

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

SENA, LOCAL 158

*
*
*
*
*
*
*
*
*

Case No. MUP-17-6211
MUP-18-6679

Date Issued: September 5, 2019

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

Kate Kleimola, Esq.

Ellen McClintock, Esq.:

Representing the City of Boston

Jillian M. Ryan, Esq.:

Representing SENa, Local 158

HEARING OFFICER'S DECISION

Summary

1 The issues in this case are whether the City of Boston (City or Employer) violated
2 Sections 10(a)(1), 10(a)(3), 10(a)(4), and 10(a)(5) of Massachusetts General Laws
3 Chapter 150E (the Law) by : 1) retaliating against Lisa Menino (Menino) for her protected,
4 concerted activity; 2) unilaterally making changes to mandatory subjects of bargaining
5 without providing SENa, Local 158 (Union) notice and an opportunity to bargain and 3)
6 transferring bargaining unit work without providing the Union with notice and an
7 opportunity to bargain. Based on the record and for the reasons explained below, I
8 conclude that the City violated Section 10(a)(5) of the Law when it: 1) required that

1 Menino provide details about staff duties at events when requesting overtime; and 2)
2 transferred the preparation and preapproval of overtime sheets to a non-unit member. I
3 dismiss the remaining allegations.

Statement of the Case

4 On September 11, 2017, the Union filed a Charge of Prohibited Practice with the
5 Department of Labor Relations (DLR) alleging that the Employer had engaged in
6 prohibited practices within the meaning of Sections 10(a)(1) and 10(a)(3) of the Law. The
7 DLR docketed this charge as MUP-17-6211. On February 26, 2018, the DLR investigator
8 issued a Complaint of Prohibited Practice and Partial Dismissal in the case. On June 8,
9 2018, the Union filed an additional charge of Prohibited Practice, which alleged that the
10 Employer had engaged in prohibited practices within the meaning of Sections 10(a)(1),
11 (3), and (4) of the Law. The DLR docketed this charge as MUP-18-6679. The DLR
12 investigator issued a Complaint of Prohibited Practice and Partial Dismissal on
13 September 13, 2018. The DLR consolidated the two cases for hearing.

14 I conducted a hearing on December 12, 2018, January 14, 2019, February 8, 2019,
15 and February 27, 2019. Prior to the start of the hearing on December 12, 2018, the Union
16 moved to amend paragraph 10(d) of MUP-17-6211 to read "the Gospel Fest on August
17 6, 2017" rather than "...August 6, 2018," and to add a paragraph 10(h), which would read,
18 "and Hub on Wheels on September 14 – 18, 2017." The City did not object to these
19 amendments, and I allowed them. Also prior to the start of the hearing on December 12,
20 2018, the Union orally withdrew Counts IV and VIII of MUP-18-6679. It also orally

1 withdrew the Section 10(a)(5) allegation in Count XIV of MUP-18-6679 and moved to
2 amend it to instead allege a Section 10(a)(3) violation. The City opposed the Union's
3 motion to amend the count to allege a Section 10(a)(3) violation. Prior to the start of the
4 hearing on January 12, 2019, I denied the Union's motion to amend Count XIV to a
5 Section 10(a)(3) violation.¹

6 Following the hearing, the parties agreed to have the hearing transcribed from the
7 audio files that were provided by the DLR, and requested that I include the transcript in
8 the record. The parties then filed timely post-hearing briefs. In their respective briefs, the
9 Union and City both refer to specific testimony by Gregory Rooney. In its brief, the Union
10 states that in response to a question from the City as to whether he has an opinion about
11 employees who file grievances, Rooney testified "No. If they're right." This is also the
12 testimony as reported in the written transcript. The City, on the other hand, included a
13 footnote in its brief contending that Rooney's testimony was incorrectly transcribed, and
14 that he actually stated, "No, it's their right" in response to the question. After listening to
15 the testimony at issue, I concluded that Rooney's response to the question at issue was,
16 "No, it's their right." I therefore allowed the Union an additional 30 days to amend its brief
17 only in those portions that relied on, or addressed, the inaccurately-transcribed statement,
18 which it did. I did not allow the City to file an amended brief.

¹ In its post-hearing brief, the Union renewed its motion to amend Count XIV to allege a Section 10(a)(3) violation. I again deny the motion.

On the entire record, including my observation of the demeanor of witnesses, I make the following findings.

Stipulations of Fact

1. The [City] is a public employer within the meaning of Section 1 of the Law.
2. SENA is an employee organization within the meaning of Section 1 of the Law.
3. SENA is the exclusive bargaining representative for a bargaining unit of middle managers in the City.
4. Lisa (Lamberti) Menino (Menino) works in the Property Management Department as an administrative assistant responsible for scheduling, coordinating, and managing the Property Management Department's Special Events Unit.
5. Menino is a SENA steward.
6. Gregory Rooney [(Rooney)] is the Commissioner of the Property Management Department [(Department)].
7. Joseph Callahan [(Callahan)] is the Deputy Commissioner of the Department.
8. William Joyce [(Joyce)] is the City's Chief of Security.
9. On or about November 23, 2016, Menino filed a grievance challenging her bypass for promotion to an asset management position in the Department.
10. The promotional bypass arbitration hearing was held on September 7, 2017 and February 28, 2018.
11. Lisa Menino's middle name is Lamberti. So all references to "Lamberti" are to "Lisa Menino."
12. The following is a list of 2018 year-to-date overtime earnings as of December 10, 2018 for the following employees: Peter Barbuto - \$9,431; Paul Berkeley - \$10,152; Leon Graves - \$15,621; Lisa Menino - \$20,563; Kenneth Ryan - \$42,681.

Findings of Fact

Menino has been employed by the City since 1994, and in the Property Management Department (Department or PMD) since approximately 2000. Thomas Menino, Menino's father-in-law, was the Mayor when Menino began working for the City in 1994, and remained in that role until 2014. Michael Galvin (Galvin), a good friend of Mayor Menino, served as Commissioner of the Department under Mayor Menino. Menino has been a union steward for at least 15 years.

The Department oversees approximately 60 City buildings. For some buildings the City is responsible for total care and custody, while for others it is responsible for certain services, such as HVAC, fire alarms, and municipal protective services. The Department also approves and manages special events held in City Hall and on City Hall Plaza.²

As the Special Events Coordinator, Menino works with clients who are holding an event outside on City Hall Plaza, or inside City Hall. Clients are either other City departments, or non-City clients. In her role generally, Menino meets with the client, and then organizes and plans the event. At the event itself, she is the overall coordinator of the event and its cleanup. Her duties are more specifically reflected in the following job description, in relevant part:

² The City requests that I take administrative notice of the Red Sox and New England Patriots championship years and the subsequent victory rallies held on City Hall Plaza. I decline to do so as it is not relevant to my decision.

Administrative Assistant Position Description

GENERAL STATEMENT OF DUTIES

Under Direct Supervision, Schedules, Coordinates, and Manages the Property and Construction Management Department[']s Special Events Unit.

SUPERVISION EXERCISED

Any and all Property and Construction Management Department staff assigned to a scheduled special event coordinated by the department.

DUTIES AND RESPONSIBILITIES

Maintains the department's automated on-line special events application system;

Reviews requested events dates for availability;

Maintains departmental special event calendar;

Schedules, coordinates and supervises departmental personnel assigned to manage scheduled special event;

Conducts pre-event logistical meetings with special event coordinators to insure that an [sic] required city applications, permits and Insurances are in place prior to the event;

Prepares and mails approved Property and Construction Management Department's special event permits;

Prepares payroll documents for all department staff assigned to departmental special events including Municipal Police Unit;

Prepares detailed itemized bills for city cost reimbursement;

Instructs and guides special event coordinators in the City of Boston's permitting process;

Prepares and distributes Property and Construction management department's monthly and annual special event reports and calendars;

Attends the City of Boston's citywide special events committee meeting for all Property and Construction Management Department related agenda items; [and]

Performs departmental administrative duties for the Deputy Commissioner and Director of Operations, Property Management Department,

1 The City's events are mainly held on nights and weekends between April and
2 January. Menino's regular hours are 9 AM to 5 PM;³ therefore, when she works at events
3 on nights and weekends, she is generally paid at an overtime rate, or allowed to take
4 compensatory time.⁴ Prior to 2017, in preparation for an event, she would determine how
5 many City employees would be needed for the event,⁵ including police and fire, EMS,
6 security, electricians, plumbers, carpenters, custodians, and engineers. To make this
7 determination, Menino would consider factors such as her past experience with events,
8 the anticipated crowd size, and whether it would be a gated ticketed event or a free event
9 that is open to the public. Once Menino determined the staffing needs, she was not
10 required to obtain any supervisory approval in order to have the event staffed as she
11 deemed appropriate, and her decisions on staffing were not modified by supervisors.⁶

12 Prior to 2017, Menino typically worked each of the City Hall events for their
13 duration. At the events, Menino was the overall coordinator, which meant that she would
14 arrive at the beginning of the event to ensure that vendors were setting up correctly, that
15 security was on post, and that the custodial staff was bringing out their equipment. During

³ Prior to early 2018, her hours were 8 AM to 4 PM. In 2018 they were changed to 9 AM to 5 PM.

⁴ Although non-City event sponsors are responsible for paying overtime for City employees who work the events, including Menino, the Department must carry the overtime until the sponsor pays their invoice.

⁵ Menino would not select which City employees would work the event, only the numbers that were needed.

⁶ Gregory Rooney (Rooney), the current Commissioner of the Department, credibly testified that prior to his becoming Commissioner of the Department, "it was more or less a hands-off management of [Menino]."

1 the event, she would ensure that everything was running smoothly by checking in with
2 vendors and staff, managing problems, and remaining on the property for the duration of
3 the event. She would also ensure that the scheduled City staff worked at the event and
4 would prepare overtime documents for them at the end of the night, which she would then
5 submit to Deputy Commissioner Callahan (Callahan) for approval.

6 *New Commissioner and Audit*

7 In August 2016, Rooney became the Commissioner of the Department, after
8 working in other roles for the City for approximately 23 years. Before Rooney became
9 Commissioner, beginning in 2015, an Operational Audit and Review of the Department
10 was conducted by an outside firm. The audit concluded in early 2016, with a written report
11 issued on March 22, 2016. The audit included a section entitled "Opportunities."
12 Opportunity #5⁷ is "Develop policies and procedures around Special Events billing, labor
13 costing, and budgeting. The report includes the "Current State Analysis" for this
14 Opportunity as follows:

15 Special Events is self-funded – it does not have its own budget and relies
16 on collection of fees from vendors renting City-owned space and the
17 services that the group provides. The Special Events group does a
18 sufficient job working with vendors to ensure they have their required
19 paperwork completed and coordination of the event itself. The Special
20 Events group is responsible for working with the vendor to establish the
21 specifications for the required security detail, custodian(s), and event
22 coordinator resources for every event. Security detail, custodian(s), and
23 event coordinator resources are provided and paid for by PCMD up front
24 and billed out to the vendor. Currently, there is no formal process for
25 determining labor costs and there is no formal requirement for collection of

⁷ This Opportunity is described as "High" priority in the report. There is no evidence describing what other priority values have been assigned to other Opportunities.

1 a deposit from the vendor for the services provided for these Special
2 Events. If a vendor is late on their payment after an event has occurred,
3 the City is forced to use its own money to pay the security detail,
4 custodian(s), and event coordinator the overtime that they worked for the
5 special event. Vendors have been known to pay extremely late –
6 sometimes up to one year later for the larger, more financially significant
7 events. In an effort to defer some of the upfront costs the City will be forced
8 to pay, the Special Events Coordinator will work with the vendor to attempt
9 to collect a deposit check prior to the event commencing. However, the
10 Treasury Department is unable to account for those deposits in PeopleSoft,
11 leaving the Special Event Coordinator to hold those checks. This is a
12 process and training issue and not an integrity issue. There are no formal
13 policies or procedures in place in regards to the billing, labor costing, and
14 budgeting of special events.

15
16 The report also includes the following Recommendations for this Opportunity:

- 17
18 • Formal policies and procedures should be implemented around billing, labor
19 costing, and budgeting of special events to ensure continued and consistent
20 operations of special events can occur when individuals within Special
21 Events turnover [sic].
22
- 23 • A formal policy and procedure should be developed between the Special
24 Events group and the Treasury Department requiring vendors for Special
25 Events to submit a deposit that covers the cost of assigning security detail,
26 custodian(s), and event coordinator resources to their event. The Treasury
27 Department and Special Events should work together to come up with
28 common terms and conditions of these deposits as well as a process for
29 collection and recognition of this deferred revenue.
30

31 *Boston Marathon Dinner*

32
33 The first large event of the year run by the Department is the pasta dinner that
34 occurs the weekend before the Boston Marathon. The 2017 dinner was Rooney's first
35 large event as Commissioner. Therefore, to begin to understand the needs for the event,
36 Rooney met with Callahan and Menino in March or early April 2017. At this meeting,
37 Rooney asked what the security and custodial staffing needs would be. Menino

1 responded that because the event was occurring on Easter Sunday, she did not know
2 who would be available to work. Rooney clarified that his question was not who would
3 staff the event, but rather how many staff would be needed. Menino did not answer this
4 question at this meeting.

5 After this meeting, by email dated March 30, 2017, Callahan asked the following:⁸

6 All:

7
8 Please provide to me by Monday, April 3rd, the following.

9
10 Overtime needs anticipated for the month of April. Please be as specific as
11 possible.

12
13 By email dated March 30, 2017, Menino responded to Callahan as follows, in relevant
14 part:

15 Boston Marathon Pasta Dinner
16 Friday, April 14 – April 17, 2017

17
18 On April 10, 2017, Callahan responded to Menino as follows:

19
20 You asked me to send you an email confirming overtime is approved for the
21 pre-Marathon pasta dinner.

22
23 This event is approved; the City is supporting the event.

24
25 Can you please provide details on what PMD support you feel is needed
26 (number of people and hours) this year?

27
28 How many custodians?
29 How many security officers?
30 Etc.

31
32 Do you have a copy of the Dept OT for the last few years?

⁸ It is unclear who this email was sent to in addition to Menino.

1 Did the BAA or anyone else send you a list of personnel or services
2 needed?

3
4 Menino responded as follows later the same day:

5
6 I won't know that until I ask[.]

7 And then we have to go down the list so this will take a few days[.]⁹

8
9 *Overtime Costs*

10 In meetings with the City's budget office, Rooney was asked to formulate a plan to
11 reduce the Department's overtime costs. By email to Rooney dated May 3, 2017, David
12 Sweeney (Sweeney), the City's then Chief of Administration and Finance/CFO, stated the
13 following:

14 I wanted to check in to see where we were in terms of timing of having a
15 formal plan in place to reduce the excessive overtime at Property
16 Management. As you know, many members of the department are making
17 in excess of \$30K per year in overtime, with some even exceeding \$40K
18 and \$50K. Given the nature of the work and the results we're seeing, it is
19 difficult to understand the department's justification for this. Please let me
20 know your proposed timeline for having a formal plan in place.

21
22 By email dated May 8, 2017, Rooney responded to Sweeney as follows:

23 Thank you very much for your note. I share your concerns and I remain
24 cognizant of the overtime costs. I am actively working with Property
25 Management senior leadership to enact strategies to curb overtime costs.
26 Please accept the following response:

27
28 Over the course of my tenure at the helm of the department, I have
29 continued to work on reducing overtime costs within the department through

⁹ The City argues that Menino's response to Callahan's question shows that Menino based overtime staffing on how many individuals wanted to work overtime rather than assessing the event's actual needs. I do not agree with this interpretation of her response, as there is no other evidence that Menino approached overtime staffing in this way. However, I do find her response to be a deliberate refusal to answer Callahan's clear question, as was her response to Rooney's similar question at the planning meeting.

1 systematic changes first implemented by former Commissioner John
2 Hanlon, as well as recommendations from the department audit completed
3 in 2016.
4

5 The primary factor that has driven overtime has been critical position
6 vacancies in the Building Systems, Security and Enforcement Programs.
7 With you [sic] and your team's assistance, we have made significant strides
8 in the past few months in filling most of these vacancies, but still face
9 challenges due to an aging workforce and recent turnover/retirements. It
10 should be noted that it has been exceedingly difficult to fill our Engineering
11 vacancies based on the lack of qualified and licensed applicants, but we are
12 working to find the right fit as attrition occurs.
13

14 While OT costs have definitely risen, it should be noted that, under my
15 direction the department has engaged in a renewed and active effort to
16 collect outstanding debt, renegotiated MOAs with city departments and
17 improve[d] Special Events billing. Resultant effect [sic] has realized an
18 increase in revenue for reimbursable costs. I agree that some of the OT
19 costs are exorbitant. We continue to monitor strategic and fair staff
20 deployment and are working with our governing CBAs to explore current,
21 existing shifts and considering modified work schedules to better deploy
22 personnel during peak events on the plaza and within city hall. Staggered
23 deployment may yield an immediate and quantifiable result. Many of the
24 strategies will require some beta-testing/pilot programming to fine tune and
25 maintain the service level(s). New staff with a keen eye to reform will be
26 invaluable in this effort.
27

28 As you are aware, we are in the process of vetting applicants for our Deputy
29 Commissioner of Administration and Finance. Our departmental audit
30 recognized the need for the hiring of a senior management official that can
31 help implement creative strategies to better budget for critical repairs and
32 control OT. I believe that the ideal candidate would be an individual that
33 possesses the capability to understand current Property Management
34 processes, yet be able to provide a critical eye towards implementing new
35 strategies of checks and balances. We hope to utilize current data to
36 develop additional cost-savings measures.
37

38 It is my hope that 1.) reducing vacancies and maintaining optimal staffing;
39 2.) adjusting work assignments, deployment, and schedules; 3.)
40 implementing a higher level of fiduciary control will provide the necessary
41 tools [to] reduce and eliminate unnecessary overtime costs. We are grateful
42 for your continued assistance within the department and we commit to

1 working closely with your budget team to implement standard citywide
2 strategies to reduce costs and improve service levels.
3

4 Rooney also began scrutinizing the special events to understand what was
5 needed. He reviewed the Event Overtime Request forms to gather information about the
6 event, such as the size, and the staff that were needed.¹⁰ He also implemented After
7 Action Reports, which he relied upon in previous positions he had held, to assess what
8 worked and what did not work at an event, and to understand whether to staff it differently
9 the next time.

10 Beginning with the Donna Summer Disco Night event in 2017, changes were made
11 to Menino's role at special events, as described below.

12 *Donna Summer Disco Night*¹¹

13 The Donna Summer Disco Night is an event that is produced by the City's Special
14 Events Department (SED), which manages events throughout the City. The event has
15 been held for approximately ten years, and includes roller skating and 80s music. Prior
16 to 2017, Menino worked the event every year for the duration, which was typically six
17 hours. In 2017, the event was held on June 23. Prior to the event, Menino submitted an
18 Event Overtime Request Form, in which she requested to work 4–11 PM for "overall event

¹⁰ Prior to the above emails, on February 16, 2017, Rooney sent an email to Menino and other managers stating that all overtime requests in Property Management must be approved in advance, on the Event Overtime Request form.

¹¹ This is the first event for which Rooney restricted Menino's overtime. He permitted Menino to work unrestricted overtime for other events in 2017 prior to this, such as the Boston Pride event on June 10 and 11, at which Menino worked 20 hours of overtime.

1 coordination." On June 22, 2017, Callahan returned the form to her, denying her request,
2 and noting that "special events staff to coordinate."¹² Callahan also sent an email on June
3 23, 2017 to Menino advising her that the SED would handle special events coordination
4 that evening, and that Menino should assist as usual during her regular work shift.¹³

5 *Boston Parks Department Concert Series*

6 Each summer, the Boston Parks Department sponsors a series of 4-6 concerts
7 that are held on City Hall Plaza. Prior to 2017, Menino worked as the event coordinator
8 for each concert. By email dated July 11, 2017, Callahan informed Menino of the
9 following:

10 Per discussion today, the Parks Department will handle special event
11 coordination for the four Wednesday night concerts on the North Stage.

12
13 I will ask Ken and Peter¹⁴ to coordinate with custodian. [sic]
14

15 By email to Callahan dated July 12, 2017, Menino stated, in relevant part:

16 I do not understand why this responsibility has been taken away from me.
17 I can only view this as a criticism to my duties and responsibilities. Events
18 such as these that are being turned over to people that are new and have

¹² Menino had also requested electrical, custodial, and security staff, to which Callahan made changes.

¹³ According to Menino, the SED coordinator's role at an event is to manage the talent for the event, and not the overall event coordination. However, not all events held by the SED feature "talent," but Menino did not describe any other duties of the SED Coordinator. In years past, both Menino and the SED coordinator have both worked this, and other, events.

¹⁴ "Ken" refers to Ken Ryan (Ryan), who is the Graffiti Manager, and "Peter" refers to Peter Barbuto (Barbuto), who is the Custodial Supervisor. Prior to 2017, Ryan and Barbuto did not work during the Boston Parks Department Concert Series, nor did their predecessors.

1 little experience in running events. Your [sic] allowing an outside city
2 agency to come to city hall [to] use our facilities without supervision. Your
3 [sic] allowing and leaving a custodian in charge of an event in case of an
4 emergency or a decision needs to be made. [sic]
5

6 Furthermore if an event should have a bad experience this will be viewed
7 as a negative impact on the excellent reputation I have earned over the
8 years with such matters.
9

10 I have been very successful over the years and now a decision has been
11 made to give my duties and responsibilities to a custodial supervisor and in
12 the past that was also my responsibility. This is the second time and it looks
13 like this is the case moving forward according to your email.
14

15 Menino did not receive a response to this email, and she did not work at the 2017 concert
16 series.

17 In connection with the 2018 concert series, in June 2018, Menino requested
18 overtime for herself, as well as security and custodial staff, for the Parks Department
19 concert on July 25, 2018. In response Rooney stated, "Due to the fact that this event is
20 managed by the Parks Department, we will not be approving an event coordinator. We
21 can discuss custodial and security needs during the Special Events meeting." Menino
22 subsequently did not work any of the 2018 concert series.

23 *Caliente Music Festival*

24 The Caliente Music Festival involves music on City Hall Plaza, and is held by the
25 SED. It has taken place for over ten years, and prior to 2017, Menino worked the festival
26 each year as the event coordinator. On or about June 25, 2017, Menino requested
27 overtime for herself and other staff for the festival. By email dated July 20, 2017, Callahan

1 informed her that because the event was being run by the SED, he would not approve
2 overtime for her, but he did approve overtime for the other staff.

3 *GospelFest*

4 The GospelFest is a night of church music on City Hall Plaza, held by the SED.
5 For approximately ten years prior to 2017, Menino worked as the event coordinator. In
6 August 2017, Menino requested overtime to work the upcoming GospelFest. By email
7 dated August 4, 2017, Rooney denied her request, stating, "Since GospelFest is run by
8 Special Events, we will not need an event coordinator." Menino also requested overtime
9 to work GospelFest in 2018, but that request was denied.

10 *GreenFest*

11 GreenFest is an annual multi-day multicultural and environmental festival held by
12 the Foundation for a Green Future (Foundation), which aims to increase awareness about
13 bringing nature back into the City and into people's lives. GreenFest has been held on
14 City Hall Plaza since 2008.

15 In connection with the 2017 event, Rooney was informed that the former Chief of
16 Energy and Environment, which helps sponsor GreenFest, had concerns about the
17 sustainability of the event because the Foundation had a history of making late payments.
18 For example, the invoice for the 2016 event was approximately \$25,000 and was not paid
19 in full until December 2016. The invoice for the August 2017 event was approximately

1 \$22,000 and was not paid in full until June 2018. As of February 2019, the invoice for
2 approximately \$18,000 for the August 2018 event has not been paid.¹⁵

3 Prior to 2017, Menino worked as the event coordinator for nine years. In 2017,
4 Menino requested overtime to work the event on August 11 from 4PM – 11PM, August
5 12 from 10AM – 11PM, and August 13 from 10AM – 11PM. Instead, Menino was
6 approved for fewer hours, i.e., 4PM – 10PM, 10AM – 2PM, and 10AM – 2PM,
7 respectively. She also requested overtime for an electrician, custodial staff, and security.
8 However, the number of staff that was approved was reduced.

9 By email dated August 12, 2017, Menino informed Weber of the hours she would
10 be working at the event, and provided contact information for Barbuto.¹⁶ In response,
11 Weber wrote in relevant part¹⁷:

12 Thank you for taking care of the water issue so efficiently – I got a
13 call that the maintenance crew is on task!

14
15 However, the note that you just sent me is very disconcerting. I had
16 been informed by Mr. Rooney's secretary, Kenya, that you will still
17 be the Event Coordinator from the city and that you would be my

¹⁵ Dr. Karen Weber (Weber), the President and Executive Director for the Foundation, testified that the bill had not yet been paid because GreenFest organizers were in negotiations to reduce the bill because their property was damaged at the event. Rooney testified that Weber had sent him an email in late November or early December 2018 claiming that the City owed GreenFest over \$10,000 for damages, to which he asked for proof that the City was responsible, but he has not received a response. He also denied that GreenFest organizers were in negotiations over the bill, but conceded that they could be negotiating with another department without his awareness.

¹⁶ Weber had never met Barbuto.

¹⁷ Weber also sent this email to Rooney and members of the Boston Municipal Police Department.

1 point of contact. During the week, someone had said something to
2 Mr. Peter Cushing of the Amusement Rides company that made me
3 worried – that you would not be involved with Boston GreenFest. I
4 double checked through communication with your supervisor, Mr.
5 Rooney. I was reassured that you would be there. Boston
6 GreenFest is an enormous event with many moving parts and lots of
7 issues popping up all the time. Even to the last moment last night
8 you were problem solving and helping us through. I honestly don't
9 know how we can make this work without you – especially today and
10 tomorrow which are so busy and so many demands.

11
12 Please – anyone on this list, get back to me and reassure me that
13 Lisa will continue through the hours of the festival to take care of
14 Boston GreenFest. We have budgeted her overtime into our plans
15 and this should not be an issue. If there is someone from the Mayor's
16 Office I need to call to be sure Lisa remains on hand throughout the
17 festival, please let me know. Please get back to me ASAP since the
18 festival is in full swing and I need the reassurance that Lisa [Menino]
19 will be there with us.¹⁸

20
21 Following this email, Menino's hours to work at the event were not changed. By
22 email to Rooney and others dated August 23, 2017, Weber wrote the following, in relevant
23 part:

24 I am writing to follow up on the management of the 10th Annual Boston
25 GreenFest and alert you to some of the things that we found disconcerting.

26
27 As you know, we have been organizing Boston GreenFest for 10 years at
28 City Hall and throughout those years, Ms. Lisa Menino, the Event
29 Coordinator for the City of Boston, has been at our side to insure that
30 everything runs smoothly. This year, at the last minute, her hours were
31 reduced and her role was passed to Mr. Peter Barbuto, a person we have
32 never worked with and whose experience with events is unknown to us.

33
34 Here is a recap of things that went astray.
35

¹⁸ Weber testified that after this email, she was reassured that Menino would still be her contact for the event.

1 First, the only time that I had any interaction with Mr. Peter Barbuto was on
2 Saturday, August 12th at around 10:30 am when Lisa introduced me to him.
3 During the remainder of the festival I never saw him. He did not check in
4 with me at any point, nor was he visible anywhere. I do not know when he
5 arrived and when he left. Further, he had one interaction with our site
6 manager in which he was unaware of our site plan and was somewhat
7 difficult when we tried to implement one of our usual installations near the
8 Wine & Beer Garden.
9

10 Second, on Saturday, August 12th, at around 3 pm, there was a theft of a
11 \$200 sculpture from the House of Nepal. The owner, Mr. Pralhad KC tried
12 to chase after the thief. He was unable to stop him. He approached several
13 municipal police gathered in a group – they did not help him even though
14 he indicated where the thief was running and all they said was “we’ll keep
15 our eye on it.” This is unacceptable. When Lisa managed our event, she
16 made sure that the municipal police were covering the area of the vendors
17 to insure that these kind of incidents would not occur. Mr. KC will file a
18 police report this week at the Area A police station on 40 New Sudbury
19 Street.
20

21 Third, during the latter part of the day, there was not a single municipal
22 police stationed by the Main Stage. We needed someone to escort a drunk
23 person from the area on more than one occasion. One time it was a half-
24 dressed man who was reeling into children and women. We had to ask the
25 Fire Department agent on duty to help us because no municipal police were
26 in the vicinity. We usually have a police presence by the Main Stage since
27 there is a lot of expensive equipment there and much activity with the
28 performers. No one was stationed there throughout the event. Fortunately,
29 we did not have any mishaps aside from the drunken people who should
30 have been escorted off immediately and we had to locate help to do so.
31

32 Fourth, at night on Sunday when we cleaned up, we put 6 sandbags, poles
33 and stands inside City Hall under the direction of Officer Kenn Vass in an
34 area he felt would be safe. These were placed there because the company
35 responsible for them wanted to pick them up within the next day or two.
36 When we inquired where the items were, no one seemed to know. Peter
37 was not around to help us with final details when cleaning the plaza. Lisa
38 was always with us right to the end for just these kinds of details. She has
39 been trying to help us locate the equipment but we have yet to learn where
40 it was stored and pray it was not disposed of. If you cannot locate it, the
41 City will need to replace these materials as soon as possible to return to our
42 supplier.

1
2 I had a conversation with you on Saturday (8/12/17) when you assured me
3 that Mr. Peter Barbuto was more than capable to handle the Boston
4 GreenFest and that nothing would come up that he could not handle. This
5 was obviously not the case and therefore your reassurance has left us with
6 several unresolved issues and complicated situations. During the previous
7 nine years of Boston GreenFest, I never had to locate staff, worry about
8 security/safety, and general oversight of the event. Our event is a large
9 event that spans across City Hall Plaza, Sam Adams Park and Faneuil Hall.
10 It has been my understanding that the reason Property Management
11 assigns us their Event Coordinator (Ms. Lisa Menino), is to insure customer
12 satisfaction and overall smooth operation of the event.
13

14 I look forward to hearing from you regarding these issues as I feel we were
15 not provided with the excellent customer service we grew accustomed to
16 over the past nine years.
17

18 On August 31, 2017, Weber again emailed Rooney to advise him that the items
19 that were part of the kiosk had been located,¹⁹ but that she had not heard back from him
20 to address the other aspects of her prior email. In October or November 2017 Weber met
21 with Callahan and others from the City to express her frustration with the event. At this
22 meeting, she asked that the Foundation not have to pay for Barbuto's time because they
23 did not see him on site and did not know what his duties had been. The City informed
24 Weber that the Foundation was obligated to pay for Barbuto, which it did.

25 In 2018, Weber told Rooney and Brophy that she wanted Menino to be at
26 GreenFest. Brophy told Weber that the City was trying to save them money by reducing
27 Menino's hours, but Weber expressed that she would prefer to have Menino there.
28 Menino was approved to work 11AM – 7PM on both days of GreenFest, rather than 11AM

¹⁹ It is unclear which items she is referring to.

1 – 11PM, which were the hours she requested. By email dated August 27, 2018 to

2 Rooney, Callahan, and others, Weber wrote, in relevant part:

3 Here is a report about our event this year:

4
5 1. We were ahead of schedule on our permit process so that allowed us to get
6 our final permit the day before we opened and let everyone know what to
7 expect well in advance of the event.

8
9 2. We met with City Officials from your department and the Mayor's office to
10 go over the site issues due to the scaffolding that was set up for the repairs
11 happening near the North Stage.

12
13 3. Several things were promised, some delivered:

14
15 Access to inside was not given as of 5 pm on Friday evening throughout the
16 weekend, as had been promised. As well, we did not see any chairs and
17 tables set up to accommodate us.

18 A dedicated municipal police was sent to us on Sunday, but there was no
19 access to inside City Hall, so we did not need him.

20 No exterior lighting of City Hall to light up the building in green and blue for
21 the week of Boston GreenFest. Only on Sunday night after our event
22 ended.

23 Trash overflowed and I had to reach out on a few occasions.

24 No regular check-ins by any of the staff other than Lisa Menino.

25 Peter Barbuto kindly helped us out with the safe storage of our TV monitor.

26 Leon Graves had the chairs and tables moved from one side of the plaza
27 into place for us at the Wine & Beer Garden.

28
29 4. Issue with electricity. Although we had asked to talk with the electricians
30 ahead of time, we were not introduced to the electricians until 9:30am on
31 Wednesday morning, August 1st, 2 days prior to the event. It was at this
32 time we learned that there was not enough electricity on the plaza to
33 accommodate our needs and we would have to get at least one generator.
34 We were told by the electricians that we needed more electricity than
35 necessary, obliging us to rent two generators. We barely used one. Also,
36 they did not open the box by the cement pad to allow us to get electricity for
37 the robots, inflatables and rock climbing tower when we needed it. We had
38 to wait until later in the day and they did help sort out issues with the rock
39 climbing tower at that time. They also did help with getting things set up, it
40 was just late. The problems due to the availability of the electricians, their

1 advice impacted our ability to get our event up and running in a timely
2 manner. I also had to return to 1010 Mass. Avenue for the permit for the
3 generators on the day of the event, that I could have pulled the day before.
4 In all, the electricians were helpful, just not in a timely manner.
5

- 6 5. Thank goodness for Lisa Menino's help with getting our exhibitors onto the
7 plaza, the fire inspection, getting the generators in place and dealing with
8 the weather on Saturday. She stayed on top of every detail and checked in
9 with us regularly. As for the weather on Saturday, initially it only looked like
10 there would be some rain through the day so we opened the event. Midday,
11 Lisa informed us that there was a Flash Flood Warning on until 8pm for
12 Boston. Given that information, we felt that it was too dangerous to hold the
13 event and had to cancel for Saturday. Although things cleared up later on,
14 we felt justified in closing since even later in the day meteorologists were
15 warning of Flash Flood potential in the City.
16

17 Finally, we managed to pull off another Boston GreenFest, but there were
18 a few bumps in the road and we felt some could have been avoided.²⁰
19

20 In 2019, GreenFest was scheduled to take place at the Greenway, rather than at

21 City Hall Plaza.²¹

²⁰ Menino testified that the problems raised in this email did not occur when she was onsite for GreenFest.

²¹ Weber testified that GreenFest would not be held at City Hall Plaza because the plaza will be undergoing construction. In addition, she testified that Menino's changed role also played a big part in the decision not to hold the event at City Hall Plaza in 2019. However, Rooney testified that in January 2019, the Foundation applied to hold the event on City Hall Plaza, but he rejected the application because of the unpaid bill from the 2018 event. Weber did not mention in her own testimony that the Foundation had applied to hold the event on the plaza in 2019, but was rejected. Therefore, I credit Rooney's testimony that he rejected the GreenFest application for 2019, and conclude that this is the primary reason that the GreenFest organizers moved the event to another location.

1 *Unity Concert*

2 In September 2017, the Unity Concert was held as a benefit following Hurricane
3 Harvey in Houston. Menino requested to work the event, but Callahan informed her that
4 because the event was being held by the SED, she would not be needed.

5 *Country in the City*

6 Country in the City is a concert held by the SED, and is the start of the Hub on
7 Wheels event, described further below. Prior to 2017, Menino worked as the event
8 coordinator for the entire event. Menino requested approval to work at the event on
9 September 14, 2017 from 5 – 10PM, but was denied.

10 *Hub on Wheels*

11 This is a large-scale multi-day event held by the SED in September, which begins
12 with the Country in the City concert on Thursday night. On Saturday, approximately 2000
13 - 5000 elite cyclists race on the streets surrounding City Hall Plaza, followed by a concert
14 that night. On Sunday, the City opens certain streets to cyclists of all ages who can bike
15 on a 5, 10, or 20 mile trek to Franklin Park, and end at City Hall Plaza. Menino worked
16 as the overall event coordinator in 2015 and 2016. In 2017, Rooney denied her request
17 to work the event because it was being sponsored and managed by the SED. Menino's
18 request to work the event in 2018 was also denied.

19 *City of Champions Beer Garden*

20 The City of Champions Beer Garden is held by TD Garden Delaware North, a
21 private organization, on City Hall Plaza. Menino requested to work from 4 – 8PM, which

1 was the duration of the event, on September 21, 2017, and her request was approved.

2 This event did not occur prior to 2017.

3 *Hub Week*

4 Hub Week is a multi-day event organized by the Boston Globe and held by the
5 SED on City Hall Plaza. It includes interactive displays and TED talks with guest
6 speakers. It has been held for approximately three years, and prior to 2017, Menino
7 worked as the overall event coordinator. In October 2017, Menino requested to work
8 overtime for the event on the following dates and times:

9 10/12/17: 4 – 12PM
10 10/13/17: 4 – 12PM
11 10/14/17: 10 - 11PM
12 10/15/17: 10 – 8PM

13
14 Menino also requested overtime for custodial and security staff. By email dated October
15 12, 2017, Callahan responded as follows, in relevant part:

16 Forwarding guidance from Greg.
17

18 After reviewing the calendar of events on the HUBweek website, I am still
19 somewhat confused by the overtime shifts that have been requested. For
20 example, the first event listed on Saturday begins at 9AM, yet we do not
21 have any custodians starting until 11AM. Conversely, the first event on
22 Sunday starts at 9:30AM, but our first custodian would start at 9AM. I also
23 think that the ending of the shifts each evening exceeds what is warranted.
24 The evening activities cease at either 10PM or 10:30PM each of the
25 evenings. In my opinion, it is hard to justify the need. I will note that I will
26 defer to the Boston Police Department's request for additional security, so I
27 will not alter the existing request.
28

29 Subsequently, I think we should change the shifts to the following:
30

31 Thursday, October 12th: 2 Custodians 4PM – 11PM; Event Coordinator
32 4PM – 10PM

1 Friday, October 13th: 2 Custodians 4PM – 11PM; Event Coordinator 4PM
2 – 10PM

3
4 Saturday, October 14th: 1 Custodian 11AM – 4PM; 2 Custodians 4PM –
5 11PM*; Event Coordinator 11AM – 8PM

6
7 Sunday, October 15th: 1 Custodian 11AM – 4PM; 1 Custodian 1PM – 6PM;
8 Event Coordinator 11AM – 6PM

9
10 *Extend to 11:30PM if necessary.
11

12 In response, by email dated October 12, 2017, Menino asked Callahan to please call Alex
13 Richmond, the Hub Week event coordinator, to let him know of the staffing changes.²²

14 In connection with the 2018 event, by email dated October 4, 2018, after Menino
15 provided a short description of what staff would be responsible for at Hub Week, Rooney
16 wrote the following in response:

17 I'm looking for a more detailed description of duties to be performed by each
18 position while on site during the event. For example, what specific duties
19 fall under overall event coordination; does security provide any
20 screening/bag checks; are the electricians only monitoring and observing
21 the power, or are they actively performing electrical work during the event?
22 This information should be included for all events. Thank you.
23

24 In response, Menino emailed the following on October 5, 2018:
25

26 As the event coordinator, I am the person who organizes people or groups
27 so that they may work together efficiently. My roll [sic] is to insure from
28 conception to completion that each and every event runs smoothly, with no
29 catastrophic occurrences and the event runs smoothly. I am on site to
30 provide any additional services that may occur. I am someone that the
31 event organizers works [sic] with from start to finish and also someone who

²² Menino explained that she asked Callahan to contact Richmond about the changes because although she had explained the changes to Richmond herself, she wanted the Deputy Commissioner to clarify them for him.

1 visitors can get immediate assistance [sic] and I have the ability to assist
2 with any issues that I observe while walking around the event site. I am the
3 on site contact event coordinator for the City of Boston and contact person
4 for Emergency Medical Services, Boston Fire Department, Boston Police
5 Department, Health Department, Inspectional Services Department, I
6 request certain personnel based on the needs of the event. However, I
7 request specialized and skilled individuals to do what their training
8 suggests.

9
10 Licensed electricians are hired to work for the City of Boston and they are
11 on site (City Hall Plaza as well as other city sites) they insure that all of the
12 events and vendors are provided with power and meet all electrical needs.
13 Licensed electricians also make sure that everything is up to the electrical
14 code. It is unpredictable when a power problem could occur so to insure
15 the power is maintained an electrician needs to be on site. Especially when
16 power is being pulled from the building and the panel that is on City Hall
17 Plaza. This should not be left unattended and without the knowledge of
18 how and where to disable these services quickly in an emergency situation.
19 Accidents can and do happen. Electrical Inspector for the City of Boston
20 has stated that there should be a licensed electrician ON SITE. I am not in
21 a position to overrule on electrical code requirements.

22
23 Custodial staff will be on site to provide barrels, hampers, and clean the
24 entire area on site that we are working on for special events. Sometimes
25 this requires going back the next day to finish the clean-up. Depending on
26 how late the event runs, and how many staff are authorized to work the
27 event. Weather is another issue that sometimes works against clean-up,
28 lighting can also be another reason why custodial staff will need to clean
29 the following day. That may entail bringing out tables and chairs, or it could
30 be help cleaning a spill. There is no way to plan what else custodial staff
31 will be asked to do while on site for a special event.

32
33 Security staff will be on site to provide overall site protection not only for the
34 event but for the entire building. At events, things happen and can reshape
35 an event in a matter of minutes. Take for example: Forbes, all the staffing
36 was in place and then Senator Flake is removed from Emerson College and
37 Forbes relocated them to City Hall Plaza to speak. Security is needed to
38 make on going changes as things developed, this required having extra
39 officers on and have officers wand folks and do a bag search. This was
40 unforeseen, but it is up to Municipal Police and Boston Police discretion.
41 The main reason for Municipal Police and Boston Police is visibility (See

1 Something, Say Something) the way things happen from day to day in the
2 world police officers are absolutely needed during events.
3

4 Deputy Callahan requested that William Joyce, Director of Security, and
5 Leon Graves, Building Superintendent, attend meetings with the event
6 organizers.²³ In the case of Hub Week, we had a meeting with Alex
7 Richman and his staff and on several occasion. [sic] Since that time I have
8 learned that individual meetings have taken place. Leon Graves has told
9 me that he has spoken directly to the Commissioners and provided updated
10 staffing levels. I am unsure of the specifics because it is my understanding
11 that the individual managers are coordinating their own units. This
12 information has not been transferred to me prior to the event. ***Since**
13 **Staffing levels have been provided to the Commissioners, I just want**
14 **to make clear that none of this information on staffing has been shared**
15 **with me for any of the events since they have been reporting to the**
16 **Commissioners.** (Emphasis in original)
17

18 *Portraits of Purpose*

19 In 2017, the SED held a new event called Portraits of Purpose to celebrate Black
20 History Month, which features photographs of individuals in City Hall. Prior to 2017, to
21 prepare for a new event, Menino would meet with the event organizer and go through
22 everything, and Callahan would not normally be involved. However, Callahan became
23 more involved in the planning of Portraits of Purpose. In early February, Callahan was in
24 contact with the event organizers to provide details on storage and where the caterer
25 should enter, which were details Menino usually handled. Following an email in which
26 Callahan requested that the operation of the chair lift in City Hall be checked for the event,
27 Menino wrote the following email to Callahan on February 7, 2018, in relevant part:

28 I am following up on this email you sent out. I am concerned and confused,
29 I attended a meeting between yourself, Commissioner Rooney, A&F
30 Director Steven Stephanou, and Peter Barbuto (Custodial Supervisor). At

²³ William Joyce and Leon Graves are both SENA members.

1 this meeting you you [sic] deferred to the custodial supervisor to make
2 recommendations on staffing, while in my presence you requested he take
3 care of the special event and then asked me for advice and feedback on
4 your plan. My years of experience in these matters cannot be transferred
5 to an inexperienced new employee in a matter of a few moments.
6 Furthermore, after I left the meeting I received two emails addressed to
7 property management staff where you are obviously coordinating special
8 events again without my assistance. I have performed my duties and
9 responsibilities as special events coordinator flawlessly for over a decade
10 and I feel this behavior is a flagrant attack at me personally. My job
11 description is to be a special events coordinator, is there a reason why my
12 work is being handed out to several other people within the department.
13

14 On February 16, 2018, Callahan responded with the following email:
15

16 The meeting you are referring to took place on February 6, 2018, and was
17 an event planning meeting for Portraits of Purpose. This meeting was
18 similar to meetings we have had in the past for other events and included
19 employees who are regularly in attendance at such meetings. Peter
20 Barbuto, as the Assistant Superintendent of Custodians, is often present at
21 these types of meetings because custodial support is integral at these
22 events. You were also included in this meeting and, as you are aware, the
23 meeting was rescheduled at your request to accommodate your schedule.²⁴
24

25 This meeting was specifically requested by Mayor's Office representatives
26 because they expressed concerns about the PMD's readiness for the event,
27 and stated that you had not responded to several earlier communications
28 regarding the event. During the February 6 meeting, at which Mayor's
29 Office representatives were present, you were asked for input several times
30 and chose not to engage. You responded to direct questions by shrugging
31 your shoulders and saying "whatever" or words to that effect. Our Custodial
32 Supervisor was included in this meeting because you had not
33 communicated the custodial needs to him prior to the meeting, except for
34 the number of chairs needed. He was unaware of the hours of the event,
35 the number of guests expected, or that the event would include a catered
36 meal. Further, you had not notified Chief Joyce, head of security, about the
37 security needs for the event, nor the loading dock manager about the
38 delivery of materials to the dock for the event. It is important that you

²⁴ This meeting was originally scheduled for 1PM, but Menino requested that it be rescheduled to 2PM because she was going to lunch at 1PM.

1 communicate these needs to the appropriate supervisors so events
2 proceed in an orderly fashion.²⁵
3

4 The email from me to John Sinagra from February 6 was specifically to
5 ensure equipment necessary for all disabled/impaired constituents was in
6 working order; this falls squarely within his job duties. Moreover, all the
7 work done by other City employees also fell within their job duties. There is
8 no intent of taking work away from you.
9

10 Menino had no further involvement in planning this event, as Rooney, Callahan, and
11 Barbuto handled the event.

12 *Youth Pride*
13

14 Youth Pride is an event that takes place each year and includes a daytime job
15 networking event and an evening dance geared toward LGBTQ students. Prior to 2018,
16 Menino would make staffing recommendations for the event, including security and
17 custodial staff. For the 2018 event, Menino only sent Joyce the hours of operation of the
18 event, and he made the security decisions.

19 In May 2018, Menino requested to work 6AM – 9PM, along with two custodians,
20 and also requested an electrician for 8AM – 9PM. By email dated May 11, 2018, Menino
21 provided Rooney and Callahan details about the duties that the requested staff would be

²⁵ At the hearing, Menino did not agree with Callahan's description of her behavior at the meeting, stating that she decided it was better not to say anything at the meeting because Callahan did not know what he was doing. She also disagreed with his allegations that she had not communicated the referenced information to the appropriate supervisors. With regard to the Custodial Supervisor being unaware that there would be a catered meal, Menino explained that food was a last minute addition, and that she could not provide information that she did not yet have, but she did not provide specifics about how she responded to the other individuals, or other issues, that were referenced in Callahan's email.

1 performing. In response, Rooney asked if it would make sense to split the custodial 15
2 hour shifts into two shifts and asked Graves and Barbuto for a recommendation. On May
3 18, Rooney advised Menino that he and Barbuto were reducing the total hours for
4 custodians, and splitting the day into 4 separate shifts. He also stated, "I am struggling
5 to understand the justification for a 15 hour shift for event coordination. What specific
6 duties require coverage for 15 hours?" In response, Menino stated in a May 18, 2018
7 email:

8 My concerns center around the entire event going smoothly. My job as the
9 event coordinator is to ensure that makes me responsible [sic] for
10 customer/clients['] overall experience. I am on site when the event arrives
11 to make sure that set-up and start-up goes smooth [sic], I am there
12 throughout the event to make sure things go according to plans and to
13 handle any problems or situations, and I am there at the end to make sure
14 the close out of the event goes well and the plaza is returned to the condition
15 it was in prior to the event. There is no subset of hours during which
16 problems occur. They can happen at any time and may require the
17 coordination of multiple departments within PMD, Security, and outside
18 support (police, fire, EMS) as well as the event group's staff. I can think of
19 no other type of event where the coordinator clocks in part time.
20

21 Menino ultimately worked the duration of the event.

22 *Boston Pride Festival*

23 The Boston Pride Festival is a large event that is held on the second Saturday in
24 June, beginning with a parade at Copley Square and ending with a festival and
25 entertainment at City Hall Plaza. A Board of Directors, overseen by Linda DeMarco
26 (DeMarco), runs the event with the help of approximately 150 volunteers.

27 Menino has been the point person for DeMarco, and coordinates with all the
28 departments involved. Prior to 2018, Menino worked the full event without her hours

1 being limited. Also, she would make staffing recommendations, including custodial and
2 security staff. In June 2018, Joyce made the decisions regarding security. Menino
3 requested to work 7AM – 12:01AM. She also requested that two custodians work 7AM –
4 4PM, six custodians work 1 – 12PM,²⁶ and an electrician work from 7AM – 12:01AM. By
5 email dated June 8, 2018, Rooney advised Menino of the following:

6 I am approving a reduced number of overtime hours.
7

8 I approve overtime for you from 7am to 3pm on Saturday for the Pride event
9 and from 7am to 3pm on Sunday for the Portuguese Festival.
10

11 First, I have serious concerns about the total amount of hours you have
12 requested for both the event coordinator and electrician for this week's
13 events. It is difficult for any one person to make clear and rational decisions
14 when they are working an exorbitant number of hours, and I feel that a 17
15 hour shift is excessive and could lead to potential unsafe conditions. For
16 the electrician, at a minimum, the 17 hour shift should be split into two.
17

18 For the event coordinator, fatigue would likely set in for anyone working 30
19 hours in a 37 period [sic], again having a potentially detrimental impact on
20 one's cognitive abilities, i.e., attention span, mental alertness, focus,
21 concentration, thinking, communication, and reasoning abilities.²⁷
22

23 Second, the Pride event on Saturday has its own event coordinator and,
24 based on their after action report regarding last year's Pride event, there
25 were not any significant issues. There were minor issues related to
26 transitioning Scooper Bowl out and transitioning Pride in, getting EMS onto
27 the Plaza, and some overflowing dumpsters. As such, your coordination is
28 necessary at the beginning of the Pride event. Since the Portuguese
29 Festival is new this year, I do not have an after action report, but based on

²⁶ It is likely that Menino intended to request that custodians work 1 – 12AM rather than 1 – 12 PM; however, the exact times are not relevant to my decision.

²⁷ The City asks that I take administrative notice of OSHA guidelines regarding demanding work schedules. I decline to do so as there is no evidence that Rooney considered these specific guidelines when revising Menino's hours, although I do find that his concerns about the excessive number of hours Menino was working to be valid.

1 the Pride after action report, I anticipate there may be some issues related
2 to transitioning Pride out and the Portuguese Festival in. As such, your
3 coordination is necessary at the beginning of the Portuguese Festival.

4
5 I welcome your feedback.

6
7 After Menino was told she was approved to work 7AM – 3PM for the Pride event,
8 she provided the event organizer with contact information for individuals who could assist
9 after Menino was off-duty. On the morning of the Pride event, there were problems setting
10 up because when the Scooper Bowl finished and broke down the site the night before,
11 they threw ice cream into the dumpsters which then melted and caused puddles that
12 smelled like spoiled milk. Normally, Menino would have been present for breakdown of
13 the Scooper Bowl, but she had not been approved to work those hours. In addition, when
14 she left her shift for the Pride event, she informed Graves that he had to ensure that the
15 trash removal was kept up. However, when she arrived at the Plaza the next morning, it
16 was a “complete mess.” By email dated June 21, 2018, DeMarco wrote the following to
17 Rooney, in relevant part:

18 * * *

19 As I expressed to you, I had a crew of volunteers to help clean the plaza
20 after the event. Sometimes we have a lot of cleanup, sometimes we don't
21 (certainly depends on the crowd and the weather). This year was a huge
22 success so there was a lot. When the city hall staff left at 10:45ish (as I
23 said that is when we found out) I let the volunteers go. The product of that
24 was all the trash was left up in the Garden area after the Youth Dance AND
25 all the trash was left up in the Bar area across from North stage as well as
26 some piles around the plaza.

27
28 Now usually the city team brings all this trash over to the dumpsters and we
29 help with our volunteers and work as a team. Since this did not happen, all
30 that trash was left throughout the plaza and not piled up near the dumpsters

1 for my trash guy to pick up. Typically Pride (myself or another team
2 member) works with the city person (usually Lisa) and we make an
3 assessment on trash to either get another trash roll off or we are good with
4 what we have. Since we did not get a chance to assess and work as a
5 team, this did not happen. As a result of this, Pride has an additional trash
6 pickup charge of \$1,147.00! This is double what we would have received if
7 we had had the chance to let the trash guy know to come with another roll
8 off to pick up the excess that would have been piled next to the dumpster.
9 Instead the night team left all the trash throughout the plaza and my trash
10 guy had to collect it with the morning crew that was there the next morning.
11

12 If Pride could have been informed earlier (not the day of) that the usually
13 [sic] management team was not going to be there to assist us, perhaps we
14 could have avoided not just this extra cost but unnecessary anxiety we went
15 through.
16

17 I tell you this so perhaps lessons can be learned.
18

19 DeMarco did not receive a response to this email. The only explanation she had received
20 from the City about Menino's reduced hours was that the City was trying to save them
21 money. However, DeMarco had never complained about the cost of the event or about
22 paying overtime for employees. The Pride Committee is responsible for paying for the
23 event and all associated overtime, and is aware that some employees will be working
24 overtime. As of December 28, 2018, the Pride Committee had not submitted payment for
25 the June 2017 event, which totaled \$9,332, or the June 2018 event, which totaled \$8,599.

26 *Puerto Rican Festival*

27 The Puerto Rican Festival of Massachusetts has held a cultural event at City Hall
28 Plaza for the past six years. The festival is a three-day event at the end of July, and
29 Menino was the contact person for the event organizers. In years prior to 2018, Edwin
30 Alicea, the President of the Festival, relied on Menino as his go-to person who was able

1 to always quickly find answers to questions or issues. In 2018, Menino's hours were
2 reduced. Alicea was advised by Brophy that the Department wanted to save him money,
3 and that Graves was in charge if he needed anything. Alicea was not satisfied with
4 Graves' performance because they did not see him much.

5 The cost of the 2018 Puerto Rican festival was \$34,500, which was paid in
6 February 2019. The cost of the 2017 festival was \$34,500, which was paid in November
7 2017.

8 *Menino's Overtime Wages*

9 As a result of working events in the evenings and on weekends, Menino earns a
10 significant amount of overtime, which has been reduced following Rooney's decision to
11 restrict her overtime, as detailed below.

12	2013: \$44,643.25
13	2014: \$44,141.83
14	2015: \$44,540.20
15	2016: \$53,743.11
16	2017: \$33,028.86
17	2018: \$20,563.00

18 19 *Overtime Sheets*

20 Menino's role with regard to staff overtime sheets had historically been to ensure
21 that the employee was at the event at the designated time, and to complete the overtime
22 paperwork at the end of the event for events she attended. In 2017, Barbuto began
23 completing the overtime paperwork for the events that Menino did not attend, beginning
24 with the Donna Summer Disco Night. In April 2018, Barbuto began completing the
25 overtime records for custodial staff, even if Menino attended the event.

1 *Coordinating Security and Custodial Staff for Events*

2 With regard to security, in prior years, Menino would work with the event organizer
3 on a detailed plan for security. At some point after 2017, the responsibility for security
4 was entirely turned over to Joyce, who is a SENA member. With regard to the custodial
5 staff, Menino would meet with the event organizer to determine the needs for custodial
6 staff. Also at some point after 2017, Leon Graves, a SENA member, determines the staff
7 that is needed, and Menino has no role in coordinating custodial staff.

8 *Detailed Overtime Request Form*
9

10 Prior to Commissioner Rooney leading the Department, although Menino was
11 required to inform her supervisors of the staffing needs for events and the need for
12 overtime, she was not required to provide them with the details regarding the staff's
13 purpose or get approval for overtime.²⁸ By email dated May 3, 2018 to Menino and Paul
14 Berkeley, Rooney wrote:

15 Since PMD hosts a wide range of events with differing needs, it would be
16 helpful to understand the specific tasks that PMD staff is being asked to
17 perform for each event. In an effort to better gauge these staffing needs,
18 please list the specific duties to be performed by staff being requested, i.e.
19 setting up/breaking down tables and chairs, emptying barrels, monitoring
20 generator, guarding main entrance, etc., when submitting the Event
21 Overtime Request Form.
22

23 Following this May 2018 email, Menino began providing details on the duties that
24 Department staff will perform at special events.

²⁸ Menino conceded in her testimony that the parties' collective bargaining agreement states that employees need prior authorization to work all hours in excess of their regular workweek, but testified that was not how it was done in the Department.

1 *Loft Access*

2 The loft is a storage area where supplies, such as trash bags and paper towels,
3 are kept. An employee can access the area with a key, with an employee badge with
4 access rights, or by requesting that security allow access. Prior to 2017, Menino had
5 access to the loft with a key and with her employee badge, but in or about December
6 2017, the City notified her that her access was removed from her employee badge.²⁹

7 *Pest Control*

8 Prior to 2017, for at least ten years, Menino was responsible for coordinating
9 extermination for City Hall and outside buildings with the pest control contractor, which is
10 currently Terminix. For example, after receiving a complaint about a pest in a City
11 building, Menino would contact Terminix to inform them of the problem and schedule
12 extermination services. At times she would also need to involve other City services, such
13 as inspectional services. Menino did not take part in selecting the pest control contractor
14 or negotiating the City's contract with it. In or about 2017, Callahan informed Menino that
15 she no longer should have contact with Terminix, and Graves took over the duties of
16 coordinating pest control services with Terminix. Rooney made the decision to have
17 Graves handle the contract as it was more in line with the duties of the Building

²⁹ Menino does not know whether she still has her key because she has not needed to access the loft since 2017. She testified that prior to 2017, she accessed the loft regularly, sometimes once per week and sometimes once per month. However, the City provided evidence that Menino never accessed the loft with her badge from 2010 – 2017.

1 Superintendent than the Special Events Coordinator, and the Terminix contract listed the
2 Building Superintendent as the point of contact.

3 *Callahan's Meeting with Gracia*

4 On or about February 12, 2018, Christopher Gracia (Gracia), a bargaining unit
5 member, was called into a meeting with Callahan. Gracia asked Callahan if the meeting
6 was disciplinary, to which Callahan replied, "I don't think so," or words to that effect.
7 Gracia then stated he would like a union representative at the meeting, and Callahan
8 asked for the name of his steward. When Gracia responded that Menino was his steward,
9 Callahan responded, "No, I don't want anyone in this office to be in the meeting," or words
10 to that effect. Callahan then ended the meeting, stating that they would have to
11 reschedule. When the interview was rescheduled, Callahan allowed Menino to be
12 present as Gracia's Union representative.

13 Opinion

14 *Section 10(a)(3) Allegations*

15 The complaints allege that the City retaliated against Menino for her protected
16 activity by refusing or reducing her overtime at special events. Section 2 of the Law
17 guarantees employees the right to form, join or assist any employee organization and to
18 engage in lawful, concerted activities for the purpose of bargaining collectively or other
19 mutual aid or protection. A public employer that retaliates or discriminates against an
20 employee for engaging in activity protected by Section 2 of the Law violates Section
21 10(a)(3) of the Law. Southern Worcester Reg. Voc. School District v. Labor Relations

1 Commission, 386 Mass. 414 (1982); School Committee of Boston v. Labor Relations
2 Commission, 40 Mass. App. Ct. (1996). To establish a prima facie case of a Section
3 10(a)(3) violation, a charging party must show that: (1) the employee engaged in
4 concerted activity protected by Section 2 of the Law; (2) the employer knew of the
5 concerted, protected activity; (3) the employer took adverse action against the employee;
6 and (4) the employer's conduct was motivated by a desire to penalize or discourage the
7 protected activity. Town of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008) (citing
8 Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000)).

9 The City does not dispute that Menino engaged in protected activity by filing a
10 grievance over her promotional bypass, and participating in the related arbitration. It also
11 does not dispute that it knew of her protected activity. Therefore, the issues in dispute
12 are whether reducing and refusing to approve her requested overtime were adverse
13 actions, and whether the City was motivated by a desire to penalize Menino's protected
14 activity.

15 The City acknowledges that it refused to allow Menino to work overtime at certain
16 events, and reduced her overtime at other events, as described above.³⁰ It contends that
17 reducing Menino's overtime was not an adverse action, but instead a sound fiscal
18 decision. The Commonwealth Employment Relations Board (Board) defines an adverse
19 action as an adverse personnel action, such as suspension, discharge, involuntary

³⁰ I will refer to the City's action as a reduction in Menino's overtime because her overall overtime earnings were reduced as a result of the City's decision to reduce her overtime at some events, and not allow her to work any overtime at other events.

1 transfer, or reduction in supervisory authority. City of Boston, 35 MLC 289, 291, MUP-
2 04-4077 (May 20, 2009). An adverse action must disadvantage the affected employee in
3 a material way. City of Boston at 291. Although the City argues that reducing Menino's
4 overtime resulted only in subjective feelings of disappointment, Menino was in fact
5 materially disadvantaged by the significant reduction in overtime earnings. See, City of
6 Gloucester, 38 MLC 211, 217, MUP-06-4742 (H.O. March 22, 2012). Thus, I agree with
7 the Union that the City's actions in reducing and refusing overtime pay were adverse
8 personnel actions.

9 To support a claim of unlawful motivation, the last element of the Union's prima
10 facie case, a charging party may proffer direct or indirect evidence of
11 discrimination. Lawrence School Committee, 33 MLC 90, 97, MUP-02-3631 (December
12 13, 2006) (citing Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002),
13 aff'd sub nom., Town of Brookfield v. Labor Relations Commission, 443 Mass. 315
14 (2005)). Direct evidence is evidence that, "if believed, results in an inescapable, or at
15 least a highly probable inference that a forbidden bias was present in the workplace."
16 Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass.
17 655, 667 (2000) (quoting, Johansen v. NCR Comten, Inc., 30 Mass. App. Ct., 294, 300
18 (1991)). "Unlawful motivation also may be established through circumstantial evidence
19 and reasonable inferences drawn from that evidence." Town of Carver, 35 MLC at
20 48. Several factors may suggest unlawful motivation, including the timing of the alleged
21 discriminatory act in relation to the protected activity, triviality of reasons given by the

1 employer, disparate treatment, an employer's deviation from past practices, or
2 expressions of animus or hostility towards a union or the protected activity. Town of
3 Carver, 35 MLC at 48 (citing Melrose School Committee, 33 MLC 61, 69, MUP-02-3549
4 (September 27, 2006)); Cape Cod Regional Technical High School District Committee,
5 28 MLC 332, 335, MUP-2541 (May 15, 2002). Because there is no direct evidence of
6 unlawful motivation here, I will consider whether there is indirect evidence.

7 The Union argues that the timing of the City's adverse actions in connection with
8 Menino's protected activity supports a finding of improper motivation. Specifically, the
9 Union notes that Menino filed her grievance in November 2016, and the Union moved the
10 grievance to arbitration in March 2017. Following this, in June 2017, the City first began
11 reducing Menino's overtime. However, timing alone is not sufficient to establish improper
12 motivation. City of Malden, 5 MLC 1752, 1764, MUP-3017 (March 20, 1979).³¹ Therefore,
13 the Union has not established a prima facie case of unlawful retaliation.

14 Further, if I were to conclude that the Union had established a prima facie case of
15 retaliation, the employer may rebut it by producing evidence that the action was motivated
16 by a legitimate reason. Suffolk County Sheriff's Department, 27 MLC 155, 159, MUP-
17 1498 (June 4, 2001). Finally, if the employer produces one or more lawful reasons for

³¹ The Union also argues that Callahan's refusal to allow Menino to act as Gracia's union steward, as described below, is further evidence of the City's improper motivation. However, there is no evidence that Callahan initially refused to allow Menino into the meeting because of her protected activity or because of animus toward the Union, rather, he did not want someone from the Department to be in the meeting.

1 taking the adverse action against the employee, the charging party must establish that
2 “but for” the protected activity, the employer would not have taken the adverse action. Id.

3 The City contends that it reduced Menino’s overtime as part of its efforts to reduce
4 excessive overtime throughout the Department. Indeed, Sweeney asked Rooney in May
5 2017 about his plan to reduce Departmental overtime, specifically noting that some
6 Department employees made over \$30K per year in overtime,³² and Rooney responded
7 that “We continue to monitor strategic and fair staff deployment and are working with our
8 governing CBAs to explore current, existing shifts and considering modified work
9 schedules to better deploy personnel during peak events on the plaza and within city hall.”
10 It was shortly after this, in June 2017, that the City understandably began reducing
11 Menino’s overtime.

12 The Union argues that the City only reduced Menino’s overtime, but not the
13 overtime of security staff or tradespeople, and the evidence shows that the overall
14 overtime in the Department did not decrease despite Menino’s significant losses in
15 overtime earnings.³³ However, Rooney testified that he decided to not require a
16 Departmental special events coordinator for events that were run by another City
17 department because they have their own event coordinators, but that he still would
18 provide custodial and security staff, and an electrician, as needed. In addition, as noted

³² Menino would be included in this category, as she made over \$40K in overtime in 2013 through 2015, and over \$50K in 2016.

³³ The evidence shows that there were times that the City reduced the overtime requested for staff other than Menino, such as at HUBWeek.

1 by Rooney in his email to Sweeney, the "primary factor that has driven overtime has been
2 critical position vacancies in the Building Systems, Security and Enforcement Programs."
3 He further explained in his testimony that the Department had longstanding vacancies in
4 positions that require 24/7 coverage that were filled with overtime. Thus, it is not
5 unexpected that the overall overtime expenses have not yet been significantly reduced
6 despite the reduction in Menino's overtime.³⁴

7 It is also clear that Rooney took other actions to reduce overtime over the long
8 term, such as requiring approval for overtime staffing, requiring a detailed description of
9 the duties staff would be performing on an overtime basis, making changes to requests
10 for overtime staffing when necessary, and implementing After Action Reports, so he could
11 determine what changes would need to be made the following year.

12 In addition, the City established that it reduced Menino's overtime at non-City
13 sponsored events because event organizers often did not pay their invoices in a timely
14 fashion after the events. When this happened, the City would be forced to carry the
15 overtime costs until the invoices were paid. In fact, Rooney rejected GreenFest's
16 application to hold their event at City Hall Plaza in 2019 because of their unpaid invoice
17 from the 2018 event.

18 I conclude that the City provided legitimate business reason for reducing Menino's
19 overtime. The Union has not established that "but for" Menino's protected activity, the

³⁴ In its brief, the Union requests that I take administrative notice of the Department's 2018 overtime expenses, which were not available at the time of hearing. I decline to do so as the hearing record was closed on February 27, 2019.

1 City would not have reduced her overtime. As explained above, the City provided
2 compelling financial reasons to justify its need to reduce overtime. It is abundantly
3 apparent that Rooney has been attempting to reduce Departmental overtime expenses,
4 as he was directed to do by the Mayor's office, and the fact that he has not yet been
5 successful does not change that fact.

6 Further, it is not plausible to me that the City would risk the quality of services it
7 provided at special events simply because Menino filed an unsuccessful grievance and
8 arbitration over a promotional bypass. I also cannot ignore the fact that Menino was
9 receiving an extremely high amount of overtime while her father-in-law was Mayor and
10 his close friend was her manager. It is not surprising that this would change as the
11 administration changed, and that a new Commissioner would not take such a "hands-off"
12 approach in the supervision of Menino by allowing her to earn tens of thousands in
13 overtime without prior approval, regardless of the quality of her work. Rooney also had
14 valid health and safety concerns about Menino working an excessive number of hours at
15 an event, such as when she requested to work 30 hours in a 37 hour period at the Boston
16 Pride Festival.

17 For all of the above reasons, I conclude that the City did not violate Section 10(a)(3)
18 of the Law as alleged.

19 *Section 10(a)(4) Allegations*

20 The Union also alleges that the City violated Section 10(a)(4) of the Law when it
21 denied Menino access to the loft, removed her pest control duties, and reduced her duties

1 in connection with Portraits of Purpose. The elements of a Section 10(a)(4) prima facie
2 case are the same as a Section 10(a)(3) case, as described above, except that to satisfy
3 the first prong of a Section 10(a)(4) case, the union must establish that the employee
4 signed or filed an affidavit, petition or complaint or gave information or testimony as part
5 of a DLR proceeding. Town of Carver, 35 MLC 29, 47, MUP-03-3894 (June 30, 2008)
6 (citing Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000));
7 Commonwealth of Massachusetts, 25 MLC 44, SUP-4128 (August 24, 1998).

8 Here, there is no dispute that Menino participated in DLR proceedings, and that
9 the City knew about her protected activity. I will now turn to the question of whether the
10 City's actions were adverse.

11 First, I conclude that eliminating Menino's badge access to the loft was not an
12 adverse action. As described above, an adverse action is a personnel action that must
13 disadvantage an employee in a material way. There is no evidence that limiting one
14 means of access to a storage area, especially when Menino still had other ways to access
15 the loft and had never even used her badge for access, disadvantaged her in a material
16 way.

17 Second, I also conclude that removing Menino's pest control duties, and reducing
18 her duties in connection with Portraits of Purpose, were not adverse actions. Neither
19 affected Menino in a material way. The pest control duties were not part of Menino's job
20 description, and there is no evidence that she performed the duties on an overtime basis
21 that resulted in additional compensation. Additionally, Callahan exercising supervision

1 over Menino by becoming involved in the organization of Portraits of Purpose, after the
2 Mayor's office expressed concerns about Menino's responsiveness, did not materially
3 disadvantage Menino. While Menino may not have been happy about either situation,
4 subjective feelings of disappointment and disillusionment will not suffice. City of Holyoke,
5 35 MLC 153, 156, MUP-05-4503 (January 9, 2009).

6 For the above reasons, I dismiss the allegation that the City violated Section
7 10(a)(4) of the Law.

8 *Section 10(a)(5) – Unilateral Change Allegations*

9 The Union argues that the City violated Section 10(a)(5) of the Law when it
10 unilaterally restricted Menino's access to the loft and required her to provide details of the
11 specific duties that staff would perform when submitting event overtime request forms. An
12 employer is obligated to provide the exclusive representative an opportunity to negotiate
13 before changing an existing condition of employment or implementing a new condition of
14 employment involving a mandatory subject of bargaining. Commonwealth of
15 Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989). The employer's
16 obligation to bargain extends to working conditions established through past practice as
17 well as those specified in a collective bargaining agreement. Town of Burlington, 35 MLC
18 18, MUP-04-4057 (June 30, 2008), aff'd sub nom. Town of Burlington v. Commonwealth
19 Employment Relations Board, 85 Mass. App. Ct. 1120 (2014). To establish a violation, a
20 union must demonstrate the following: 1) the employer altered an existing practice or
21 instituted a new one; 2) the change affected a mandatory subject of bargaining; and 3)

1 the change was established without prior notice and an opportunity to bargain. Town of
2 Shrewsbury, 28 MLC 44, MUP-1704 (June 29, 2001). To determine whether a practice
3 exists, the Board analyzes the combination of facts upon which the alleged practice is
4 predicated, including whether the practice has occurred with regularity over a sufficient
5 period of time so that it is reasonable to expect that the practice will continue.
6 Commonwealth of Massachusetts, 23 MLC 171, SUP-3586 (January 30, 1997).

7 Regarding Menino's access to the loft, as noted above, Menino is still able to gain
8 access through a key or by notifying security. The City also established that Menino had
9 never used her badge to access the loft. Therefore, I do not find that there was a change
10 in her job duties, as alleged in the complaint, and I dismiss this allegation.

11 With regard to the Event Overtime Request Forms, by email dated May 3, 2018,
12 Rooney instructed Menino to list the specific duties to be performed by staff for which she
13 was requesting overtime when submitting the form. Prior to this request, Menino was not
14 required to detail the duties that staff would perform at events.³⁵ The evidence show that
15 Menino now provides significant detail about the duties that overtime staff will perform
16 when requesting overtime for them. Thus, Menino's workload has increased because of
17 this change, and an increase in workload is a mandatory subject of bargaining. City
18 of Worcester, 25 MLC 169, MUP-1641 (April 22, 1999). Further, the City did not provide

³⁵ Although the City argues that Menino was first notified of the requirement to do this by email on March 30, 2017, and thus the allegation is untimely, Menino was never required to detail the specific duties that overtime staff would perform until May 2018.

1 notice or an opportunity to bargain before making this change. I therefore find the City
2 violated the Law as alleged.

3 *Section 10(a)(5) – Transfer of Bargaining Unit Work Allegations*

4 The Union alleges that the City unlawfully transferred bargaining unit work by: 1)
5 having Callahan and Barbuto coordinate the Portraits of Purpose event; 2) assigning
6 Barbuto to approve overtime staffing for special events; and 3) assigning Joyce and
7 Graves to coordinate security and custodial staffing for special events.

8 The Law requires a public employer to give the exclusive collective bargaining
9 representative of its employees prior notice and an opportunity to bargain before
10 transferring bargaining unit work to non-bargaining unit personnel. Commonwealth of
11 Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct. 831 (2004). To
12 determine whether an employer has unlawfully transferred bargaining unit work, the
13 Board considers the following factors: 1) whether the employer transferred bargaining unit
14 work to non-unit personnel; 2) whether the transfer of unit work to non-unit employees
15 has an adverse impact on individual employees or the unit itself; and 3) whether the
16 employer gave the bargaining representative prior notice and an opportunity to bargain
17 over the decision to transfer the work. Id. at 833. In situations where the work is shared
18 work that is traditionally performed by both bargaining unit and non-bargaining unit
19 personnel, the Board has held that the work in question will not be recognized as
20 exclusively bargaining unit work. City of Quincy/Quincy City Hospital, 15 MLC 1239,
21 MUP-6490 (November 9, 1988). In these shared work situations, there is no obligation

1 to bargain over every incidental variation in job assignments between unit and non-unit
2 personnel. Rather, bargaining must occur only in situations where there is a calculated
3 displacement of bargaining unit work. City of Boston, 10 MLC 1539, 1541, MUP-4967
4 (April 24, 1984).

5 Coordinating Event Staffing Needs

6 The evidence shows that prior to 2017 or 2018, Menino would determine how
7 many staff were needed for security and custodial services at special events, and she
8 would attend the planning meetings with organizers on her own. Beginning in or about
9 2018, Joyce and Graves also attended the planning meetings and are involved in
10 coordinating security and custodial staff for the events. However, both Joyce and Graves
11 are bargaining unit members. Therefore, there has been no transfer of unit work to a
12 non-unit position, and this allegation is dismissed.

13 Preparing and Preapproving Overtime Sheets

14 Menino's role with regard to overtime sheets has historically been to ensure that
15 the employees were there at the designated time, and to fill out the necessary overtime
16 paperwork. Beginning in April 2018, Barbuto began completing the overtime paperwork
17 for custodians at special events, even if Menino attended the event. Accordingly, there
18 was a transfer of unit work. The Board has long held that an adverse impact can be
19 shown, absent a reduction in bargaining unit positions, when the transfer "could result in
20 the eventual elimination of the bargaining unit through gradual erosion of bargaining unit
21 duties." Commonwealth v. Labor Relations Commission, 60 Mass. App. Ct. 831, 834

1 (2004). Here, the City has removed duties that were once assigned to a unit member,
2 and transferred them to a non-unit member on an ongoing basis, which could lead to a
3 gradual erosion of the bargaining unit. Further, the City did not provide the Union with
4 notice or an opportunity to bargain before assigning this task to Barbuto. Accordingly, I
5 find that the City violated Section 10(a)(5) of the Law as alleged.

6 Portraits of Purpose

7 Portraits of Purpose was a new event in 2018. Prior to 2018, Menino would
8 normally prepare for a new event and Callahan would not be involved. However, Callahan
9 became more involved in the preparation for this event due to concerns about Menino's
10 responsiveness from the Mayor's office. Menino herself admitted that she did not say
11 anything at a planning meeting because she felt that Callahan did not know what he was
12 doing. After witnessing such behavior from Menino, I conclude that Callahan was given
13 no choice but to continue to oversee the coordination of the event without Menino, and I
14 find Callahan's actions to be necessary supervision, and not a transfer of unit work.
15 Further, even if I did find this to be a transfer, there has been no adverse impact to Menino
16 or on the bargaining unit as it was a one-time situation that has not been repeated.³⁶

17 *Section 10(a)(1) Allegation*

18 The Union alleges that the City independently violated Section 10(a)(1) of the Law
19 when Callahan did not allow Menino to represent Gracia at their meeting in February

³⁶ Unlike the transfer of preparing overtime sheets, as described above, a one-time transfer that was necessary as part of proper supervision could not lead to a gradual erosion of the bargaining unit.

1 2018. When Gracia responded that Menino was his steward, Callahan responded, "No,
2 I don't want anyone in this office to be in the meeting," or words to that effect. Callahan
3 then ended the meeting, stating that they would have to reschedule. When the interview
4 was rescheduled, Callahan allowed Menino to be present as Gracia's Union
5 representative. A public employer independently violates Section 10(a)(1) of the Law if it
6 engages in conduct that would reasonably tend to interfere with, restrain, or coerce
7 employees in the free exercise of their rights under Section 2 of the Law. City of Peabody,
8 25 MLC 191, 193, MUP-9861 (May 21, 1999). In determining whether an employer has
9 violated the Law, the Board applies an objective test that focuses on the impact that the
10 employer's conduct would have on a reasonable employee rather than the subjective
11 impact of the employer's conduct on the employee involved. Id. Under this test,
12 expressions of employer anger, criticism and ridicule directed at employees' protected
13 activities have been found sufficient to constitute interference, restraint and coercion of
14 employees, although to constitute a violation of the Law it is not necessary that
15 an employer's conduct actually restrain or coerce an employee in the exercise of the
16 employee's rights. Id.

17 I conclude that the City did not violate the Law as alleged. Callahan initially
18 declined to allow Menino to attend the meeting with Gracia because she worked in the
19 Department, as he stated, and not for any reason related to her protected activity. He did
20 not express any anger, criticism, or ridicule toward Gracia's or Menino's protected
21 activities. He did not require Gracia to continue the meeting at that time, and when the

1 meeting was rescheduled, he allowed Menino to attend. I do not find that this conduct
2 would chill a reasonable employee in the exercise of their rights, and dismiss this
3 allegation.

4 Conclusion

5 Based on the record and for the reasons explained above, I find that the City
6 violated Section 10(a)(5) of the Law when it: 1) required that Menino provide details about
7 staff duties when requesting overtime; and 2) transferred the preparation and preapproval
8 of overtime sheets to a non-unit member. I dismiss the remaining allegations.

9 Order

10 WHEREFORE, based upon the foregoing, it is hereby ordered that the City shall:

11 1. Cease and desist from:

- 12
13 a) Unilaterally requiring that Menino provide details about staff duties at
14 special events when requesting overtime without first providing the
15 Union with notice and the opportunity to bargain to resolution or
16 impasse over the decision and the impacts of the decision;
17
18 b) Transferring the preparation and preapproval of staff overtime sheets
19 for special events to non-bargaining unit employees without first
20 bargaining to resolution or impasse with the Union over the decision
21 to transfer the work and the impacts of that decision on bargaining
22 unit members' terms and conditions of employment;
23
24 c) In any like manner, interfering with, restraining and coercing its
25 employees in any right guaranteed under the Law.
26

27 2. Take the following action that will effectuate the purposes of the Law:

- 28
29 a) Rescind the requirement that Menino provide details about staff
30 duties at special events when requesting overtime until the City
31 satisfies its obligation to bargain about the decision and the impacts
32 of that decision;

- 1
2 b) Upon request, bargain in good faith with the Union to resolution or
3 impasse about the decision and impacts of the decision to require
4 that Menino provide details about staff duties at special events when
5 requesting overtime;
6
7 c) Restore to the bargaining unit the preparation and preapproval of
8 staff overtime sheets for special events until the City satisfies its
9 obligation to bargain about the transfer of unit work and the impacts
10 of that decision;
11
12 d) Upon request, bargain in good faith with the Union to resolution or
13 impasse about the decision and impacts of the decision to transfer
14 the preparation and preapproval of staff overtime sheets for special
15 events to non-unit employees;
16
17 e) Post immediately in all conspicuous places where members of the
18 Union's bargaining unit usually congregate, or where notices are
19 usually posted, including electronically, if the City customarily
20 communicates with these unit members via intranet or email and
21 display for a period of thirty (30) days thereafter, signed copies of the
22 attached Notice to Employees;
23
24 f) Notify the DLR in writing of the steps taken to comply with this
25 decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


KERRY BONNER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF THE
MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations has held that the City of Boston (City) has violated Section 10(a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by: 1) Unilaterally requiring that Lisa Menino provide details about staff duties at special events when requesting overtime; and 2) transferring the preparation and preapproval of staff overtime sheets for special events to non-bargaining unit employees.

The City posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights: to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT unilaterally require that Lisa Menino provide details about staff duties at special events when requesting overtime without first providing the Union with notice and the opportunity to bargain to resolution or impasse over the decision and the impacts of the decision;

WE WILL NOT transfer the preparation and preapproval of staff overtime sheets for special events to non-bargaining unit employees without first providing the Union with notice and the opportunity to bargain to resolution or impasse over the decision and the impacts of the decision;

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

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Rescind the requirement that Menino provide details about staff duties at special events when requesting overtime;
- Restore to the bargaining unit the preparation and preapproval of staff overtime sheets for special events; and
- Upon request, bargain with the Union about the decisions to require Menino to provide details about staff duties at special events when requesting overtime and to transfer unit work to non-unit members and the impacts of those decisions on unit members' terms and conditions of employment.

CITY OF BOSTON

DATE

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 Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).