

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
	*	
CITY OF MARLBOROUGH	*	Case Nos. MUP-18-6822
	*	MUP-19-7061
and	*	
	*	Date Issued: November 3, 2020
MARLBOROUGH MUNICIPAL	*	
EMPLOYEES ASSOCIATION	*	
	*	

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Kier Wachterhauser, Esq.	-	Representing the City of Marlborough
Sheilah McCarthy, Esq.	-	Representing the Marlborough Municipal Employees Association

HEARING OFFICER'S DECISION

1 SUMMARY

2 The issues in this case are whether the City of Marlborough (City or Employer)

3 unilaterally terminated a past practice of permitting members of the Marlborough

4 Municipal Employees Association (MMEA or Union) bargaining unit to wear jeans on

5 Fridays, and unilaterally implemented a dress code in July 2018 in violation of Section

6 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter

7 150E (the Law), as well as whether the City interfered, restrained or coerced the Union

8 president in violation of Section 10(a)(1) of the Law. For the reasons explained below, I

9 find that the City violated the Law regarding the past practice of permitting unit members

1 to wear jeans on Fridays, and by its statements to the Union president. However, I
2 dismiss the allegation that the City implemented a new dress code in July 2018.

3 Statement of the Case

4 On August 4, 2018, the Union filed a charge of prohibited practice with the
5 Department of Labor Relations (DLR) in Case No. MUP-18-6822, alleging that the City
6 violated Sections 10(a)(5) and (1) of the Law. A DLR investigator investigated the charge
7 on November 7, 2018. On April 25, 2019, the investigator issued a two-count complaint
8 alleging that: a) the City independently violated Section 10(a)(1) of the Law by certain
9 April 20, 2018 comments that were made to Union president Christine Monfalcone
10 (Monfalcone); and b) the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1)
11 of the Law by unilaterally terminating a past practice of permitting unit members to wear
12 jeans on Fridays. The City filed its answer to the complaint in Case No. MUP-18-6822
13 on May 13, 2019.

14 On January 2, 2019, the Union filed a charge in Case No. MUP-19-7061 alleging
15 that that the City had violated Sections 10(a)(5) and (1) of the Law. A second DLR
16 investigator investigated Case No. MUP-19-7061 on July 18, 2019. On July 30, 2019,
17 the investigator issued a complaint of prohibited practice alleging that the City violated
18 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a dress
19 code without bargaining to resolution or impasse. The City filed its answer to the complaint
20 in Case No. MUP-19-7061 on August 9, 2019. On August 15, 2019, the DLR consolidated
21 Case Nos. MUP-18-6822 and MUP-19-7061 for hearing. I conducted a hearing on
22 November 20, November 21 and December 11, 2019. On November 20, 2019, I allowed
23 the Union's motion to sequester all witnesses prior to giving testimony, except Monfalcone
24 and David Brumby (Brumby), the City's Director of Human Resources. Both parties had

1 an opportunity to be heard, to call witnesses and to introduce evidence. The parties
2 submitted their post-hearing briefs on August 4, 2020. Upon review of the entire record,
3 including my observation of the demeanor of the witnesses, I make the following findings
4 of fact and render the following opinion.

5 Findings of Fact¹

6 The Union is the exclusive bargaining representative for certain full-time and
7 regular part-time clerical, custodial and technical employees of the City, including
8 employees who work at City Hall, the Library, and the Department of Public Works (DPW)
9 as well as various other municipal offices.² The City and the Union were parties to a
10 collective bargaining agreement that, by its terms, was in effect from July 1, 2015 through
11 June 30, 2018 (2015-2018 CBA). Article 21, Section 3 of the 2015-2018 CBA listed
12 twenty-eight past practices that the City would continue to adhere to including #14, casual
13 day every Friday (casual Fridays). The language regarding casual Fridays has been
14 present in collective bargaining agreements between the City and the bargaining unit's
15 exclusive representative since at least 1997.³

16 Background

17 2000

¹ The DLR's jurisdiction in this matter is uncontested.

² The City employs members of seven different bargaining units, including the MMEA's unit.

³ The casual Friday provisions existed in the 1997-2000 collective bargaining agreement between the City and SEIU, the unit's prior collective bargaining representative. The casual Friday provision continued to be present in collective bargaining agreements between the City and the MMEA, after the MMEA became the unit's representative in 2000.

1 On February 10, 2000, newly elected Mayor William Mauro, Jr. (Mayor Mauro) sent
2 a memo (February 10, 2000 Department Head memo) to the City's Department Heads
3 that stated in pertinent part:

4 As you will recall from our last Department Head meeting, I discussed the
5 issue of appearance and attire. Since that time a policy has been written
6 and approved by me.

7
8 Enclosed you will find a copy of this Appearance Policy (February 2000
9 Appearance Policy). All office personnel and non-uniformed Department
10 Heads shall comply with this Policy.

11
12 Each Manager or Department Head will enforce the dress code and bring
13 questions of interpretation to the Personnel Director.

14
15 Please ensure that all of your employees receive a copy of this new policy.

16 The February 2000 Appearance Policy, which Mayor Mauro enclosed, stated:⁴

17 In order to present a confident and professional image to our customers and
18 visitors, during business hours, certain standards and restrictions are
19 established for proper employee appearance and attire.

20
21 The general appearance and dress code for office employees is considered
22 to be neat and attractive grooming, and business casual attire. Clothes
23 should be clean, pressed, comfortable, and tasteful for a business
24 atmosphere, i[.]e. [s]ports shirts and slacks, blouses, sweaters, jumpers,
25 dresses and skirts. Each person should consider what is most appropriate
26 for meetings with customers, outside associates and visitors, and dress
27 more formally when necessary or requested to do so. More formal clothing
28 includes suits, sport coats, dress shirts, ties, dresses, skirts, etc.

29
30 Tee [s]hirts, shorts, blue jeans/dungarees, sweatshirts, sweatpants and
31 sneakers are not acceptable dress.

32
33 Extreme, bizarre, or alternative fashions are not acceptable in the
34 workplace.

⁴ Former Personnel Director Eileen "Sue" Ellis (Ellis) drafted the policy for Mayor Mauro based on her experience working in non-unionized private sector businesses. She acknowledged at hearing that she had not notified the MMEA before drafting the policy.

1 Each Manager or Department Head will enforce the dress code and bring
2 questions of interpretation to the Personnel Director. Employees with
3 questionable appearance will be sent home and asked to wear attire that
4 meets the above standards. Before any employee is sent home, the
5 Personnel Director will be consulted. Refusal to comply with this policy may
6 also result in disciplinary action.

7 2003

8 On April 4, 2003, the City and the Union began negotiations for a successor
9 contract to the parties' then collective bargaining agreement that, by its terms, was in
10 effect from July 1, 2000 through June 30, 2003 (2000-2003 CBA).⁵ On April 24, 2003,
11 the parties met to discuss ground rules. On May 20, 2003, the Union and the City
12 exchanged their initial sets of bargaining proposals. The Union's set of proposals
13 included a proposal to modify Article 21 of the 2000-2003 CBA⁶ to include a section
14 stating that blue jeans, as long as they are neat, clean and are not showing signs of wear,
15 shall be acceptable office dress on Fridays.⁷ The parties subsequently held negotiation
16 sessions on July 16, 2003 and August 7, 2003, but thereafter held no more successor
17 negotiation sessions in 2003.

18 2004-2005

⁵ In late 2002, the City and the MMEA agreed to the 2000-2003 CBA after lengthy negotiations and participation in mediation.

⁶ Article 21, Section 3 of the 2000-2003 CBA listed 28 past practices to which the City would adhere, including #14 Casual Day every Friday.

⁷ Current MMEA president Monfalcone, who was not part of the MMEA leadership team in 2004, indicated that her understanding as a unit member was that the Union made the proposal to clear up the ambiguity that certain department heads believed the casual Friday provision permitted unit members to wear blue jeans while others did not.

Ultimately, the Union's proposal was not included in the successor collective bargaining agreement.

1 In early January 2004, the City's newly elected mayor Dennis Hunt (Mayor Hunt)
2 was sworn into office. On January 12, 2004, Mayor Hunt sent the City's Department
3 Heads⁸ a memorandum (January 12, 2004 memo) that stated in pertinent part:

4 Now that I have become acclimated, there are a few things that I would like
5 to convey to all department heads, regarding my administration as well as
6 some general information that you may find useful. ...

7
8 Customer Service Attitude: As I mentioned in my Inauguration speech,
9 which is posted on the city web site, courteous and professional service is
10 a high priority of mine. All city employees in all departments are expected
11 to treat city residents, and all others with whom we interact, with respect
12 and dignity. Regardless of the issue, there is no reason to be disrespectful
13 or discourteous to anyone. Each department head is responsible for
14 ensuring a professional customer service attitude. This includes the proper
15 telephone skills. I also expect each department to be responsive to
16 constituents and those who do business with the city in a timely manner.
17 Prompt follow-up is important.

18
19 Applicable Dress Code: All department heads should ensure that the
20 applicable dress code policy is being followed for their department.

21
22 I will be scheduling a group meeting for all department heads in the near
23 future.

24
25 Meanwhile, please contact my office if you have anything requiring
26 immediate attention.

27
28 Thank you.

29 At a March 23, 2004 bargaining session, the City was represented by new labor
30 counsel. Shortly thereafter, then Union president Maureen Brennan (Brennan)
31 complained to Ellis, who was at the bargaining table on behalf of the City, that the meeting
32 was a waste of time and money. On Friday, March 26, 2004, Brennan wore blue jeans
33 to work and commented upon her attire to Mary Ward (Ward), Ellis' assistant. Ward
34 reported Brennan's attire to Ellis. Ellis then notified Brennan's boss Al Lima (Lima),

⁸ The City's Department Heads are not included in the MMEA bargaining unit.

1 Director of Community Development, that Brennan was dressed inappropriately, and
2 instructed him to speak with her. Ellis also approached Monfalcone who was wearing
3 jeans that day and asked her whether she was cleaning. Ellis informed Monfalcone that
4 she could not wear jeans to work unless she was cleaning.⁹ Despite Ellis' statement,
5 Monfalcone continued to wear jeans to work on Fridays.¹⁰

6 On May 6, 2004, Robert Martel, Mayor Hunt's executive aide, emailed a memo
7 (May 6, 2004 memo) from Mayor Hunt to all department heads with a notation to "please
8 forward to everyone in your department." The May 6, 2004 memo stated in pertinent part:

9 The Mayor's Office has received several complaints from the public about
10 the manner in which they have been treated while conducting business
11 with the city.

12
13 I want to remind all department heads about my commitment to providing a
14 high level of customer service to those who do business with City Hall, and
15 with all other organizations within the City of Marlborough.

16
17 Please ensure that your entire department is aware of the need to be
18 professional in all aspects of the service they deliver to the public.

19
20 Specifically, I want all city employees to be reminded of three important
21 points:

22
23 I expect all employees to follow the prescribed dress code for their
24 department.

25
26 I expect all employees to "be part of the solution" when the public (or another
27 city employee) brings a problem to their attention. If the solution lies with

⁹ Although Monfalcone contended that she thought Ellis was joking when she told her that jeans were not allowed, I decline to make that finding as it is only based on Monfalcone's subjective belief.

¹⁰ Although Ellis testified that the City did not permit employees to wear jeans to work unless they were cleaning or they had duties that required field work, such as building inspectors, she also indicated that she did not recall Monfalcone regularly wearing jeans to work. Thus, I credit Monfalcone's testimony that she continued to wear jeans to work on Fridays despite Ellis' comment to her.

1 another department, I expect the person with the initial contact to properly
2 handle the transfer of the situation to the other department.

3
4 I expect the telephone to be answered properly, meaning that those who
5 answer the phone be courteous, and announce the department AND their
6 first name when answering the call.

7
8 As public employees we have an obligation to provide courteous,
9 professional service. We also deserve to be treated with dignity and respect
10 when doing business with each other.

11
12 Customer service training will be arranged in the coming months for those
13 who have primary contact with the public.

14 On or about September 14, 2004, the parties engaged in mediation for a successor
15 collective bargaining agreement under the auspices of a mediator from the Board of
16 Conciliation and Arbitration. On September 27, 2004, the Union filed a prohibited practice
17 charge in Case No. MUP-04-4239, alleging that the City had engaged in multiple
18 independent violations of Section 10(a)(1) of the Law pertaining to Brennan, which
19 included counselling Brennan about wearing blue jeans to work on March 26, 2004. On
20 November 24, 2004, the Union filed a written submission in support of Case No. MUP-
21 04-4239 in which it asserted, in part, that there was not an enforced dress code in the
22 City or City Hall against wearing jeans on Friday. On January 21, 2005, the City filed its
23 opposition statement (January 21, 2005 opposition statement) in which it contended, in
24 part, that the City had a longstanding personal appearance policy that prohibited, among
25 other items, jeans/dungarees. The City attached as exhibits copies of the February 10,
26 2000 Department Head Memo and the February 2000 Appearance Policy.¹¹ Thereafter,
27 when the Union and the City agreed upon a successor collective bargaining agreement,

¹¹ The Union introduced the City's January 21, 2005 opposition statement, the February 10, 2000 Department Head Memo and the February 2000 Appearance Policy as its Exhibit #8 at the hearing.

1 each party withdrew various prohibited practice charges that it had filed, including Case
2 No. MUP-04-4239.

3 2011

4 On Monday, January 31, 2011, then Mayor Nancy Stevens (Mayor Stevens) sent
5 an email to all City Hall employees regarding casual attire for Tuesday, February 1, 2011.
6 Mayor Stevens noted in pertinent part:

7 **Given the weather forecast for more snow tomorrow, I am authorizing**
8 **casual dress, including jeans tomorrow. Please remember while I am**
9 **authorizing jeans and casual apparel, please dress neatly and**
10 **appropriately. [Emphasis in original.]**

11 Also, on Thursday, March 31, 2011, Mayor Stevens sent an email to all City Hall
12 employees stating in relevant part:

13 **Given the weather forecast for more snow tomorrow, I am authorizing**
14 **casual dress, including jeans tomorrow. Please remember while I am**
15 **authorizing jeans and casual apparel, please dress neatly and**
16 **appropriately. [Emphasis in original].**

17 2012

18 On July 13, 2012, then Mayor Arthur Vigeant (Mayor Vigeant) sent a memo (July
19 13, 2012 memo) to all Department Heads that stated in pertinent part:

20 As we are in the midst of summer weather and vacations, I wanted to offer
21 a reminder to all Department Heads on two items:

22
23 **Dress Code** [Emphasis in original]

24
25 Although the warmer temperatures necessitate the need for lighter clothing,
26 we must maintain a professional appearance at all times. Jeans, t-shirts,
27 sneakers, flip flops, bizarre clothing, or any other combination that one
28 might be more apt to wear on weekends is not considered appropriate work
29 attire. My expectation is that everyone will maintain “business casual” attire
30 at minimum and be aptly dressed at all times to interact with residents,
31 businesses, elected officials, or colleagues.

32
33 There may be times when duties may require more informal clothing for site
34 visits, moving, cleaning, etc. As a Department Head, I am depending on
35 you to exercise your best judgment when these circumstances arise and

1 ensure that my office is made aware as needed. It is also your responsibility
2 to ensure that your employees follow these same standards.

3 On August 1, 2012, Patricia Bernard (Bernard), Mayor Vigeant's executive
4 administrative assistant¹², sent an email to all City Hall employees regarding a call for
5 non-perishables for the Marlborough Food Bank, stating in pertinent part:

6 Please consider donating a minimum of three canned goods or non-
7 perishable items for the food bank. In turn, you may participate in City Hall's
8 "**Casual Friday**" [emphasis in original] this week. (*Casual does not include*
9 *t-shirts, shorts or flip flops*).

10
11 The Metro West Daily News published an article on the urgent need for
12 donations at local food pantries

13
14 Please drop off items by Friday, 8/3 at the Mayor's office.

15 On November 14, 2012, Bernard sent an email message to all City Hall employees
16 regarding canned food drive-casual Friday stating in relevant part:

17 We will be collecting goods for the Marlborough Community Cupboard. ...

18
19 Please consider donating a few items and participating in casual Friday this
20 week. Items may be left on the 3rd floor landing.

21 Also, on December 11, 2012, Bernard sent an email to all City Hall employees regarding
22 Casual Friday-Donations for Hurricane Sandy. Bernard commented in pertinent part:

23 Please consider donating a few items to the Hurricane Sandy Relief Effort
24 in return for casual dress on Friday, 12/14.

25 2013

26 On November 5, 2013, Bernard sent an email to all City Hall Employees regarding
27 Canned Goods/Casual Friday. Bernard wrote in pertinent part:

28 Please consider bringing in a few canned goods for the Marlborough
29 Community Cupboard this week in exchange for the option to dress

¹² Bernard's position was not included in the MMEA bargaining unit.

1 casually on Friday, 11/8. Please leave canned goods on the 3rd floor
2 landing. ...

3

4 2014

5 On January 14, 2014, Bernard sent an email to all City Hall employees regarding

6 Casual Friday for canned goods noting in pertinent part:

7 Please consider donating a few canned good items for the Marlborough
8 Community Cupboard and you may dress casual on **Friday, January**
9 **17th**....

10 Also, on September 2, 2014, Bernard sent an email to all City Hall employees regarding

11 a food drive/casual Friday this week stating in relevant part:

12 Please consider donating a minimum of three canned goods or non-
13 perishable items for the food pantry. In turn, you may participate in City
14 Hall's "**Casual Friday**" on **September 5th**. (*Casual does not include t-*
15 *shirts, shorts or flip flops*). (Italics in original).

16 Additionally, on November 7, 2014, Bernard sent an email to all City Hall employees

17 regarding casual Friday-canned goods noting in relevant part:

18 Please consider bringing in a couple of canned goods for the Marlborough
19 Community Cupboard since the Thanksgiving holiday is fast approaching.
20 For those who wish to participate, please leave your canned goods on the
21 3rd floor landing and you may dress in **casual attire on Friday, 11/14**.
22 [Emphasis in original].

23 On May 19, 2015, Bernard sent an email to all City Hall employees regarding an

24 upcoming casual Friday stating in pertinent part:

25 We are collecting canned goods for the food pantry this week and will have
26 this Friday, May 22, a casual dress day. ...

27 Also, on September 2, 2015, Bernard sent an email to all City Hall employees as a

28 reminder of casual day that Friday as a fundraiser for St. Jude's Research Hospital noting

29 in relevant part:

30 We will be offering a casual day and taking up a collection for St. Jude's
31 Research Hospital (*suggested donation-\$5.00*) for September 4 (*Friday*)

1 *before Labor Day*). If you would like to participate, please stop up with a
2 donation before September 4. ...

3
4 Additionally, on December 23, 2015, Bernard sent an email to all City Hall employees
5 noting in pertinent part:

6 If you are planning on working a half day tomorrow, feel free to dress
7 casual. ...

8 2016

9 On February 18, 2016, Bernard sent an email to all City Hall employees as a
10 reminder of a canned goods/ casual day on Friday 2/19 noting in relevant part:

11 We are collecting canned good for the food pantry this week and will hold
12 casual day this Friday, February 19. ...

13 Also, on May 25, 2016, Bernard sent an email about a food/drive casual dress day on
14 the upcoming Friday commenting in pertinent part:

15 We are collecting canned goods for the food pantry this week and early
16 next week to coincide with casual dress day this Friday, May 27th.

17 Additionally, on November 18, 2016, Bernard sent an email regarding an upcoming
18 canned good drive/casual day in which she noted in relevant part:

19 The Evangelical Brazilian Church of Marlborough, who hosts Our Father's
20 Table, was flooded during the October 21st rainstorm and temporarily lost
21 the use of their kitchen.

22
23 After extensive cleaning and refurbishing, they are now just starting to
24 operate again. Please consider helping restock their shelves by donating
25 any type of canned goods. ...

26
27 Casual Day will be on Monday, 11/28 for those of you who would like to help
28 out.

1 Also, on December 28, 2016, Nicholas Milano (Milano)¹³, Mayor Vigeant's executive aide,
2 sent an email to all City Hall employees about a casual day on Friday, December 29
3 stating in pertinent part:

4 For those of us who will be here tomorrow, I've convinced the Mayor to let
5 us have a casual day¹⁴ tomorrow.

6
7 On his and Trish's [Bernard] behalf, Happy New Year!

8 2017

9 On June 30, 2017, Bernard sent an email to all City Hall employees regarding
10 casual day on Monday in which she noted in pertinent part:

11 City Hall will have casual dress day on Monday, July 3rd for those who are
12 working. *No canned goods required.* ...

13 Also, on August 2, 2017, Bernard sent an email to all City Hall employees about a food
14 drive/casual day on Friday, 8/4 in which she commented in relevant part:

15 Please consider bringing in a few canned good items for a casual dress
16 day on Friday. ...

17 Additionally, on August 28, 2017, Bernard sent an email to all City Hall employees
18 regarding an upcoming casual day that stated in pertinent part:

19 We will have a casual day on Friday, 9/1 for those who will be working.

20 2018

21 On February 1, 2018, Bernard sent an email to all City Hall employees about an
22 upcoming Casual Friday noting in relevant part:

23 All are welcome to take part in casual day on Friday, February 2.

¹³ Milano worked for the City from 2015 to 2019.

¹⁴ Milano stated that the purpose of casual day was to allow employees to dress more casually and to wear jeans if they chose.

1 The best dressed Patriot's fan¹⁵ will have a chance to win a gift card
2 On the morning of February 12, 2018, Milano sent an email to Nicholas

3 Charbonneau (Charbonneau), the City's Veterans Agent,¹⁶, regarding a Finance
4 Committee meeting that evening. Milano noted in pertinent part:

5 You will be attending tonight right?
6

7 You will likely be expected to speak before the committee so [wear]proper
8 attire, including a tie, please.

9 On March 30, 2018, Milano sent an email to Mark Gibbs, the head of the IT Department,
10 regarding one of his employees, a non-bargaining unit member. Milano stated in relevant
11 part:

12 Mayor Vigneault complained to me about Mike Sayce's (Sayce) attire earlier
13 this week. Please speak to him about proper attire for working in City Hall.¹⁷

14 On or about April 3, 2018, Mayor Vigeant conducted a meeting of the City's
15 Department Heads. Although the primary focus of the meeting was the City's budget for
16 the next fiscal year, the Mayor also had Director of Human Resources David Brumby
17 (Brumby)¹⁸ speak about the City's standards for employee attire. ¹⁹ Brumby read aloud

¹⁵ The New England Patriots were scheduled to play in the Super Bowl the following Sunday.

¹⁶ Charbonneau was a department head and was unrepresented for the purposes of collective bargaining.

¹⁷ Apparently, Sayce often wore his shirts untucked and sometimes wore t-shirts. The City employed certain members of the IT staff, while the School Department employed other members of the IT staff, including Sayce.

¹⁸ Brumby became the City's Human Resources Director in 2009.

¹⁹ Brumby did not reference the casual Fridays provision in the Union's contract during his April 3, 2018 presentation to the department heads although he had become aware of the provision three or four years previously.

1 the portion of Mayor Vigeant's July 13, 2012 memo under the heading Dress Code.²⁰
2 Brumby informed the Department Heads that he was available to assist a department
3 head in speaking with an? employee whose attire did not conform with the City's dress
4 standards.²¹ He also stressed that these discussions about attire were not considered
5 disciplinary in nature. He further noted that employees only would be sent home to
6 change clothing in "egregious" situations.

7 On April 11, 2018, Milano sent a follow up email to the Department Heads and to
8 Bernard that stated in pertinent part:

9 As follow up from last week's Department Head meeting, please see below
10 the email Mayor Vigeant sent out in 2012 [July 13, 2012 memo] regarding
11 work attire.²²
12

13 Also, in preparation for this year's budget submittal, please note: ...
14

15 We will send out the budget as soon as it is finalized, but you can certainly
16 start working on each of these pieces. If you have any questions, need
17 samples/templates, or need more information, please let me know.²³

18 On April 19, 2018, representatives from the City and the Union met for the fourth
19 session to negotiate a successor contract to the 2015-2018 CBA. The City's bargaining
20 team consisted of Milano, Brumby and the City's labor counsel Kier Wachterhauser, while

²⁰ At hearing, Brumby described the City as having "dress expectations" rather than a dress code.

²¹ Brumby characterized his role as Human Resources Director as assisting supervisors or managers to manage their employees rather than as him speaking directly with every employee who wore inappropriate attire.

²² The July 13, 2012 memo that Milano attached to his email was the same memo that Brumby read aloud the week before at the Department

²³ The City held one or two department head meetings per year.

1 the Union's bargaining team consisted of its officers, Monfalcone the president,²⁴ Rob
2 Sargood, the vice-president, Maria Rios (Rios), the treasurer, and Jennie Simopoulos
3 (Simpoulos), the secretary, as well its legal counsel Sheilah McCarthy. Both Milano and
4 Monfalcone described the bargaining session as heated, while Brumby referred to it as a
5 little tense. Milano, speaking on behalf of the City, proposed a reorganization of certain
6 municipal departments, a reorganization which the Union did not expect. In part, the City
7 wanted to: a) outsource payroll functions to a private vendor and use a different financial
8 application for payroll, b) eliminate the unit position of senior clerk in payroll, c) hire a non-
9 Union principal assessor,²⁵ and d) eliminate one of two bargaining unit positions in the
10 assessing department. Milano claimed that outsourcing the payroll functions would be
11 more efficient and eliminate double data entry. Monfalcone, who was a finance assistant
12 in the Treasurer's Department of which payroll was a part, vigorously challenged him on
13 that assertion. Monfalcone also expressed concerns that a unit member, the senior clerk
14 in payroll, would lose his position with no guarantee of receiving another position. The
15 City merely indicated that the potentially affected senior clerk in payroll could apply for
16 other vacancies in the City, and noted that the finance assistant position in payroll would
17 become vacant as the incumbent previously had announced her intent to retire at the end
18 of the fiscal year.²⁶ Monfalcone called the reorganization plan ludicrous. The parties

²⁴ Monfalcone had been Union president for nine years, which was preceded by her six or seven years as vice-president.

²⁵ The City previously used part-time assessors that were supplied by a private vendor.

²⁶ The City also proposed upgrading a principal clerk in the fire department to a public safety assistant and to upgrade a head clerk position to a principal clerk position in the auditor's office, both of which subsequently happened.

1 scheduled another bargaining session for early May 2020 to have the
2 Comptroller/Treasurer Brian Doheny (Doheny)²⁷ attend and explain why the proposed
3 reorganization would be more efficient.²⁸

4 On Friday, April 20, 2018, Monfalcone arrived at work wearing jeans, which she
5 wore most Fridays from mid-October to early May.²⁹ Monfalcone had worn jeans on
6 Fridays throughout her thirty-three years of employment with the City, including the first
7 five years in the Tax Collector's office³⁰ and twenty eight years in the Treasurer's office.³¹
8 As Monfalcone entered City Hall, she saw Milano behind her and greeted him. Thereafter,
9 Milano informed Brumby that he saw Monfalcone going to work in blue jeans and that he
10 wanted to do something about it. Brumby informed Milano that it was Doheny's
11 responsibility, as Brumby's supervisor, to speak to her about her attire. Milano informed
12 Brumby that Doheny was out of the office that day, and that it was unclear whether
13 Doheny would be at work on Monday. Milano and Brumby went back and forth about
14 who should speak with Monfalcone about her wearing jeans. Brumby anticipated that

²⁷ As Comptroller/Treasurer, Doheny oversaw the assessor's, the collector's, the payroll and the treasurer's departments.

²⁸ The City subsequently did not outsource the payroll functions or hire a full-time principal assessor. The City did select the senior clerk in payroll to fill the vacant financial assistant position in payroll.

²⁹ Monfalcone typically did not wear jeans on Fridays from May through September because she found them uncomfortable in the warmer weather.

³⁰ Monfalcone worked for one department head Verona Cloutier in the Tax Collector's office.

³¹ Monfalcone has worked for three department heads in the Treasurer's Department: Thomas Wellen for five or six years, Thomas Abel for eighteen years, and Doheny for the last five or six years.

1 Monfalcone would be displeased by the conversation. Brumby volunteered because he
2 felt that he had a stronger personal and professional relationship with her than Milano did.
3 Brumby indicated at the hearing that he decided not to wait and have Doheny speak with
4 Monfalcone about her jeans because he wanted to clear up the matter and avoid any
5 confusion that could arise with the passage of time.³² Brumby previously had not spoken
6 directly to an employee about wearing inappropriate attire.

7 Monfalcone had been at work for about an hour when Brumby came to her office
8 to speak with her. He told her that she was not dressed appropriately for work because
9 she was wearing jeans.³³ Monfalcone informed him that she wore jeans every Friday
10 because it was casual Friday, and that other unit members were wearing jeans that day.
11 She also pointed out her that her jeans were neat, clean and pressed, and Brumby
12 agreed. Brumby noted that Mayor Vigeant's July 13, 2012 memo, which was sent out to
13 department heads on April 11, 2020, prohibited, in part jeans, sneakers, and flip fops.
14 Monfalcone responded that she had never seen Mayor Vigeant's July 13, 2012 memo,
15 and that the City did not have a dress code. Monfalcone asked if Milano had complained
16 about her wearing of jeans, and Brumby smiled at her. Monfalcone also remarked that
17 one of the senior clerks in Brumby's own office, who was not a unit member, frequently

³² Brumby also noted at hearing that although Monfalcone was the MMEA president, he wanted to treat her in the same manner that the City would treat other unit members if they wore jeans on days other than special occasions.

³³ Although Brumby stated at hearing that the City did not allow employees to wear jeans at work unless permission was given on special occasions, he acknowledged that he was aware prior to April 20, 2012 that employees had worn jeans to work at other times. He noted that those employees were spoken to if their supervisors or the mayor's office noticed them wearing jeans.

1 wore flip flops at work. Brumby remarked that the senior clerk in his office would no longer
2 be doing so.³⁴ Finally, Monfalcone said that she could not leave work to go home and
3 change because no one else was working in the Treasurer's office that day.³⁵ The
4 conversation between Brumby and Monfalcone lasted approximately ten to fifteen
5 minutes.

6 Brumby subsequently informed Doheny that he spoken with Monfalcone about her
7 jeans, and that she might come to Doheny with questions. When Monfalcone approached
8 Doheny about her conversation with Brumby, she was upset. Doheny informed her that
9 that he did not have a problem with her attire, although Monfalcone previously had worn
10 jeans in his presence.³⁶

11 On April 30, 2018, the Union submitted a class action grievance at Step 1 of the
12 contractual grievance procedure, which described the nature of the grievance as:

13 By the following and related conduct the employer violated the Recognition
14 Clause (Article 1), the Casual Friday clause (Article 21, Section 3, subsection
15 14), and related provisions of the collective bargaining agreement, when on
16 Friday, April 20, 2018, the Human Resources Director David Brumby visited
17 MMEA president Christine Monfalcone who was clothed that Friday as she

³⁴ At hearing, Brumby confirmed that since April 20, 2020, he had spoken twice to the senior clerk in his office about wearing flip flops.

³⁵ Brumby had not directed Monfalcone to go home and change her clothing.

³⁶ Doheny testified at hearing that he did not have a problem with Monfalcone's work attire because he had never noticed her or other employees in the departments that he oversaw wearing jeans, with several exceptions including Jennifer DiBuono (DiBuono) in jean overalls, which is discussed below, and two employees in the assessor's office, who are discussed below. He opined that the employees in his departments, including Monfalcone, were usually sitting down when he saw them. Conversely, Monfalcone testified that she and Doheny previously had discussed how much she loved wearing jeans and that she would pay money to wear jeans to work. Because Doheny testified that he regularly visited the departments over which he had oversight four times per day, including Monfalcone's department, and Monfalcone testified that she did always not remain seated, it is highly plausible that he saw Monfalcone wearing jeans. Thus, I credit her testimony on this point.

1 had many prior Fridays in jeans (neat and clean) and asserted the existence
2 of a ban on wearing jeans to work on Fridays. There was nothing inappropriate
3 or unprofessional about Ms. Monfalcone's attire on April 20, 2018. The April
4 20, 2018 visit from Mr. Brumby came following a contentious bargaining
5 session (on April 19, 2018) in which President Monfalcone was vocal in her
6 objections to management's proposed reorganization of the City Treasurer
7 Office.

8 On May 14, 2018, Doheny issued the following response at Step 1 of the contractual-
9 grievance procedure:

10 I have received the Step I grievance you submitted on April 30, 2018 on
11 behalf of the MMEA. I respectfully disagree with the contentions in the
12 grievance and therefore am denying it. With the exception of certain
13 instances approved in advance by the City (for example, when employees
14 who participate in Marlborough Community Cupboard food drive are
15 allowed to wear jeans on specified day), it is and has been the City's position
16 that professional attire, which does not include jeans, is required each day,
17 including on Fridays.

18 I welcome the opportunity to discuss this matter further with you.³⁷

19 The Union subsequently submitted the grievance at Step II of the contractual grievance
20 procedure. On June 27, 2018, Mayor Vigeant denied the grievance, and the Union took
21 no further action on the grievance.

22 At hearing, unit members and department heads consistently described the attire
23 that unit members wore at City Hall as business casual and/or professional with the unit
24 members also citing to their casual days on Fridays.

25 Other Unit Members Who Have Been Spoken to about their Attire

26 DiBuono

³⁷ Prior to April 20, 2018, Doheny had not instructed Monfalcone that she could not wear jeans at work.

1 DiBuono has worked for the City in the bargaining unit position of senior clerk in
2 the Tax Collector's Office since 2013. The Tax Collector's Office collects payments from
3 approximately eighty members of the public per day. Eileen Bristol (Bristol), the current
4 City Collector, has been DiBuono's supervisor for three and one-half years. In 2016,
5 DiBuono wore jean overalls³⁸ to work on a Friday because she was cleaning out the office
6 safe. Doheny, as Bristol's supervisor, asked Bristol why DiBuono was wearing jean
7 overalls. Bristol replied that DiBuono was cleaning out the safe. Doheny instructed Bristol
8 to notify DiBuono that she was not dressed appropriately for work, which Bristol did.
9 DiBuono, who had previously worn jeans to work, informed Bristol that the Union contract
10 with its casual Fridays provision permitted unit members to wear jeans on Fridays. Bristol
11 informed Doheny of her conversation with DiBuono.³⁹ DiBuono subsequently has not
12 worn the overalls to work.

³⁸ Various witnesses referred to the piece of clothing that DiBuono wore as coveralls, farmer jeans and overalls. For the purposes of this decision, I used the term overalls.

³⁹ Doheny testified that after Bristol alerted him to DiBuono's comments about the casual day Friday provision in the MMEA contract, he had spoken with Monfalcone about the contractual provision that same day. However, Monfalcone testified that she was unaware of the instance where Bristol spoke to DiBuono about wearing overalls until November or December 2018, and that Doheny had not spoken contemporaneously with her about the matter or the contractual provision. I credit Monfalcone's testimony on this point because as MMEA president, it is more likely that she would recall her direct supervisor asking for her an interpretation of the MMEA contract.

Additionally, it is unnecessary for me to make a finding about Doheny's claim that he also had spoken with Brumby about the casual day Fridays provision, because Brumby acknowledged that he been aware of the provision for at least three or four years before he spoke with Monfalcone on April 20, 2018. Thus, Brumby's knowledge of the provision prior to his conversation with Monfalcone is not in dispute.

1 For the last twelve years, DiBuono has held a part-time job on Friday and Saturday
2 nights at a local restaurant called Kennedy's Market and Pub (Kennedy's).⁴⁰ In 2017,
3 DiBuono wore her Kennedy's uniform top, a black t-shirt with the company name on the
4 front corner and the company slogan on the back (Kennedy's t-shirt).⁴¹ Doheny told
5 Bristol that it was not appropriate for DiBuono to wear a t-shirt to work advertising a local
6 business. Bristol informed DiBuono either not to wear the shirt or to cover it up. DiBuono
7 agreed to wear a sweater or another top to cover the Kennedy's t-shirt so that it was not
8 visible when she worked.

9 Approximately six months later in 2017, DiBuono wore a t-shirt embossed with
10 shiny beads (beaded shirt) that spelled out the word "amazing," clothing which she had
11 worn to work before. Doheny informed Bristol that DiBuono was not dressed
12 appropriately and instructed Bristol to speak with her.⁴² Bristol then told DiBuono that a
13 shirt with writing on it was not appropriate workplace attire. DiBuono ceased wearing the
14 shirt to work.

⁴⁰ Because Kennedy's did not allow DiBuono to wear jeans to work, she did not wear jeans on Fridays unless she had taken a night off from working there, which was consistent with Bristol's response on cross-examination that she had not seen DiBuono wear jeans "that many times."

⁴¹ DiBuono reported to her part-time job as soon as she left City Hall.

⁴² DiBuono testified it was the prior City Collector Deborah Fox who had informed her that the beaded shirt was not appropriate for the workplace. However, the Union introduced into evidence a December 7, 2018 City response to a Union information request, which identified Bristol as the supervisor who spoke with DiBuono about the shirt. Further, both Doheny and Bristol identified Bristol as the supervisor who spoke with DiBuono about the beaded shirt. Thus, I conclude that it was Bristol who spoke with DiBuono.

1 On Friday, June 29, 2018, DiBuono wore her Kennedy's t-shirt to work and covered
2 it with a sweater while she was at work in the Collector's Office. When she went outside
3 for lunch, she took off the sweater because it was hot. When she came back from lunch,
4 she entered City Hall without wearing the sweater. DiBuono put the sweater on when
5 she arrived at the Collector's Office. Shortly thereafter, Milano sent an email (June 29,
6 2018 email) to Bristol with a subject line matter of department head meeting follow-up
7 that stated in pertinent part:

8 Did I see a[n] Kennedy's Market t-shirt today? Please let me know if that's
9 the case and how it was addressed.

10
11 If I need to send Dave [Brumby] in everyday to check on dress code in your
12 department, let us know. We get more complaints about the Collector's
13 office than anywhere else in the building.⁴³

14
15 The Mayor's dress code guidance is below.

16
17 [Milano's April 11, 2018 email and Mayor Vigeant's July 13, 2012 email were attached.]

18 After receiving the June 29, 2018 email, Bristol spoke with DiBuono, who assured Bristol
19 that her Kennedy's t-shirt was only visible while she was outside at lunch. Bristol then
20 notified Doheny about her receipt of Milano's June 29, 2018 email and that she had
21 spoken with DiBuono about the matter. DiBuono never contacted the Union about the
22 instances when Bristol spoke with her about her attire.

23 Jennifer Brodeur (Brodeur)

⁴³ At hearing, Milano acknowledged that no members of the public had complained about the attire of the staff in the Tax Collector's Office. Rather, some of the handful of complaints had come from Mayor Vigeant and Lisa Thomas (Thomas), the then City Clerk. Thomas complained that her staff could not dress as casually as the Tax Collector's Office staff dressed.

1 Brodeur has worked for the City in the bargaining unit position of senior clerk in the
2 Collector's Office since 2015,⁴⁴ On Tuesday, July 3, 2018, Brodeur wore a gray t-shirt
3 with a pocket to work.⁴⁵ Doheny observed Brodeur in the t-shirt and informed Bristol that
4 he was unsure whether it was appropriate work attire as it was too casual.⁴⁶ Doheny
5 instructed Bristol to have Brodeur go see Monfalcone and check with her whether the
6 shirt was appropriate, which Bristol did. Doheny also informed Monfalcone that Brodeur
7 would be checking with her as to whether the shirt was appropriate to wear to work.⁴⁷
8 Monfalcone took Brodeur's photo with her cellphone and informed DiBuono that she did
9 not see anything wrong with the shirt. Brodeur returned to the Collector's Office and told

⁴⁴ Brodeur indicated that she believed that MMEA members had the right to wear jeans on casual Fridays, that she sometimes wore jeans on casual Fridays before April 2018, and that other times she did not because she forgot about it. She also had observed other unit members wearing jeans on casual Fridays prior to April 2018.

⁴⁵ Although the Union in its post-hearing brief asserted that Brodeur certainly had worn the shirt to work before, Brodeur's testimony was that she was ninety percent sure that she had worn the t-shirt to work before. In the absence of Brodeur being entirely sure that she had worn the t-shirt before to work, I decline to make the finding that she did.

⁴⁶ Doheny testified that he informed Bristol that Brodeur was wearing a t-shirt, and t-shirts were not allowed even if the shirts had pockets. However, both Brodeur, who overheard Doheny speaking to Bristol, and Bristol testified that Doheny was unsure whether the Brodeur's shirt was appropriate. I credit Brodeur's and Bristol's testimony on this point because it is internally consistent with Doheny's instruction that Brodeur check in with Monfalcone about the appropriateness of the shirt.

⁴⁷ Monfalcone testified that Doheny apprised her that Brodeur would be checking in with her and that she responded that the MMEA contract did not have a dress code and that she was not the "fashion police" Although Doheny testified that Monfalcone's description of his comments to her did not sound like something that he would say, he also admitted on cross-examination that he could not remember whether he had spoken with her. Thus, I credit Monfalcone's testimony on this point.

1 Bristol what Monfalcone had said and that she had taken her photo. Bristol informed
2 Brodeur that t-shirts were not appropriate for work.⁴⁸

3 Iliana “Lily” Cabrera Serrano (Cabrera Serrano)

4 Cabrera Serrano has worked for the City in the bargaining unit position of senior
5 clerk in the Building Department⁴⁹ since 2013.⁵⁰ In the Summer of 2018, she wore what
6 she referred to as “bermuda shorts,” short trousers to the knee, to work. She had worn
7 them to work one time previously. In the Summer of 2018, her supervisor, Building
8 Commissioner Jeffrey Cooke (Cooke), came to her and told her that someone had
9 complained to Human Resources about her wearing the shorts and that prospectively she
10 should not wear that piece of clothing to work.

11 Prior to November 21, 2018, the day before Thanksgiving and a scheduled half-
12 day of work, Cabrera Serrano had requested permission from Cooke to wear jeans to
13 work, and he had agreed. Although Cabrera Serrano previously had worn jeans to work
14 on some casual Fridays, she explained that she had asked permission to wear jeans that
15 day because it was a Wednesday. Later, Cooke informed her that he had been mistaken
16 when he gave her permission, that she was dressed inappropriately, and that no jeans
17 were allowed. He also sent out an email apologizing for his mistake and noting that he
18 had given her permission to wear jeans that day.

⁴⁸ Although Brodeur insisted at hearing that Bristol did not tell her specifically not to wear the t-shirt in question to work in the future, Brodeur acknowledged that she decided that she would never wear that shirt to work again.

⁴⁹ The City permitted inspectors in the Building Department, who were MMEA unit members and who often worked in the field, to wear jeans to work.

⁵⁰ Cabrera Serrano worked for the City’s Schools for one year prior to her employment in the Building Department.

1 At some point thereafter, Cabrera Serrano wore a long shirt over leggings to work,
2 attire that she had worn two times previously. Cooke informed her that Brumby had
3 expressed concern that she was not dressed appropriately for work because she was
4 wearing yoga pants. Cabrera Serrano disagreed and contended that yoga pants were
5 made of a different material than leggings.

6 In the Summer of 2019, Cabrera Serrano wore a blouse with so-called “spaghetti”
7 straps and open-toed sandals to work. Cooke informed her that Bernard had contacted
8 him and told him that Cabrera Serrano was not dressed appropriately for work. Cooke
9 told Cabrera Serrano that she needed to go home and change her shirt but was unsure
10 whether she needed to change her sandals. Cabrera Serrano went home, put a shawl
11 over her shirt, and came back to work. She continued to wear the sandals, because she
12 asserted that other female employees wore similar sandals during the summer.

13 Korianne Bardsley (Bardsley)⁵¹

14 Bardsley was a principal clerk, a bargaining unit position, in the auditor’s office,
15 who reported to Auditor Diane Smith (Smith).⁵² On Friday, November 18, 2018, Milano
16 sent an email to Smith stating that Bardsley had been seen wearing jeans at work that
17 day. Because Smith was not at work that day, she had not seen Bardsley’s attire.⁵³

⁵¹ Bardsley did not testify at the hearing.

⁵² Smith had worked for the City in the auditor’s office since 2001, held the MMEA unit position of finance assistant for six years, and became the auditor in 2007. She also indicated that as an MMEA unit member, she believed that she could not wear jeans to work.

⁵³ Smith testified that she previously did not recall seeing other City Hall employees wearing jeans, including her first cousin Monfalcone. Smith also noted that of the three bargaining unit members who work for her, the part-time senior clerk does not work on

1 Milano's email instructed Smith to either speak to him or to Human Resources about the
2 matter. Smith elected to speak with Brumby. After confirming with Brumby that Bardsley
3 was seen wearing jeans at work, Smith asked Bardsley if she had done so. Bardsley
4 confirmed that she had worn jeans, and Smith told her that she was not allowed to wear
5 jeans at work.

6 Paula Murphy (Murphy) and Cindy Healy (Healy)

7 Both Murphy and Healy work in the Assessor's Office, hold bargaining unit
8 positions,⁵⁴ and report directly to Doheny. On or about November 19, 2018, Brumby
9 informed Doheny that Murphy wore jeans to work on Friday, November 16, 2018, a date
10 when Doheny was not present. Doheny did not speak with Murphy about the matter until
11 more than ten days later. On Friday, November 30, 2018, Doheny went to the Assessor's
12 Office and saw Healy wearing jeans. He then spoke with both Murphy and Healy and
13 informed them that they were not allowed to wear jeans at work.

14 Library

15 The City's Library is a stand-alone building that is open Monday through Thursday
16 from 9 a.m. to 8:30 p.m., Friday and Saturday from 9 a.m. to 5 p.m., and Sunday from 1
17 p.m. to 5 p.m. The Library is closed on Sundays in July and August. The Library is a
18 municipal department, whose funding comes from the City's budget. However, the
19 Library's Board of Trustees is responsible for the care and custody of the facility and

Fridays. Smith also described her finance assistant Rios as "not one to wear jeans," which Rios confirmed when she testified, although Rios referred to it as a matter of choice.

⁵⁴ Neither Murphy nor Healy testified at the hearing, and their exact titles were not identified in the record.

1 delegate responsibility for personnel matters to the Library’s Director, Margaret Cardello
 2 (Cardello).⁵⁵ On April 7, 2015, the Board of Trustees approved a dress code policy (2015
 3 Library dress code), which Cardello recommended as she believed that employee dress
 4 was “too casual” and she wanted written dress expectations. The 2015 Library dress
 5 code stated:

6 The purpose of this policy is to allow library staff to dress to perform their
 7 work comfortably and yet to project a professional image to the public.
 8 Business casual is the general standard for this dress code.

- 9
- 10 • Clothing must fit properly and not be considered overly revealing
- 11 • Clothing should not be soiled or excessively worn, torn or frayed.
- 12
- 13 • Words on clothing are restricted to fashion brand names, print
- 14 promoting reading or the library, such as Summer Reading t-shirts.
- 15
- 16 • Nametags are provided by the Library [and] are required to be worn
- 17 when staff is on duty.
- 18

19 The following chart⁵⁶ is intended to provide a guideline for appropriate and
 20 inappropriate attire. It does not cover all contingencies so employee
 21 judgment must be exercised.

22
 23 ALLOWABLE CLOTHING

- 24
- 25 Suits
- 26 Blazers/Jackets
- 27 Dress pants, khakis and casual dress pants
- 28 Skirts, skorts and shorts (longer than fingertip length)
- 29 Cropped dress pants or capris
- 30 Button down shirts or blouses
- 31 Polo shirts
- 32 Dark colored jeans (navy or black) allowed on casual Fridays and
- 33 weekends
- 34

35 CLOTHING NOT ALLOWED

36

⁵⁵ Cardello has worked for the City as Library Director since 2010.

⁵⁶ The April 2015 Library Dress Code was incorporated into a two-sided chart with the list of allowable clothing on the left and the list of clothing not allowed on the right.

- 1 Halter, tube, one shoulder, racer back, spaghetti strap or tank tops (unless
- 2 covered by another garment)
- 3 Spandex
- 4
- 5 Baseball caps
- 6
- 7 Sweatpants, sweatshirts, yoga pants or athletic wear
- 8
- 9 Shorts or skirts shorter than fingertip length
- 10
- 11 T-shirts (unless they are promoting the library)
- 12
- 13 Thongs or flip flops
- 14
- 15 Ripped or torn pants or tops
- 16
- 17 The Library Director may authorize exceptions to this dress code when
- 18 special projects warrant or for holidays or library programs.
- 19
- 20 If you have any questions about acceptable, business casual attire please
- 21 speak with the Library Director.

22 Simopoulos has worked as a children's librarian since 2016 and has been the
23 Union secretary since January 2017. Simopoulos wore dark jeans to work on Fridays,
24 Saturdays and Sundays from 2016 to 2018⁵⁷ and observed other unit members at the
25 wearing jeans on those days as well.

26 On or about November 2018, Cardello attended a Department Head meeting,
27 where there was a discussion about the City's dress code for employees. An attendee at
28 the meeting asked whether employees were permitted to wear jeans when they worked
29 on Saturdays and Sundays. Mayor Vigeant replied that jeans were not acceptable work

⁵⁷ Simopoulos testified that she had worn dark jeans to work on almost every Friday, that she had been in Cardello's presence while dressed in jeans, and that Cardello had not spoken to her about wearing jeans. Although Cardello contended that Library employees could not wear jeans on casual Fridays except for special occasions approved by the Mayor, she testified that she could not recall whether Simopoulos wore jeans in her presence. Thus, I credit Simopoulos' testimony on this point.

1 attire for employees on weekends because the City had a business casual standard at all
2 times. Cardello then decided to recommend that the Board of Trustees make a change
3 in the 2015 Library dress code. In late November 2018, Cardello posted the following
4 statement on the internal Library blog:⁵⁸

5 Dress Code Update

6
7 Jeans are no longer acceptable attire for library staff. This change was
8 made to be consistent across City departments. Exceptions are casual day
9 announcements from the Mayor's office which you should all now be
10 receiving via your city email accounts.

11
12 Any questions? Let me know.

13 On December 4, 2018, the Board of Trustees issued a revised dress code policy (2018
14 Library dress code). The 2018 Library dress code read as follows: [Revisions are noted
15 in italics]:

16 The purpose of this policy is to allow library staff to dress to perform their
17 work comfortably and yet to project a professional image to the public.
18 Business casual is the general standard for this dress code. *This standard*
19 *applies to all days that the library is open.*

- 20
- 21 • Clothing must fit properly and not be considered overly revealing
 - 22 • Clothing should not be soiled or excessively worn, torn or frayed.
 - 23 • Words on clothing are restricted to fashion brand names, print
24 promoting reading or the library, such as Summer Reading t-shirts.
25 *Specific days on which MPL/summer reading t-shirts may be worn*
26 *will be posted at the beginning of the summer reading season.*
27 *Wearing MPL/summer reading t-shirts on other than specified dates*
28 *is not allowed.*⁵⁹
- 29
30

⁵⁸ The Library communicated with its employees by sending them emails, putting paper copies of the email messages in the staff mailboxes, and by an internal blog that employees used passwords to access.

⁵⁹ At some period between 2016 and 2018, a former unit member had worn the Library's Summer Reading t-shirts from prior years to work, and Cardello had sent out an email noting that Summer Reading t-shirts from prior years were not acceptable attire.

- 1 • Nametags are provided by the Library are required to be worn when
2 staff is on duty.

3
4 The following chart is intended to provide a guideline for appropriate and
5 inappropriate attire. It does not cover all contingencies so employee judgment
6 must be exercised.⁶⁰

7
8 ALLOWABLE CLOTHING

9
10 Suits

11 Blazers/Jackets

12 Dress pants, khakis and casual dress pants

13 Skirts, skorts and shorts (longer than fingertip length)

14 Cropped dress pants or capris

15 Button down shirts or blouses

16 Polo shirts

17 *[Deleted: Dark colored jeans (navy or black) allowed on casual Fridays*
18 *and weekends].*

19
20 CLOTHING NOT ALLOWED

21
22 Halter, tube, one shoulder, racer back, spaghetti strap or tank tops (unless
23 covered by another garment)

24
25 Spandex

26
27 *Jeans* or ripped or torn pants

28
29 Sweatpants, sweatshirts, yoga pants or athletic wear, or baseball caps

30
31 Shorts or skirts shorter than fingertip length

32
33 T-shirts (unless they are promoting the library)

34
35 Thongs or flip flops

36
37 The Library Director may authorize exceptions to this dress code when
38 special projects warrant or for holidays or library programs.

⁶⁰ The allowable clothing and clothing not allowed were listed in a double-sided chart in the 2018 Library dress code.

1 and an opportunity to bargain. City of Boston, 20 MLC 1545, 1552, SUP-3460 (May 13,
2 1994).

3 Wearing of Blue Jeans on Fridays

4 The Union contends that a past practice existed whereby unit members could wear
5 jeans on Fridays, which the Union contends was reflected for more than twenty years in
6 the casual Fridays provisions in the various collective bargaining agreements between
7 the City and the unit's bargaining representatives. Conversely, the City contends that it
8 never permitted employees to wear jeans to work except for special occasions. In
9 determining whether a binding past practice exists, the Commonwealth Employment
10 Relations Board (CERB) analyzes the combination of facts upon which the alleged
11 practice is predicated, including whether the practice has occurred with regularity over a
12 sufficient period of time so that it is reasonable to expect that the practice will continue.
13 Swansea Water District, 28 MLC 244, 245, MUP-2436, MUP-2456 (January 23, 2002);
14 Commonwealth of Massachusetts, 23 MLC 171, 172, SUP-3586 (January 30, 1997).
15 Here, Monfalcone testified that she wore jeans on Fridays, in the cooler months from
16 October to April, while working for five different department heads. Although the City in
17 its post-hearing brief labels Monfalcone's testimony as self-serving, her testimony was
18 credible. Additionally, other unit members DiBuono, Brodeur, and Cabrera Serrano
19 straight forwardly testified that they believed that they were permitted to wear jeans on
20 Fridays even though they sometimes chose not to wear them. Moreover, DiBuono
21 referenced the past practice to Bristol when Bristol spoke to about wearing jean overalls
22 on a Friday in 2016. With the exceptions of Lima, who spoke with Brennan at Ellis'
23 request in 2004, a matter which was the subject of Case No. MUP-04-4239, and DiBuono,

1 who wore jean overalls in 2016, which are different from regular jeans, the record contains
2 no specific information showing that a department head admonished unit members about
3 wearing jeans on Fridays until November 2018.

4 The City attempts to defeat the Union's past practice claim by asserting that if a
5 clear past practice had existed, then the Union would not have introduced a proposal in
6 successor contract negotiations in 2003, which the Union subsequently dropped, to
7 incorporate the wearing of neat and clean jeans as part of the casual Fridays provision.
8 However, Monfalcone testified to her understanding as a unit member, who was not then
9 in a MMEA leadership position, that the proposal was made to clear up ambiguity amongst
10 department managers as to whether jeans were permitted on casual Fridays. The
11 ambiguity to which Monfalcone referred is the essence of the past practice here,
12 specifically that unit members were permitted to wear jeans on Fridays when their
13 supervisors/department heads gave either their implied or express consent. Additionally,
14 the Employer relies on the testimony of Smith, the auditor, who testified that she did not
15 believe as an MMEA unit member that she could wear jeans on Fridays, to dispel the
16 Union's claims of a past practice. However, Smith's testimony is not inconsistent with the
17 past practice as her supervisor may not have allowed unit members to wear jeans on
18 Fridays. Furthermore, Brumby confirmed that he had seen unit members wearing jeans
19 on Friday, but that he had taken no action as human resources director because he had
20 not been requested to do so by either the unit members' department heads or the mayor's
21 office. Also, the City argues that it would not have offered to allow unit members to wear
22 jeans in exchange for charitable donations or before the Super Bowl, so-called special
23 occasions, if a past practice already existed of wearing jeans on Fridays. However, the

1 City's emails were sent to all City Hall employees, not just unit members, some of whom
2 may had no past practice or no bargaining rights to enforce a past practice of wearing
3 jeans on Fridays. Moreover, the mere existence of charitable or morale building activities
4 does not alone invalidate a past practice. See generally, New Bedford School Committee,
5 35 MLC 77, MUP-03-3896 (March 2, 1995) (finding the existence of charitable and
6 morale-building activities does not support the employer's claim that it maintained and
7 enforced a dress code for teachers).

8 Additionally, the City argues that it was not reasonable for unit members to
9 conclude that a past practice of allowing them to wear jeans on Fridays existed in light of
10 the 2000, 2004, 2012 and 2018 memos from Mayors Munro, Hunt and Vigeant
11 respectively describing the City's dress standards, which specifically precluded the
12 wearing of jeans. However, the City's argument overlooks the department heads' role as
13 the City's agents and their apparent authority to allow the wearing of jeans as part of
14 casual Fridays. The authority to act for and to speak on behalf of an employer is governed
15 by the principles of agency and may be actual, implied or apparent. Town of Bolton, 32
16 MLC 20, 25, MUP-01-3254 (June 27, 2005). The issue of agency may be gauged from
17 the point of view of the employees. Id. As the CERB recognized in Town of Chelmsford,
18 "supervisors are presumed to be acting and speaking for the employer, even when the
19 employer has instructed the supervisor to refrain from such action, so long as the
20 employer's instructions have not been communicated to employees." 8 MLC 1913, 1916,
21 MUP-4620 (March 12, 1982), aff'd 15 Mass. App. Ct. 1107 (1983). Accordingly, in Town
22 of Chelmsford, the CERB found that the Superintendent of the Highway Department was
23 "unquestionably an agent of the employer' as he was in charge of the overall running of

1 the department on a day-to-day basis. Id.; See also Amherst Police League, 35 MLC
2 239, 252, MUPL-05-4521 (April 23, 2009) (citing Town of Ipswich, 11 MLC 1403, 1420
3 n.7, MUP-5248 (February 7, 1985) (unless communication of a limitation in one's authority
4 is presented to the other party, an individual in charge of a transaction is held to have
5 broad apparent authority)); Higher Education Coordinating Council, 25 MLC 69, 71, SUP-
6 4807 (September 17, 1998) (citing Commonwealth of Massachusetts, 11 MLC 1206,
7 SUP-2747 (October 3, 1984) (public employer is responsible for the actions of its
8 supervisory employees an agents who act within the scope of their apparent authority
9 whether or not those acts were specifically authorized)).

10 Because I credited Monfalcone's testimony that she continued to wear jeans even
11 after the 2004 memo issued and even in the presence of then Human Resources Director
12 Ellis, who told her around that time that jeans were not allowed, I conclude that the
13 practice of supervisors/department heads permitting unit members to wear jeans
14 continued uninterrupted. Also, the City failed to establish that individual unit members
15 actually received copies of the 2012 and 2018 memos, which were addressed to the
16 department heads, and arguably could have put the unit members on notice that the
17 department members were not authorized to allow them to wear jeans on Fridays. Thus,
18 it was reasonable for unit members to conclude that department heads acted within their
19 apparent authority by permitting them to wear jeans on Fridays.

20 Section 6 of the Law requires public employers to negotiate in good faith with
21 respect to wages, hours, standards of productivity and performance, and any other terms
22 and conditions of employment. Work rules that govern appearance standards, like dress
23 codes, are terms of conditions of employment and constitute mandatory subjects of

1 bargaining. Sheriff of Worcester County, 27 MLC 103, 106, MUP-1910 (January 11,
2 2001), aff'd in part and rev'd in part on other grounds sub nom., Sheriff of Worcester
3 County v. Labor Relations Commission, 60 Mass. App. Ct. 632 (2004), see also City of
4 Lawrence, 43 MLC 96, MUP-14-3666 (September 21, 2016) (finding dress codes to be a
5 mandatory subject of bargaining). Here, the City decision to prohibit unit members from
6 wearing jeans on Fridays except on special occasions implicated a mandatory subject of
7 bargaining. Furthermore, the City did not provide the Union with notice and an opportunity
8 to bargain to resolution or impasse over that change. Accordingly, the City violated
9 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally terminating
10 the practice of permitting unit members to wear jeans on Fridays.

11 Chilling Effect on Section 2 Rights

12 A public employer violates Section 10(a)(1) of the Law when it engages in conduct
13 that may be reasonably said to interfere with, restrain or coerce employees in the exercise
14 of their rights under Section 2 of the Law. Quincy School Committee, 27 MLC 83, 91,
15 MUP-1986 (December 8, 2000); Town of Athol, 25 MLC 208, 212, MUP-1448 (June 11,
16 1999); Town of Winchester, 19 MLC 1591, 1595, MUP-7514 (December 12, 1992);
17 Groton-Dunstable Regional School Committee, 15 MLC 1551, 1555, MUP-6748 (March
18 20, 1989). The focus of the Section 10(a)(1) analysis is the effect of the employer's
19 conduct on reasonable employees' exercise of their Section 2 rights. Town of Winchester,
20 19 MLC at 1596. The CERB does not analyze either the motivation behind the conduct
21 or whether the coercion succeeded or failed. Groton-Dunstable Regional School
22 Committee, 15 MLC at 1555-1556. The CERB's inquiry focuses on the objective impact
23 that the employer's conduct would have on a reasonable employee under the

1 circumstances. Quincy School Committee, 27 MLC at 91. The subjective impact of the
2 employer's conduct is not determinative. City of Fitchburg, 22 MLC at 1286, 1292, MUP-
3 9843 (November 28, 1995). Section 2 of the Law provides:

4 Employees shall have the right of self-organization and the right to form,
5 join, or assist an employee organization for the purpose of bargaining
6 collectively through representatives of their own choosing on questions of
7 wages, hours, and other terms and conditions of employment, and to
8 engage in lawful concerted activities for the purpose of collective bargaining
9 or other mutual aid or protection, free from interference, restraint or
10 coercion. An employee shall have the right to refrain from any or all such
11 activities ...

12 Here, it is undisputed that when Monfalcone in her role as Union president
13 participated in successor contract negotiations on April 19, 2018, that she engaged in
14 concerted activity protected under Section 2 of the Law. Both Monfalcone and Milano,
15 the former mayoral executive aide, described the April 19, 2018 negotiations as heated.
16 At some point in the negotiations, Monfalcone derided certain of the City's proposals to
17 reorganize the payroll department as ludicrous. On Friday, April 20, 2018, Monfalcone
18 arrived at work wearing jeans when she encountered Milano as they both entered City
19 Hall. Within the hour, Milano contacted Brumby to contend that Monfalcone needed to
20 be spoken to about wearing jeans. Although Brumby suggested that Milano wait for
21 Monfalcone's supervisor Doheny to return to work on Monday, Milano declined to wait.
22 Brumby and Milano went back and forth about who should speak with Monfalcone.
23 Brumby, who perceived that Monfalcone would be displeased by the conversation,
24 suggested that he speak with her and ultimately did so. Brumby informed Monfalcone
25 that jeans were not allowed on Fridays, and that she was not dressed appropriately.

26 The City argues that Brumby's statements to Monfalcone would not have
27 interfered, restrained or coerced reasonable employees in the exercise of their Section 2

1 rights. The City emphasizes that Brumby was respectful to Monfalcone and his remarks
2 to her were not disparaging or critical of her concerted, protected activity. Although the
3 City is correct that CERB cases finding independent Section 10(a)(1) violations often
4 involve an employer's disparaging or critical comments about an employee's protected
5 activity, see Athol-Royalston Regional School District, 26 MLC 55, 56, MUP-1832
6 (November 2, 1999), those cases do not encompass the entire breadth of all Section
7 10(a)(1) violations. For instance in Salem School Committee, a case involving multiple
8 Section 10(a)(1) violations, the CERB found a violation where the principal assigned
9 herself to evaluate two teachers who, two weeks before, signed a letter urging the union
10 membership to reject a proposed successor collective bargaining agreement. 35 MLC
11 199, 216, MUP-04-4008 (April 14, 2009). The CERB noted that in light of the teachers
12 concerted, protected activity and the timing of the change, reasonable employees would
13 have felt restrained and coerced by the change in their evaluators. Id.

14 Here, Milano faulted Monfalcone's attire a day after a heated bargaining session
15 at which Monfalcone scoffed at the City's proposals. Also, as was discussed supra, the
16 City deviated from a longstanding past practice when it prohibited her from wearing jeans
17 on Fridays and labeled her attire as inappropriate. Milano also demanded immediate
18 action and was unwilling to accept Brumby's suggestion that Milano wait and have
19 Monfalcone's supervisor Doheny speak with her when Doheny returned to work on
20 Monday. Milano's actions were contrary to how he previously addressed Sayce's
21 untucked shirts in his March 30, 2018 email, and how he subsequently handled seeing
22 DiBuono wearing her Kennedy's market t-shirt when returning from lunch in June 2018.

1 The facts before me also show no reason for the City's urgency. Although Brumby
2 indicated at hearing that he wanted to speak with her that day in order to ensure that she
3 was treated similarly to other unit members, in reality the City did not treat Monfalcone in
4 the same way. When Brumby confronted Monfalcone about wearing jeans, she informed
5 him that other unit members were wearing jeans that day, which would have been
6 consistent with the past practice. However, the facts before me do not show that the City
7 made any effort to investigate Monfalcone's assertion or to admonish those other unit
8 members. Further, while it is highly likely that Brumby suggested that that he speak with
9 Monfalcone in order to avoid a repeat of the heated exchange that occurred the night
10 before between Monfalcone and Milano, Brumby need not have intended to chill
11 Monfalcone in the exercise of her concerted, protected activity, when he spoke with her
12 at the behest of Milano, for a violation to be found. Proof of unlawful motivation is not
13 required in Section 10(a)(1) case. See City of Boston, 8 MLC 1281, 1284, MUP-3891
14 (August 17, 1981). Finally, I do not find persuasive the City's argument that I should
15 dismiss this allegation despite its merits merely because the Union filed a similar
16 allegation involving then president Brennan fourteen years before, which it subsequently
17 withdrew as part of the resolution of a successor collective bargaining agreement.
18 Therefore, I find that the City violated Section 10(a)(1) of the Law.

19 Unilateral Change in Dress Code

20 The Complaint alleges that: before Wednesday, July 3, 2018 the City did not have
21 a dress code, on July 3, 2018 Bristol informed Brodeur that her t-shirt with a pocket was
22 in violation of the dress code, and thus, the City implemented a new dress code. The City
23 contends that there was no change, and that the City has not allowed t-shirts to be worn

1 on Mondays through Thursdays since 2000.⁶² Upon review, the February 2000
2 Appearance Policy specifically describes t-shirts as not acceptable dress. In the January
3 12, 2004 memo and the May 6, 2004 memo, newly elected Mayor Hunt states that he
4 expects employees to follow the prescribed dress code for their departments. Although
5 the Union correctly points out that the February 2000 Appearance policy was sent to the
6 City's Department Heads and not to bargaining unit members, the Union received a copy
7 of the February 2000 Appearance policy attached to the City's January 21, 2005
8 opposition statement to the Union's prohibited practice charge. The record does not show
9 that within six months of January 21, 2005, the Union filed a prohibited practice charge
10 alleging that the employer unilaterally implemented a dress code in violation of Section
11 10(a)(5) of the Law. Because since 2005, the Union was aware of a dress code policy
12 that prohibited unit members from wearing t-shirts Mondays through Thursdays, it cannot
13 now claim that Bristol's July 3, 2018 comments to Brodeur that t-shirts were not allowed
14 constituted an implementation of a new dress code.

15 Rather than argue that the City implemented a new dress code, the Union in its
16 post-hearing brief contends that Bristol's comments to Brodeur constituted a stringent
17 enforcement of the dress code, which the City had an obligation to bargain about before
18 its enforcement. However, the Union did not present sufficient evidence that the City had
19 engaged in lax enforcement of the dress code between 2004 and 2018 on Mondays
20 through Thursdays, i.e. by identifying unit members who routinely wore t-shirts on
21 Mondays through Thursdays when it was not a special occasion and were not spoken to

⁶² I do not address whether unit members could wear t-shirts as part of casual Fridays as the parties did not put that issue before me.

1 by their supervisors. Instead, the Union relies on Brodeur's testimony that she was ninety
2 percent sure that she wore the shirt before, a statement upon which I declined to make
3 an affirmative finding. Ultimately, Doheny and Bristol could not decide whether the shirt
4 was appropriate or not, and it was Brodeur herself who decided not to wear that again.
5 Although the Union argues that Doheny's and Bristol's indecision demonstrated lax
6 enforcement because even they did not know what was appropriate, it does not override
7 the fact that Bristol confirmed with Brodeur after Brodeur returned from visiting
8 Monfalcone that t-shirts were not allowed.

9 Also, the Union seeks to have me consider other instances where the City spoke
10 to Cabrera Serrano about her attire to support its assertion that the City more stringently
11 enforced the dress code after July 3, 2018. However, even if I were to consider those
12 instances, they did not cure a basic flaw in the Union's argument, which is a paucity of
13 facts showing that in the past, the City laxly enforced the dress code. Additionally, the
14 Union points to Milano's June 28, 2018 email to Bristol complaining about DiBuono's
15 Kennedy's market t-shirt to show that the City was ramping up enforcement of its dress
16 code even five days before the incident with Brodeur. Again, the flaw in the Union's
17 argument is that Bristol previously had spoken with DiBuono in 2016 about that t-shirt
18 because Bristol was concerned that a Tax Collector's Office employee should not be
19 wearing a shirt that advertises a local business while assisting the public. There was no
20 change in how Bristol handled DiBuono's wearing of the t-shirt, but rather, Milano
21 misunderstood when he saw DiBuono return from lunch with the t-shirt visible.

Order

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City

shall:

- 1 1. Cease and desist from:
 - 2
 - 3 a) Unilaterally terminating the practice of permitting unit members to
 - 4 wear jeans on casual Fridays.
 - 5
 - 6 b) Making statements that would tend to interfere with, restrain or
 - 7 coerce employees in the exercise of their rights guaranteed under
 - 8 the Law.
 - 9
 - 10 c) In any like or related manner interfering with, restraining or coercing
 - 11 employees in the exercise of their rights guaranteed under the Law.
 - 12
- 13 2. Take the following affirmative action:
 - 14
 - 15 a) Restore the prior practice that permitted unit members to wear jeans
 - 16 on casual Fridays.
 - 17
 - 18 b) Bargain in good faith to resolution or impasse with the Union about
 - 19 discontinuing the practice of allowing unit members to wear jeans on
 - 20 casual Fridays and the impact of the decision on employees' terms
 - 21 and conditions of employment.
 - 22
 - 23 c) Refrain from interfering with, restraining or coercing employees in the
 - 24 exercise of their rights under Section 2 of the Law.
 - 25
 - 26 d) Immediately post signed copies of the attached Notice to Employees
 - 27 in all conspicuous places where members of the Union's bargaining
 - 28 unit usually congregate, or where notices are usually posted,
 - 29 including electronically, if the City customarily communicates with
 - 30 these unit members via intranet or email and display for a period thirty
 - 31 (30) days thereafter, signed copies of the attached Notice to
 - 32 Employees.
 - 33

- 1 e) Notify the DLR in writing of the steps taken to comply with this decision
2 within ten (10) days of receipt of this decision.

SO ORDERED.

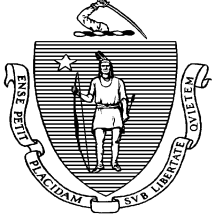
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 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 Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall be final and binding on the parties.



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 (DLR) has held that the City of Marlborough (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it unilaterally terminated a past practice of permitting members of the Marlborough Municipal Employees Association's (MMEA's) bargaining unit to wear jeans on casual Fridays. The City also independently violated Section 10(a)(1) of the Law by restraining, coercing and interfering with the MMEA president in the exercise of her concerted activity protected by Section 2 of the Law.

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 terminate the past practice of permitting unit members to wear jeans on casual Fridays.

WE WILL not make statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of their rights protected under the Law.

WE WILL take the following affirmative action that will effectuate the purpose of the Law:

- Restore the prior practice of permitting unit members to wear jeans on casual Fridays.
- Bargain in good faith to resolution or impasse with the Union about discontinuing the practice of permitting unit members to wear jeans on casual Fridays and the impact of the decision on employees' terms and conditions of employment.
- Refrain from interfering with, restraining or coercing employees in the exercise of their rights under Section 2 of the Law.

City of Marlborough

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, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).