demeanor, his recognition that the City permissibly disciplined him on one occasion over a thirteen year work history, his acceptance and understanding of the Union's decision not to take his demotion grievance to arbitration, and his immediate decision to retain an experienced criminal attorney to represent him on certain issues, Muniak impressed the hearing officer as a person who would have read carefully the sections of the civil service statute and purposely asked Magnan about the ten-day appeal period. Because Magnan did not have the statutory excerpts, he may not have assigned the same level of importance to that question that Muniak did at the time they spoke. Therefore, Magnan's memory on that issue is likely to be non-existent or vague, as compared to Muniak's recollection that he did ask Magnan that question, which related directly to a procedure he wanted to pursue to challenge his termination.

cluding Article 8.08 on choice of remedies, told Muniak he did not have to choose between arbitration or civil service until later in the process, after Step 2 of the grievance-arbitration procedure.[22] Muniak interpreted Magnan's statements during this telephone conversation to mean that he did not have to file an appeal with the Civil Service Commission at that time.[23] Muniak did not file an appeal with the Civil Service Commission until May 2, 2000, after Magnan asked him to choose between arbitration and civil service, and Muniak elected civil service.

Muniak never asked Magnan for a copy of the applicable contract, and Magnan never provided Muniak with one. About the time Muniak filed his demotion grievance, Muniak had received a copy of a contract from a co-worker. The contract Muniak received was not the 1997-2000 agreement, but a prior agreement.[24] Muniak read the contract he received in the context of challenging his demotion, skimming through sections, including the grievance-arbitration procedure.[25]

Muniak also talked with Castleman after he received the termination letter. Castleman told Muniak to contact the Union about appealing the decision. Muniak did not consult with Castleman about appealing his termination under the civil service law, nor did he ask Castleman to represent him in any appeal or hearing before the Civil Service Commission. Muniak did not tell Magnan that Castleman was not retained to represent him in any civil service matters or labor-related issues, nor did Magnan ever ask Muniak about the extent or scope of Castleman's representation of Muniak. After the March 13, 2000 hearing, Magnan believed that Muniak still had Castleman under retainer.

On March 27, 2000, Magnan filed a grievance on Muniak's behalf asserting that the City had unjustly terminated Muniak.[26] By letter dated April 4, 2000, the City's Director of the DPW, Allan R. Chwalek, notified Magnan that he had denied Muniak's grievance because there "is no contract violation and the DPW had just cause to terminate the employee." At some point after the Union filed the grievance, the City, through its Collective Bargaining Agent, Clement P. Chelli (Chelli), told Magnan that the City would take Muniak back as a garage mechanic, if Muniak admitted wrongdoing.[27] Magnan relayed the offer to Muniak. Muniak declined to admit to any wrongdoing and rejected the offer. Magnan told Chelli that Muniak had rejected the City's offer. Magnan then asked Chelli if the City would waive step 3 of the grievance procedure to expedite the process, and Chelli agreed to do so.[28] By letter dated April 28, 2000 to Magnan, Chelli confirmed that, to expedite the process, the City and the Union had agreed to waive Step 3 of the grievance procedure, allowing the grievant to submit the grievance to Step 4 arbitration.

After Magnan received Chelli's April 28, 2000 letter, Magnan called Muniak. Muniak told Magnan that he wanted to appeal to the Civil Service Commission. Muniak asked Magnan for Union assistance in filing with the Civil Service Commission.[29] Magnan again told Muniak that he did not handle civil service appeals and that Muniak would have to retain an attorney.[30] Magnan also told Muniak that if he wanted to go to arbitration, Magnan was willing to represent him and he had already prepared the paperwork to file for arbitration. In response, Muniak told Magnan that he preferred to go to the Civil Service Commission. There was no discussion about the time limits for filing an appeal under the civil service law during these telephone conversations in late April. During another telephone conversation in late April, Magnan told Muniak that he had spoken with someone in the Union office who was knowledgeable about civil service and they had told Magnan that civil service was the route to follow in Muniak's discharge.

On or about May 2, 2000, Muniak forwarded an appeal of the City's just cause determination to suspend him for five days and to

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22. Muniak's testimony on this point conflicts with Magnan's testimony. Muniak testified that Magnan first told him that they could go to both arbitration and civil service, and if they weren't successful in one, they could go to the other, and that the clock doesn't start running on the time limits until after the grievance procedure is exhausted. Muniak also testified that, during a subsequent telephone conversation, Magnan told him that he was wrong, that you could not do both, it's one or the other. Magnan denies that he told Muniak that the clock doesn't start running on the time limits until after the grievance procedure is exhausted. Magnan does acknowledge in his testimony that they did discuss the choice of remedies and that he did tell Muniak that he did not have to choose between arbitration and civil service until Step 2 of the grievance arbitration procedure. Magnan's version of their conversation on the choice of forums reflects his interpretation of the contractual grievance-arbitration procedure, without any integration of the applicable civil service law, that Magnan admits he did not know at the time he was advising Muniak. Therefore, the hearing officer credited Magnan's testimony that he interpreted the contractual provision and provided that information to Muniak.

23. The hearing officer credited Muniak's testimony on cross-examination that he did not file for civil service at this time because "at that time, I [Muniak] felt it was the union's responsibility to file [with] civil service at the point in time when need be. I relied on the union to guide me in these things. I was a member, this was what I paid dues for." "I just brought up the issue that it says ten days, and Mr. Magnan explained the time did not start until the grievance procedure was exhausted, and I took his word for it."

24. Muniak did not recall the dates on the contract that he received, referring to it in his testimony as an outdated agreement, about a year or two years old.

25. Although Muniak at one point in his testimony denied reading the grievance-arbitration provisions of the contract he had in his possession, the hearing officer did not credit this denial for the following stated reasons. First, the hearing officer found that Muniak's testimony on this point was inconsistent with his other credible testimony that he had read the contract he received in the context of his demotion grievance and that he had looked through the contract, skimming the sections, including the grievance procedure. Second, Muniak's denial belied his general knowledge of the procedure that was reflected in other parts of his testimony about the processing of his demotion grievance, including his statements to Rooney that he intended to pursue that grievance to arbitration.

26. Magnan did not give a copy of that grievance to Muniak.

27. Chelli did not define the scope of the wrongdoing that Muniak would have to admit to, whether it was the alleged vandalism of City property or the alleged threat of workplace violence, or both.

28. The record is silent on whether Magnan discussed this request with Muniak.

29. Muniak talked with Castleman shortly before he filed his appeal with the Civil Service Commission, and Castleman told him that the Union should be filing on his behalf. Muniak did not retain Castleman to represent him in his civil service case.

30. According to Magnan, the Union has a policy of not representing employees in civil service matters, but he did not believe that the Union had communicated that policy to the employees it represented.

discharge him under both Section 42 and Section 43 of the civil service law to the Civil Service Commission.[31] Although Magnan had prepared the requisite paperwork to file for abitration of Muniak's termination, he did not file for arbitration because Magnan knew that Muniak had elected to go to the Civil Service Commission and the contract required that an employee elect either civil service or arbitration, not both. After Muniak filed these appeal forms with the Civil Service Commission, he did not raise the possibility of filing for arbitration with Magnan because he knew at that time that he could challenge his termination through either civil service or arbitration, but not both. Had Magnan known about the ten-day time period to file an appeal with the Civil Service Commission, he would not have told Muniak to file with the Civil Service Commission.[32] Rather, Magnan would have told Muniak that he had to go to arbitration.

At some point after his termination, Muniak asked Magnan to help him with his unemployment compensation appeal. Magnan told Muniak that the Union did not handle unemployment compensation claims.[33] On the day just prior to, or on the day of his unemployment compensation appeal hearing in early May 2000, Muniak asked Castleman to represent him at that hearing, and Castleman did so. After a hearing during which testimony was taken, the Commonwealth of Massachusetts, Division of Employment and Training (DET) decided that Muniak was entitled to unemployment benefits because he did not leave work voluntarily, nor did the City establish by substantial and credible evidence that Muniak's discharge was attributable to deliberate misconduct in willful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer. *See*, M.G.L. c. 151A, ss. 25(e)(1) and 25 (e)(2). The DET issued this ruling on May 7, 2000.

At some point before July 10, 2000, Muniak called Magnan and told him that the Civil Service Commission had scheduled hearing for July 10, 2000.[34] On or about July 10, 2000, Muniak attended a scheduled hearing at the Civil Service Commission. Magnan attended that hearing with Muniak at Muniak's request.[35] During that July 10, 2000 meeting, the City's attorney, Corrine Rock, informed the Civil Service Commissioner present that she did not wish to discuss the merits of Muniak's case because she intended to file a motion to dismiss Muniak's appeal because it was not filed within the ten-day statutory period. This was the first time that Magnan heard anything about timeliness. Magnan thought they were participating in a pre-hearing meeting and that later there would be a full hearing. The Civil Service Commissioner presiding asked Magnan about his role there, and Magnan told him that he had never handled a civil service case and he was curious about it. After Attorney Rock left the Civil Service Commission, Magnan and Muniak stayed behind and discussed the statutory time limits with the Civil Service Commissioner. The Civil Service Commissioner asked Muniak why he took so long to file an appeal with the Civil Service Commission. In response, Muniak stated that he understood that he had time to file an appeal because the Union had filed a grievance on his behalf.

Both Magnan and Muniak left the meeting at the Civil Service Commission with the understanding that the Civil Service Commission would not consider the merits of Muniak's termination. By letter dated July 12, 2000 to Magnan, Muniak authorized the Union to inform the City that he would withdraw his appeal before the Civil Service Commission if the City permitted his termination case to proceed to arbitration. At some point in mid-July 2000, Magnan asked the City to proceed to arbitration on Muniak's termination grievance. The City declined to do so. At about this same time, following discussions with Magnan, the City offered to remove all allegations of wrongdoing from Muniak's personnel record and to convert Muniak's termination to a resignation if Muniak agreed to waive all future claims against the City and its employees.[36] This offer did not require Muniak to admit to any wrongdoing. Magnan relayed this offer to Muniak in late July or early August 2000. Muniak rejected the offer.[37] The City filed its Motion to Dismiss with the Civil Service Commission on August 31, 2000.

Muniak did not hear anything further from the Civil Service Commission on his appeal until he received an April 2, 2001 Notice of Full Hearing from the Civil Service Commission. Based on the information contained in this notice, which scheduled a hearing for May 18, 2001, Magnan met with Muniak and his attorney, Raymond W. Zenkert, Jr., to prepare for a full hearing on the merits of Muniak's termination. Muniak and Magnan attended the hearing on May 18, 2001, and brought with them a forensic expert and a polygraph expert, who were both prepared to testify as expert witnesses on Muniak's behalf. Attorney Rock attended the hearing as the City's representative. At the beginning of the hearing, the pre-

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31. On July 7, 2000, Muniak faxed a copy of the appeal he filed with the Civil Service Commission to Magnan. Magnan did not assist Muniak in completing the appeal forms.

32. This finding of fact is based on Magnan's testimony that, had he known civil service law, he would not have told Muniak to file for civil service. Specifically, Magnan testified that: "[h]ad I known that there was a ten-day limit and that the contract was wrong, which now I only knew the contract, not civil service laws, I certainly wouldn't have recommended somebody to go down an avenue where timeliness would be the issue." Magnan also testified that: "[t]he contract is very clear, it says once you get the second step answer, that's when you should choose which way you're going. Unfortunately, what the contract says, and what apparently I didn't know is that that's not true. What's true is that from the day he gets the termination letter, the clock starts ticking and there's ten days."

33. Although Magnan testified that he never remembered Muniak contacting him about an unemployment compensation hearing, Magnan also testified that he has never attended an unemployment compensation hearing on behalf of a bargaining unit member. The hearing officer credited Muniak's testimony that he did ask Magnan to assist him, and that Magnan told him that the Union did not handle unemployment compensation claims.

34. Magnan explained that he decided to go with Muniak to his civil service hearing because he was curious about the civil service process.

35. Muniak did not retain the services of an attorney to represent him at this civil service hearing.

36. By letter dated March 7, 2000, Attorney Philip Castleman notified a city employee that he represented Muniak "in a potential legal action against you [the city employee] for the tortious acts against him he alleges you are responsible for and the filing of a criminal complaint without basis."

37. Muniak filed this charge of prohibited labor practice with the Commission on August 16, 2000.

siding agent told the parties present that, despite the content of the April 2, 2001 Notice of Full Hearing, the hearing on May 18, 2001 would be limited to evidence and argument on the City's August 31, 2000 Motion to Dismiss. Magnan represented Muniak at that hearing.

On or about June 7, 2001, the Civil Service Commission allowed the City's Motion to Dismiss Muniak's appeal of his termination because Muniak failed to file an appeal of his termination within the ten days allowed by Section 43 of the civil service law. In its written ruling, the Civil Service Commission found that: 1) the City notified Muniak of his termination on March 17, 2000; 2) Muniak was informed of his rights under the civil service law; 3) Muniak was notified that he could file an appeal with ten days of receipt of the notice of discipline under Section 43 of the civil service law; 4) Muniak did not file an appeal until May 4, 2000, forty-six days after the City notified him that he was terminated; and, 5) Muniak did not offer an adequate explanation as to why his appeal was not filed within the required ten days.

OPINION

Once a union acquires the right to act for and negotiate agreements on behalf of employees in a bargaining unit, the Law imposes on that union an obligation to represent all bargaining unit members without discrimination and without regard to employee organization membership. G.L.c.150E, s.5.[38] A union breaches its statutory responsibility to bargaining unit members if its actions toward an employee, during the performance of its duties as the exclusive collective bargaining representative, are unlawfully motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. *Quincy City Employees Union, H.L.P.E.*, 15 MLC 1340, 1355 (1989), *aff'd sub nom. Pattison* v. *Labor Relations Commission*, 30 Mass. App. Ct. 9 (1991), *further rev. den'd*, 409 Mass. 1104 (1991); *Boston Teachers Union*, 12 MLC 1577, 1584 (1986); *Robert W. Kreps and AFSCME*, 7 MLC 2145, 2147-2148 (1981). The duty of fair representation applies to all union activity, including contract negotiation. *Air Line Pilots Assn.* v. *O'Neill*, 499 U.S. 65 (1991). If the facts support a finding that the Union has breached its duty of fair representation, the Commission concludes that the Union has violated Section 10(b)(1) of the Law.[39]

The issue here is whether the Union breached its duty of fair representation by failing to properly advise Muniak about his choice of remedies, as set forth in the collective bargaining agreement (the Agreement), for appealing his termination. The Union argues that it is not responsible for Muniak's decision to file his civil service appeal after the time for the appeal had elapsed because it is undisputed that the Union official informed Muniak on several occasions that he was not familiar with civil service law and that the Union did not represent employees at the Civil Service Commission. The Union also argues that the Union official processing Muniak's grievance knew that Muniak hired an attorney to represent him in the civil service hearing before the appointing authority and, therefore, the Union official had every reason to believe that Muniak's counsel would be responsible for advising his client of the opportunity to appeal under the civil service law. In the Union's view, the Union official had no reason to be concerned about the civil service time limits. We disagree.

The Union's bargaining unit includes employees, like Muniak, who have an individual right to file an appeal of the City's decision to discharge them under the civil service law, and a right to file a grievance challenging their termination under the Agreement. Those rights are subject to an election to proceed to arbitration with the Union under the Agreement, or to pursue their appeal under the civil service law.[40] Under Article 8.08 *Choice of Remedy* of the Agreement, if the grievance involves the discharge of a permanent civil service employee, the grievance may be appealed either to Step 3 (Labor Relations Department) of the grievance procedure or to another procedure such as civil service. Article 8.08 *Choice of Remedy* also provides that, if the termination grievance is appealed to any procedure other than Step 3, the grievance is not subject to arbitration under the Agreement.

Article 7 *Civil Service* of the Agreement states that the Union shall recognize and adhere to all Civil Service and State labor laws, rules and regulations relative to seniority, promotions, transfers, discharges, removals and suspensions, and that the Union reserves the right to represent employees under any such established procedure. Article 7 also provides that, if the Civil Service Law and Rules are abolished or modified "wherein employee coverage is lessened or changed during the life of this Agreement," the contract shall be reopened to permit negotiations of such pertinent matters into the scope of this Agreement.

Once the Union negotiated and incorporated the language in both Article 7 *Civil Service* and Article 8.08 *Choice of Remedy* into the Agreement, the Union voluntarily assumed the duty to notify bargaining unit members about the procedural interplay between the

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38. Section 5 of the Law provides, in relevant part, that:

> The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

39. Section 10(b)(1) of the Law, in relevant part, provides:

> It shall be a prohibited practice for an employee organization or its designated agent to: (1) interfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter;..."

40. Section 8 of the Law, in relevant part, provides:

> The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provision of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections thirty-nine and forty-one to forty-five, inclusive, of chapter thirty-one ….

See also, Section 43 of M.G.L. c. 31.

civil service law and the terms of the Agreement, particularly the time limits for filing an appeal under the civil service law. This information is necessary for a bargaining unit member to make an informed election that is required under Article 8.08 *Choice of Remedy* of the Agreement. Unquestionably, the time limit for filing an appeal under the civil service law has a hidden effect on an employee's choice of remedies that may effectively preclude an employee from pursuing their rights in either forum.

Union representatives, in the performance of their duties as the exclusive representative of City employees in this bargaining unit and under this Agreement, must know, or take all the steps necessary to acquire notice of, the statutory time period in which an employee, like Muniak, must file an appeal of an adverse personnel action under the civil service law. As the facts of this case demonstrate, the ten-day time period to file an appeal of an adverse personnel action with the Civil Service Commission does not always coincide with the contractual time limits for the employee to elect to pursue an appeal before the Civil Service Commission, or to pursue their grievance at Step 3 of the grievance procedure. Therefore, it is the Union's duty to provide employees with sufficient information about the time limits for filing an appeal with the Civil Service Commission before they make an election under Article 8.08, *Choice of Remedy*. A Union's failure to do so constitutes a breach of the duty of fair representation.

This duty to properly notify bargaining unit members of the procedural interplay between the civil service law and the choice of remedy provisions in the Agreement exists notwithstanding the fact that the Union official told Muniak that the Union does not handle an employee's appeal under the civil service law, or that the Union official held the erroneous belief that, at that time, Muniak had retained an attorney to represent him regarding an appeal under the civil service law. Here, the Union official's lack of knowledge about the time period in which to file an appeal under the civil service law led directly to a series of events, which prejudiced not only Muniak's individual statutory right of appeal under the civil service law, but also his right under the Agreement to pursue his grievance with the Union to arbitration. The Union's inexcusable neglect in the performance of its duties as Muniak's exclusive representative is evidenced here by its failure to warn Muniak that he needed to timely file an appeal with the Civil Service Commission in order to preserve his rights to elect to pursue that appeal under the choice of remedies provision of the Agreement.

The record demonstrates that the Union's decision not to file for arbitration was based solely on a Union official's mistaken belief that Muniak had recourse to full relief under the civil service law. Shortly after April 28, 2000, the Union official contacted Muniak and asked him if he wanted to proceed to arbitration under the Agreement. Muniak notified the Union that he had elected to appeal his termination to the Civil Service Commission. In this same conversation, Muniak asked the Union official to help him file the appeal with the Civil Service Commission. As the Union official himself acknowledged, had he known that Muniak's appeal under the civil service law was subject to a timeliness issue at the time he asked Muniak to inform him of his election under the Agreement's choice of remedy provision, he would not have advised Muniak to pursue that avenue of relief.

Finally, we find that the grievance the Union filed on Muniak's behalf, asserting that the City had unjustly terminated Muniak, is not clearly frivolous. *See*, *Berkley Employees Association*, 19 MLC 1647, 1650 (1993) (termination from employment, allegedly without just cause, coupled with the possibility that the grievance contesting that termination is substantively arbitrable under the contract, generally satisfies the "not clearly frivolous" test). Muniak had been employed by the City for about thirteen years and prior to the incidents leading to his discharge he had an unblemished work record except for a single one-day suspension that had occurred about seven years before the date of his termination from employment.

CONCLUSION

For the reasons stated above, we conclude that the Union acted in a manner reflective of inexcusable neglect by failing to timely and properly notify Muniak about the election of remedies for appealing his termination required by the collective bargaining agreement, in violation of Section 10(b) (1) of M. G.L. c. 150E (the Law).

REMEDY

The Commission has ordered unions that breach the duty of fair representation to take any and all steps necessary to have the grievance resolved or to make the charging party whole for all economic losses caused by the union's conduct. *National Association of Government Employees,* 28 MLC 218, 222 (2002); *NAGE*, 20 MLC at 114-115; *Quincy City Employees Union, HLPE*, 15 MLC at 1374-1378. Here, the Union's unlawful conduct harmed Muniak because its decision not to file for arbitration of his termination grievance was based solely on Muniak's uninformed election to pursue his appeal to the Civil Service Commission, not arbitration under the contract.

Therefore, we first direct the Union to attempt to remedy the harm to Muniak by taking all steps necessary to resolve Muniak's termination grievance. These steps include, at a minimum, the Union submitting a written request to the City either to arbitrate Muniak's grievance, including an offer by the Union to pay the full costs of the arbitration, or to provide Muniak the grievance remedy that would have been sought from an arbitrator (i.e. reinstatement to his former, or substantially equivalent, position with full back pay).

If the City does not agree to arbitrate or otherwise fully resolve Muniak's grievance, the Union shall be liable for all compensation Muniak lost because the Union failed to pursue his grievance to arbitration, plus interest, from the date of his termination until he is reinstated by the City or obtains substantially equivalent employment.

According to the procedure contained in *Quincy City Employees Union, HLPE*, the Union expressly elected at the hearing on the prohibited practice complaint to postpone introducing evidence designed to rebut Muniak's case concerning the merits of the termination grievance. *Quincy City Employees Union, HLPE*, 15

MLC at 1376, n. 67. Therefore, if the Union is unable to resolve the grievance with the City, the Union may return to the Commission for a compliance hearing to limit its liability by proving that Muniak's termination grievance would have been lost for reasons not attributable to the Union's misconduct.

In addition, the Union shall post the attached Notice to Employees in conspicuous places where Union notices are customarily posted to employees of the City to assure employees that the Union will not violate the Law.

ORDER

WHEREFORE, on the basis of the foregoing, it is hereby ordered that the United Steelworkers of America shall:

1. Cease and desist from:

a) Failing to timely and properly notify employees who are covered by the terms of a collective bargaining agreement between the United Steelworkers of America and the City of Springfield and who also have rights to appeal certain adverse employment actions under M.G.L. c. 31, the Civil Service Law, about the election of remedies for appealing their termination required by the collective bargaining agreement.

b) Otherwise interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action necessary to effectuate the purposes of the Law:

a) The United Steelworkers of America (Union) shall request in writing that the City of Springfield (City) offer Mark A. Muniak (Muniak) reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, and make him whole for the loss of compensation that he suffered as a direct result of his termination effective on March 20, 2000.

b) If the City declines to offer Muniak reinstatement with full back pay, the Union shall request in writing that the City waive any time limits that may bar further processing and arbitration of Muniak's termination grievance; and the Union shall offer to pay the cost of arbitration. If the City agrees to waive any applicable time limits and to arbitrate the merits of Muniak's grievance, the Union shall process the grievance to conclusion in good faith and with all due diligence and shall pay the cost of arbitration if the City accepts its offer to do so.

c) If the City does not agree to arbitrate or otherwise fully resolve Muniak's termination grievance, the Union shall make Muniak whole for the loss of compensation he suffered as a direct result of his termination from the City effective on March 20, 2000. The Union's liability to make Muniak whole for his loss of compensation will cease upon the earlier of the following: (a) the date when he is offered reinstatement by the City to his former or a substantially equivalent job; or (b) the date when Muniak obtained, or obtains, other substantially equivalent employment. The Union's obligation to make Muniak whole includes the obligation to pay Muniak interest on all money due at the rate specified in M.G.L. c. 231, Section 6B.

d) Immediately post in conspicuous places where notices to bargaining unit employees are customarily posted, including all places at the City, copies of the attached Notice to Employees. The Notice to Employees shall be signed by a responsible elected Union officer and shall be maintained for at least thirty consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that the Notices are not altered, defaced, or covered by any other material. If the Union is unable to post copies of the Notice in all places where notices to bargaining unit employees are customarily posted at the City, the Union shall immediately notify the Executive Secretary of the Commission in writing, so that the Commission can request the City to permit the posting.

e) Notify the Commission in writing within thirty days from the date of this Order of the steps taken by the Union to comply with the Order.

SO ORDERED.

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Massachusetts Labor Relations Commission (Commission) has decided that the United Steelworkers of America (Union) acted in a manner reflective of inexcusable neglect by failing to timely and properly notify Mark A. Muniak (Muniak) about the election of remedies for appealing his termination required by the collective bargaining agreement between the City of Springfield (City) and the Union, in violation of Section 10(b)(1) of M.G.L. c. 150E, the Public Employee Collective Bargaining Law (the Law). The Union posts this Notice to Employees in compliance with the Commission's order.

Section 2 of the Public Employee Collective Bargaining Law gives all employees the following rights:

The right to engage in concerted, protected activity, including the right to form, join and assist unions, to improve wages, hours, working conditions, and other terms of employment, without fear of interference, restraint, coercion or discrimination and;

The right to refrain from either engaging in concerted protected activity, or forming, or joining or assisting unions.

WE WILL NOT fail to timely and properly notify employees who are covered by our collective bargaining agreement with the City and who also have rights to appeal certain adverse employment actions under M.G.L. c.31, the Civil Service Law, about the election of remedies for appealing their termination required by the collective bargaining agreement.

WE WILL NOT otherwise interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL request the City to offer Muniak reinstatement to his former position, or, if it no longer exists, to a substantially equivalent position with full back pay. If the City declines to offer Muniak reinstatement to his former, or substantially equivalent position, we will ask the City to process the grievance concerning Muniak's termination, and we will process the grievance to conclusion in good faith and with all due diligence.

Because the Commission has decided that we violated the Law by failing to timely and properly notify Muniak about the election of remedies for appealing his termination required by our collective

bargaining agreement with the City, WE WILL make him whole for any loss of compensation he may have suffered as a direct result of our unlawful conduct.

[signed]
United Steelworkers of America

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Labor Relations Commission, 399 Washington St., 4th Floor, Boston, MA 02108-5213 (Telephone: (617) 727-3505).

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In the Matter of TOWN OF EASTON

AND

EASTON PROFESSIONAL ADMINISTRATIVE EMPLOYEES ASSOCIATION

Case No. MCR-03-5064

34.2	***community of interest***
35.2	***confidential***
35.5	***para-professionals***
35.7	***supervisory and managerial employees***

March 10, 2005
Allan W. Drachman, Chairman
Helen A. Moreschi, Commissioner
Hugh L. Reilly, Commissioner

Leo J. Peloquin, Esq.	*Representing the Town of Easton*
Eric Davis	*Representing the Easton Professional Administrative Employees Association*
Anne Carney	

DECISION AND DIRECTION OF ELECTION[1]

On September 17, 2003, the Easton Professional Administrative Employees Association (the Association) filed a petition in Case No. MCR-03-5064 seeking to represent certain full-time and regular part-time employees of the Town of Easton (the Town). On November 12, 2003, December 3, 2003, January 7, 2004 and January 13, 2004, a duty designated Commission agent Margaret M. Sullivan, Esq. conducted a hearing at which both parties had the opportunity to be heard, to examine witnesses, and to introduce evidence. The Association filed its post-hearing brief on February 9, 2004, and the Town filed its post-hearing brief postmarked on February 11, 2004.

The Association asserts that the petitioned-for bargaining unit, which includes the positions of animal control officer/animal inspector/milk inspector, assistant animal control officer, assistant assessor/data processing manager, assistant public health director, assistant water superintendent, building inspector, council on aging director, health inspector, highway foreman, information systems manager, land use engineer, local inspector/zoning code enforcement officer, outreach coordinator, plumbing and gas inspector, public health director, recreation director, recreation program director, systems designer/programmer, technical assistant to the department of public works (DPW) director, town accountant, town clerk, town planner, treasurer/collector, tree warden/supervisor of buildings and grounds, veterans services director/veterans services officer, water superintendent, and wiring inspector is an appropriate bargaining unit within the meaning of M.G.L. c.150E (the Law). If the Commission determines that

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.