

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

CITY OF LAWRENCE

and

FIREMEN & OILERS, LOCAL 3, SEIU

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Case Number: MUP-18-6853

Date Issued: July 31, 2020

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Robert D. Hillman, Esq. - Representing City of Lawrence
Eric P. Klein, Esq.

Paige W. McKissock, Esq. - Representing Firemen & Oilers, Local 3, SEIU

HEARING OFFICER'S DECISION

SUMMARY

1 The issue is whether the City of Lawrence (City) violated Section 10(a)(5) and,
2 derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law)
3 by denying the Firemen and Oilers, Local 3, SEIU (Union) access to the City's Department
4 of Public Works (DPW) Yard (Yard) for an expert to conduct sampling for the presence of
5 hazardous contaminants. Based upon the record, and for the reasons explained below,
6 I find that the City violated the Law.

STATEMENT OF CASE

8 On or around August 27, 2018, the Union filed a charge of prohibited practice
9 (Charge) with the Department of Labor Relations (DLR) alleging that the City had violated

1 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On March 12, 2019, a
2 DLR Investigator investigated the Charge. On April 16, 2019, the Investigator issued a
3 Complaint of Prohibited Practice and Partial Dismissal (Complaint) alleging that the City
4 had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by denying
5 the Union access to the Yard for an expert to conduct sampling for the presence of
6 hazardous contaminants. The Investigator dismissed the Union's allegations that the City
7 had violated the Law by surface bargaining and bad faith bargaining. On April 29, 2019,
8 the City filed its Answer to the Complaint. On October 24, 2019, and November 4, 2019,
9 I conducted a hearing during which the parties received a full opportunity to be heard, to
10 examine and cross-examine witnesses, and to introduce evidence. On December 23,
11 2019, the parties filed post-hearing briefs.

12 STIPULATIONS OF FACT

- 13
- 14 1. Firemen and Oilers, Local 3, Service Employees International Union ("Union" or
- 15 "Local 3") is an employee organization, as defined by G.L. c. 150E, §1.
- 16
- 17 2. The City of Lawrence ("City") is a public employer, as defined by G.L. c. 150E, §1.
- 18
- 19 3. The Union (and its predecessor, AFSCME Council 93) and the City (collectively
- 20 "Parties") have bargained collectively for over thirty (30) years. The current
- 21 collective bargaining agreement expired on June 30, 2019. The parties are
- 22 currently in negotiation for a successor collective bargaining agreement.
- 23
- 24 4. The Union is the exclusive bargaining representative of approximately thirty-five
- 25 (35) City employees who work in the City's Department of Public Works ("DPW").
- 26
- 27 5. The DPW Yard is located at 1 Auburn Street in Lawrence, Massachusetts ("DPW
- 28 Yard").
- 29
- 30 6. The following City departments fall under the CBA: Streets and Parks, Water and
- 31 Sewer, Municipal Garage, Public Property, Cemetery, Airport, and Animal Control.
- 32 Of those City departments, the following fall within the DPW: Streets and Parks,
- 33 Water and Sewer, Municipal Garage, and Public Property.
- 34

- 1 7. Carlos Jaquez was the Director of Public Works for the City at all times relevant to
2 this charge.
3
- 4 8. Frank Bonet is the Personnel Director for the City.
5
- 6 9. By letter to the City dated July 11, 2017, the Union alleged unsafe and unsanitary
7 working conditions at the DPW Yard and requested to bargain over the same.
8
- 9 10. On August 4, 2017, August 29, 2017, November 1, 2017, and December 22, 2017,
10 the Parties met to bargain over the working conditions at the DPW Yard.
11
- 12 11. On October 12, 2017, the Massachusetts Department of Labor Standards (“DLS”)
13 conducted a workplace safety and health inspection of the DPW Yard.
14
- 15 12. On November 13, 2017, DLS issued an Inspection Report.
16
- 17 13. By letters from Mr. Jaquez to DLS dated December 11, 2017, January 30, 2018,
18 and April 12, 2018, the City submitted Corrective Action Reports in response to the
19 Inspection Report.
20

FINDINGS OF FACT

Description of Yard

22 The DPW Yard (Yard) is located within fifty feet of the Spickett River. The Yard is a
23 complex that currently contains eleven buildings; a twelfth building was demolished in or
24 around April 2019, after the Complaint in this matter issued. These buildings are:¹
25

- 26 1) A two-story building that contains the “blacksmith’s shop,” where bargaining unit
27 members in the Streets and Parks Department report in the morning. The building
28 also contains the sign shop, which is a garage where street signs, certain
29 chemicals, and other materials are stored, and a lunchroom with lockers. The
30 Water and Sewer Department stores materials on the second floor. Bargaining
31 unit members use a hose outside this building as a wash station for hosing down
32 their vehicles and other equipment, including Sewer Department vehicles and
33 equipment that have been exposed to untreated sewage.
34
- 35 2) The Sewer Department garage. The building contains six or seven garage doors
36 that access two large, open garages that are used for storing equipment, vehicles,

¹ For ease of reference, I retain the numbering system that the parties used at the hearing to identify these structures. In addition to the structures, this numbering system includes two outside areas – 5 and 11 – within the Yard.

- 1 and materials, including a sand pile. The Sewer Department breakroom is in this
2 building.
3
- 4 3) A two-story building where Public Property Department employees work. The
5 storekeeper, a bargaining unit member, has an office on the first floor. Certain
6 chemicals and other materials are stored in this building. Five garages in the rear
7 of the building are used for additional storage of items that include discarded
8 propane tanks, televisions, and other electronics.
9
- 10 4) The Central Garage. Trucks and other vehicles are stored here. The building
11 contains a boiler room and is heated.
12
- 13 5) An area next to the Central Garage where an exterior salt pile is stored in the
14 wintertime.
15
- 16 6) A two-story building containing several garages that are used to store equipment.
17 The first floor contains the DPW office and the Sewer Department office, where
18 Sewer Department bargaining unit members report in the morning. The Streets
19 and Parks Department has offices on the second floor.
20
- 21 7) A long row of garages where vehicles, equipment, and materials are stored.
22
- 23 8) The Municipal Garage. A two-story building where mechanics in the bargaining
24 unit maintain and repair City vehicles and equipment. The mechanics take their
25 breaks and have lockers in this building. A fuel pump is outside this building.²
26
- 27 9) A garage where vehicles and equipment are stored.
28
- 29 10) The Salt Shed. This structure is a barn where the DPW stores its salt pile. The
30 public drops off certain recycling materials next to the Salt Shed.
31
- 32 11) An area near Building 3 where street sweepings, which can include anything from
33 used syringes to trash to drug paraphernalia, are dumped. Catch basin debris was
34 dumped in this general location until approximately early 2019, when the City
35 began dumping catch basin debris at a different DPW location along the Merrimack
36 River.³ Dumpsters are also located in this general area.
37

² In the summer of 2019, after the Complaint in this matter issued, an oil leak from a previously unknown underground storage tank occurred outside this building. During remediation of this incident, a second underground storage tank was discovered.

³ A catch basin, also known as a storm sewer, collects everything that runs off the street into the sewer when it rains.

1 12) A garage where equipment and materials are stored.

2

3 13) A building where vehicles and equipment are stored until they can be repaired or
4 used for scrap parts. This building is primarily accessed by bargaining unit
5 mechanics.⁴

6

7 14) The former Health Department Building.⁵

8

9 General Background

10 Of the bargaining unit members who work for the DPW, approximately sixteen
11 work in the Water and Sewer Department; approximately fourteen work in the Streets and
12 Parks Department; three work in the Municipal Garage; and one works as a storekeeper
13 for the Public Property Department, which is also known as the Building and Facilities
14 Department. Collectively, members of the bargaining unit access every building in the
15 Yard in the course of performing their job duties. Some bargaining unit members, such
16 as Union Steward Kevin Silva (Silva), a backhoe operator in the Water and Sewer
17 Department, work primarily out in the City after reporting to the Yard in the morning to
18 receive an assignment, but come and go from the Yard throughout the day as needed to
19 retrieve materials and equipment. Union Steward Thomas Fritschy (Fritschy), a thirty-
20 five-year DPW employee who currently works as a Graffiti Removal Specialist in the

⁴ Brian Pena (Pena), the Water and Sewer Commissioner, and Acting Director of the DPW since July 1, 2019, and Glen Gary (Gary), the Building and Facilities Supervisor, testified that Building 13 is not in use. I do not credit this testimony because Andres Torres, a bargaining unit mechanic, testified that he accesses this building to obtain spare parts.

⁵ Demolition of this building commenced in or around April 2019. The building underwent asbestos abatement prior to being demolished, and during demolition, a previously unknown source of asbestos that required additional abatement was discovered. Although ruins of this structure remain standing, it is currently a hole in the ground that pools with water when it rains.

1 Streets and Parks Department, works out in the City or in the Yard depending on the
2 nature of the day's assignment. Andres Torres (Torres), a mechanic in the Municipal
3 Garage, works primarily in Building 8 but also enters other buildings throughout the Yard
4 to obtain parts, and to pick up and park equipment.

5 Union Request to Bargain and Visual Inspection of Yard

6 By letter dated July 11, 2017, Edmund Gabriel (Gabriel), then the Union's Business
7 Agent, wrote to Frank Bonet (Bonet):

8 This letter regards the working conditions at the DPW Yard in Lawrence. The
9 Union has grave concerns about the unsafe and unsanitary conditions to which
10 members are exposed on daily basis at the yard. These concerns should not come
11 as news to the City. Over the past six years, the Massachusetts Department of
12 Environmental Protection has inspected the yard at least four times following
13 complaints of improper storage and handling of hazardous waste, substandard air
14 quality, and other violations of environmental regulations. Despite these
15 complaints, and repeated inspections and citations by the DEP, the City has failed
16 to remediate the situation to the continued detriment of its employees, and to the
17 public at large.⁶

18
19 Please advise whether the City is willing to bargain over the working conditions at
20 the DPW Yard, which impact the health and safety of our members and constitute
21 a mandatory subject of bargaining under G.L. c. 150E. Local 3 is prepared to seek
22 all appropriate legal recourse. Thank you for your immediate attention to this
23 matter.

24
25 On an unidentified date after Gabriel's July 11, 2017 letter to Bonet, Gabriel and
26 Bonet met to walk the Yard together so that Gabriel could point out the Union's concerns
27 to the City about the health and safety conditions within the Yard. As they walked the
28 Yard, Bonet took photographs of the conditions about which Gabriel expressed concern,
29 and Gabriel wrote down notes on those conditions. After walking the Yard, Bonet created

⁶ Gabriel did not testify at the hearing, and the Union did not produce evidence about "repeated inspections and citations by the DEP" at the Yard.

1 a PowerPoint presentation that combined the photographs he had taken with the notes
2 that Gabriel provided to him. Bonet titled this presentation, which he prepared to
3 memorialize the Union's concerns so that he could report them to management, "City of
4 Lawrence Visual Safety Inspection Department of Public Works Yard 2017" (Bonet
5 Powerpoint). Bonet subsequently emailed this document to Gabriel, who did not respond.

6 The Bonet Powerpoint documents that the Union raised the following health and
7 safety concerns during their meeting: the presence of sewer waste in the Yard and its
8 potential health impacts;⁷ vehicles parked in sewer waste;⁸ the presence in the trash
9 collection area of contaminated, standing water and its potential health impacts; the daily
10 presence of syringes in and around the dumping area of the street sweeping pile;⁹ the
11 danger of a total roof collapse in the area where vehicles requiring repairs are stored; the
12 unsanitary and dangerous condition of miscellaneous garage areas; the unsafe and
13 unsanitary condition of storage areas and offices; the unsanitary nature of the vehicle
14 wash station in the Yard; missing electrical outlet covers in some buildings; trip and fall
15 hazards in some buildings and the Yard; unsanitary bathrooms; the safety of a wood
16 burning stove; the improper storage of certain chemicals; and the presence in buildings
17 of rodents, insects, bats, birds, and other animals.¹⁰

⁷ Silva testified that the soil emits a foul odor when it is disturbed.

⁸ Bonet testified that this concern was legitimate.

⁹ Both parties have referenced a memorandum of understanding related to syringe pickup that resulted from the parties' health and safety negotiations related to this matter. This document was not, however, introduced into evidence despite the City's reference to it in its post-hearing brief as Respondent Exhibit 3.

¹⁰ During the hearing, the Union offered testimony that feral cats are present throughout the Yard. Only three of the six or seven garage doors in Building 2 are functional, and

1 Correspondence after August 4, 2017 Bargaining Session

2 On August 4, 2017, after Gabriel and Bonet had walked the Yard together, the
3 parties held a bargaining session. By letter dated August 7, 2017, Bonet wrote to Gabriel
4 that the bargaining session “started collaboratively and we made substantial progress
5 discussing the Union’s concerns” before “the entire tone and apparent purpose of the
6 meeting changed.” Bonet then asserted that during the bargaining session, the Union
7 decided “to stop bargaining with the City and to instead make demands.” Bonet indicated
8 that the Union exhibited a “lack of good faith...in engaging in this bait and switch.” To
9 conclude this letter, Bonet wrote that “where the City believes there are legitimate
10 concerns, it is currently working to address them.”

11 By letter dated August 9, 2017, Union attorney Paige McKissock (McKissock)
12 wrote to City attorney Erica Crystal (Crystal) that: “The Union has sought to work with the
13 City for many years on remediating the Yard. Unfortunately, conditions have deteriorated
14 to such an extent that the Union believes a major remediation, with professional oversight,
15 is necessary and required by law.” This letter further stated that “it is imperative that the
16 City commit to and adopt all safety protocols required by law before bargaining unit
17 members are assigned any job duties that require the removal and/or handling of
18 hazardous materials including sharps waste.” This letter continues, in relevant part:

cats live in this building and use the Sewer Department’s sand pile as a litter box. Bargaining unit members use that sand to mix concrete and pad pipes. Cats are also present in Building 4. Rats and mice have also been spotted in Building 4. Cats, rats, and mice have also been spotted in Buildings 9 and 12. Although Gary testified that he has not seen any rodents other than “a couple field mice,” this testimony does not overcome Silva’s more specific testimony that he has seen rats in Buildings 2, 4, 9, and 12.

1 Primarily, the City began the negotiations by asking for suggestions about how to
2 deal with the waste in the Yard.... In particular, any suggestions proposed
3 by the Union and its members would be without the benefit of specialized
4 knowledge in occupational health and safety risks and environmental
5 hazards. The Union could not agree to any resolution that did not competently
6 protect the health of its membership.
7

8 In light of these concerns, and with the goal of having a productive bargaining
9 session, the Union suggested a framework proposal that the City: (1) provide a
10 safe temporary reporting location, (2) engage an expert to address what
11 remediation was necessary, and (3) ensure that the Yard was properly remediated
12 and/or moved to a new, safe site. In introducing its proposal, the Union stated that
13 while it appreciated the City's attempt to jointly propose solutions, it felt moving
14 workers to a temporary location and an independent review of the DPW Yard by
15 qualified individuals was necessary to determine the proper remedial steps. The
16 Union's proposal was in direct response to the City's request for suggestions to
17 address the Yard's health and safety hazards.
18

19
20

21 Notwithstanding the above, the Union looks forward to seeing the City's stated
22 commitment to ensure safe working condition[s] put to action through bargaining.
23 Towards that end, the Union's [sic] restates its proposals as follows:
24

25 First, that the City immediately change the reporting location for bargaining unit
26 members working in the DPW Yard to an agreed upon safe location until such time
27 as the Yard is fully remediated.
28

29 Second, that the City and the Union jointly request that the Department of Labor
30 Standards and the Department of Environmental Protection (and/or a mutually
31 agreed upon independent consultant at the City's expense) – i.e., entities with
32 specialized knowledge – inspect the DPW Yard.
33

34 Third, that the City pay for medical examinations for bargaining unit members
35 working in the DPW Yard given their continued exposure to health and safety
36 hazards.
37

38 Fourth, that the City, in conjunction with and/or with the approval of state agencies,
39 develop a remediation plan for the DPW Yard that includes the provision of training
40 and safety equipment and apparel consistent with all applicable regulations.
41 Alternatively, that the City permanently relocate bargaining unit members to
42 another worksite that meets all health and safety requirements under state law and
43 provides training and safety equipment and apparel consistent with all applicable
44 regulations.
45

1 Finally, on Monday, July 7, the Union learned that the City assigned laborers, who
2 do not drive any DPW vehicles as part of their job duties, to clean up the "tent city"
3 in Lawrence. The City was well aware that this area is filled with refuse, not limited
4 to dirty syringes from intravenous drug use. The Union's members were not given
5 any training or safety equipment. The City's actions in this regard were egregious
6 and cannot be repeated under any circumstances.
7

8 By letter dated August 10, 2017, Crystal responded to McKissock, in relevant part,
9 that the City "is actively working to respond to issues of concern and is providing training
10 to employees within the next two weeks." Crystal continued, "the City is engaging in
11 meaningful changes in the DPW Yard and would welcome an opportunity to discuss these
12 changes with the Union and to further discuss the Union's proposals." This letter
13 concluded by stating that before the parties next met, "the City will provide the Union more
14 detailed information regarding the work it is undertaking to ensure that its employees
15 remain safe when working."

16 By letter dated August 22, 2017, Crystal wrote to McKissock and Union attorney
17 Nicole Horberg-Decter (Decter) stating, in relevant part, that the City had "begun taking
18 important steps" to address safety issues in the Yard. Crystal attached to this letter the
19 City's "Bloodborne Pathogen Exposure Control Plan for Syringe Pick-Up," and indicated
20 that the City was in "the process of developing related training and expect[ed] to begin
21 training sessions for employees within days." Crystal further indicated that the City had:
22 removed old and abandoned vehicles from the Yard; procured quotes for demolishing the
23 vacant building in the Yard; cleaned out and painted the Blacksmith Shop (employee
24 lounge) and was in the process of updating the furniture; procured quotes to rehab the
25 bathrooms; and begun updating written protocols for disposing of street sweepings and
26 catch basin cleanings. Finally, this letter indicated that the City had contacted Robert
27 Nicotera (Nicotera), a Department of Labor Standards (DLS) Safety Inspector, would

1 meet with him at the Yard in the upcoming days, and that the parties would further discuss
2 conditions at the Yard at their next meeting on August 29, 2017.

3 Correspondence after August 29, 2017 Bargaining Session

4 By letter dated September 1, 2017, Crystal wrote to McKissock and Decter, in
5 relevant part, that the City was “currently reviewing” the Union’s proposals from the
6 parties’ August 29, 2017 bargaining session. This letter notified the Union that the City
7 and DLS had arranged for “Syringe Pick-Up training” to occur on September 6 and 7,
8 2017. Additionally, this letter stated that the City took the view that picking up needles on
9 an “ad hoc” basis “is encompassed in the laborer’s job description,” and that “once the
10 training is provided, laborers will be expected” to perform that duty. This letter further
11 indicated that the City would clean out the “Tent City” on a one-time basis; would assign
12 laborers to remove bulk items without leaving their vehicles; and that the City would
13 contract with an outside party to pick up needles. Finally, this letter indicated that the City
14 was waiting to hear from the DLS regarding an inspector walkthrough of the Yard.

15 By letter dated September 14, 2017, McKissock wrote to Crystal, in relevant part,
16 that the Union had not received a response to the proposals it set forth at the parties’
17 August 29, 2017 bargaining session. Additionally, this letter requested that the City notify
18 the Union after a full DLS inspection of the Yard was scheduled. Finally, the Union
19 restated its “objection to and demand for bargaining over the City’s decision to require
20 bargaining unit members to engage in syringe pick-up on an ad hoc basis once training
21 is completed.”

22 By letter dated September 19, 2017, Crystal wrote to McKissock, in relevant part,
23 “It is the City’s position that responding to the Union’s proposals concerning the DPW

1 Yard conditions, including the Union's testing proposal is premature without the DPW
2 Yard report." Crystal reiterated the City's view that assigning bargaining unit members to
3 pick up needles on an ad hoc basis was part of the laborers' job description. Finally,
4 Crystal notified McKissock that on September 6 and 7, 2017, the DLS conducted DPW
5 training on the appropriate procedure for syringe pickup; and that on September 13 and
6 14, 2017, bargaining unit members used heavy machinery to perform bulk item cleanup
7 of the "Tent City" without removing any items by hand.

8 By letter dated September 29, 2017, McKissock wrote to Crystal, in relevant part:
9

10 The Union agrees to a reasonable postponement of bargaining to allow DLS
11 Inspector Nicotera additional time to inspect and issue his report on the conditions
12 at the DPW Yard. However, as the Union stated at the parties' August 29, 2017
13 bargaining session, the Union does not expect that the DLS report will be
14 comprehensive enough to address all of the concerns covered by the Union's
15 proposals. Notably, there are areas of serious concern – e.g. external and internal
16 air quality, soil quality, structural integrity – over which DLS does not have
17 jurisdiction. As such, the Union maintains that independent third-party inspections
18 may be necessary to determine what remedial steps the City needs to take to
19 ensure the DPW Yard is safe for its workers and their families.
20

21 Additionally, the Union again stated its objection to the City requiring bargaining unit
22 members to pick up needles on an ad hoc basis and requested that the City cease and
23 desist from implementing this requirement until the parties had bargained this issue to
24 impasse or resolution. Finally, the Union noted that under "the City's original Bloodborne
25 Pathogen Exposure Control Plan for Syringe Pick-Up," a plan to which the Union did not
26 object, the City delegated responsibility for cleaning up used needles to DPW supervisors.

27 By letter dated October 3, 2017, Crystal informed McKissock that Nicotera's "DPW
28 Yard Survey" had been scheduled for October 12, 2017, at 10:00 am. Additionally, after
29 again stating the City's position that picking up needles on an ad hoc basis was not a new
30 job duty, Crystal indicated that the City would "endeavor to avoid using bargaining unit

1 members to pick up needles on an ad hoc basis” before the parties held their next
2 bargaining session.

3 DLS Inspection of Yard

4 Nicotera is part of a DLS section that has responsibility for overseeing public sector
5 workplace health and safety.¹¹ On October 12, 2017, Nicotera performed a walkthrough
6 inspection of the Yard, which Gabriel, Jaquez, and an attorney for the City attended. The
7 walkthrough began sometime before lunch and lasted for most of the rest of the workday.
8 As opposed to an industrial hygienist, who performs scientific sampling, as a Safety
9 Inspector, Nicotera looks for health and safety issues of a physical nature where there’s
10 “a worker present doing something.”¹² Rather than try to uncover issues during this
11 inspection, Nicotera sought to see things as they visually appear while walking.¹³

¹¹ DLS has other sections as well. For example, DLS has an asbestos and lead section that enforces asbestos and lead regulations. Nicotera testified that if, as part of a health and safety workplace inspection, he noticed “an imminent type of situation” involving asbestos, he would make recommendations to the employer and then refer the case to the asbestos and lead section. Although not part of his current duties, Nicotera has experience with asbestos inspections, and on November 4, 2019, he testified that “last week” he referred a call from a worker to the asbestos and lead section.

¹² Nicotera was initially trained as an industrial hygienist. He testified that there was “basically nobody” in the Yard at the time of his inspection, except for the mechanic’s garage, which is in Building 8. Some workers entered the locker room area toward the end of the day, and he testified that was why he focused his inspection on the mechanic’s garage and locker room area. Nicotera acknowledged that he could “only guess” as to which areas of the Yard employees work in frequently.

¹³ When asked if he inspected every building in the Yard, Nicotera answered that he “inspected everything that was reasonably accessible.” He testified that management told him that Building 9 was “off-limits” and not a work area. Pena testified that Building 9 is not currently being used and that there is no garage door on it. I do not credit Pena’s testimony that the building is not in use because Torres testified that he works in Building 9, including working in Building 9 the day before the hearing.

1 On November 13, 2017, Nicotera issued his Inspection Report (Inspection Report).

2 The Inspection Report states:

3 Pursuant to Mass. Gen. L. Ch. 149, § 6, it is the responsibility of the Department
4 of Labor Standards (“DLS”) to investigate occupational hazards in the workplace,
5 to recommend controls, to reduce such hazards, and to assist counties,
6 municipalities and state agencies [to] comply with applicable workplace safety and
7 health laws, regulations, and recognized industry standards.

8
9 [DLS] conducted a workplace safety and health inspection on October 12, 2017 at
10 the Lawrence Department of Public Works (“Respondent”) located at One Auburn
11 Street in Lawrence, Massachusetts. The inspection was based on a complaint by
12 the employee union that DPW workers are working in unsafe conditions in the
13 DPW yard. DLS representative Robert Nicotera was accompanied by
14 representatives of the City of Lawrence Department of Public Works to review the
15 yard and activities in the yard.

16
17 DLS identified conditions which place employees at risk of work-related injury or
18 illness. As permitted by M.G.L. c149, § 6[,] DLS issues this Inspection Report to
19 the Respondent to correct those conditions in accordance with Massachusetts
20 General Laws and Federal Regulations, including the Occupational Safety and
21 Health Act of 1970, Section 5(a)(1), 19 CFR 1910, and 29 CFR 1926. Respondent
22 shall address the corrective measures outlined in the Conditions Requiring
23 Corrective Action and Order to Correct. Recommendations are also provided to
24 prevent work-related injuries at this site and are based on nationally recognized
25 standards. Respondent is advised to apply DLS corrective actions and
26 recommendations as appropriate to all work locations.

27
28 Nicotera identified thirteen (13) items requiring corrective action by December 13, 2017:

- 29
30 1) Exposed wiring in Building 2, Building 1, Building 4, Building 7, and Building 8.
31
32 2) Lawn Mowers with exposed pinch points in Building 7.
33
34 3) Walking surfaces/trip/fall hazards throughout the Yard, especially the second floor
35 of Building 1, but also Building 4 and Building 8.
36
37 4) Trash and spills hazards in or around Building 1, Building 2, Building 3, and
38 Building 4.
39
40 5) Improper storage in Building 8.
41
42 6) Unmarked exit doors in Building 1, Building 3, Building 6, and Building 8.
43
44 7) Insufficient access to electric circuit panels in Building 1.

- 1
- 2 8) Unlabeled electrical panels in Building 1.
- 3
- 4 9) Unlabeled containers of chemical products in Building 1, Building 3, and the Yard.
- 5
- 6 10) Unavailable Safety Data Sheets (SDS) for chemicals stored in Building 3.
- 7
- 8 11) Defective shop grinders in Building 3 and Building 8.
- 9
- 10 12) Radial saws without machine guards in Building 3.
- 11
- 12 13) Floor opening without a railing in the loft of Building 8.
- 13

14 Additionally, Nicotera made the following recommendations:¹⁴

- 15
- 16 1) Organize and implement a Right to Know Program department wide.¹⁵
- 17
- 18 2) Install a smoke and carbon monoxide detector in the employee break room in
- 19 Building 1.
- 20
- 21 3) Contact the Massachusetts Department of Environmental Protection for guidance
- 22 on the proper management and disposal of the storage pile of street cleaning
- 23 sweepings in the Yard.
- 24
- 25 4) Develop a Safety and Health Management System that includes Management
- 26 Leadership, Control Risk, and Measure Performance.
- 27

28 By letter dated December 11, 2017, Jaquez requested a six-month extension from
29 Nicotera to address the hazards identified in the Inspection Report and indicated that the
30 City had corrected Item 1. By letter dated January 30, 2018, Jaquez notified Nicotera
31 that the City would correct Items 2, 9, and 10 before April 1, 2018. Additionally, Jaquez
32 indicated that the City had taken corrective action on Items 3, 4, 5, 6, 7, 8, 11, 12, and

¹⁴ Nicotera testified that his recommendations involved potential hazards in areas he does not regulate.

¹⁵ This refers to maintaining information about certain chemical products.

1 13.¹⁶ By letter dated April 12, 2018, Jaquez informed Nicotera that the City had completed
2 taking corrective action.¹⁷ By email on January 15, 2019, Nicotera informed Jaquez that
3 the case was closed.

4 Correspondence after December 22, 2017 Bargaining Session

5 By letter dated January 2, 2018, Crystal wrote to McKissock and Decter, in relevant
6 part:

7 As you know, at our December 22, 2017 bargaining session concerning DPW Yard
8 conditions and syringe needle pick up procedures, the Union requested four types
9 of testing and remediation.... As the City attempts to respond to the Union's
10 information request, it believes it may be useful for the Union to clarify at which
11 locations it believes testing is necessary, what testing it seeks at each location,
12 why it seeks that testing and why it is seeking remediation now, even before there
13 is testing.

14
15 By letter dated January 17, 2018, McKissock and Decter responded to Crystal's
16 request for clarification and stated that the Union disagreed with Crystal's characterization
17 of the Union's proposal "as a request for information." They identified three elements to
18 the Union's proposal: 1) that the City hire a third-party, qualified neutral to test the Yard
19 for "asbestos, mold, lead, PCBs, and any other contaminants, as determined by the third-
20 party neutral;" 2) that the City provide the Union with a copy of the report and any findings
21 associated with the testing; and 3) that bargaining unit members at the Yard be

¹⁶ Jaquez indicated regarding Item 3 that, "Area identified on Bldg. 1 – Floor 2 has been declared off-limits to personnel. This area is no longer being used for storage or any other purpose." Jaquez also indicated that the loft in Building 8 had been declared off limits to personnel. Silva testified that the second floor of Building 1 was blocked off for less than twenty-four hours, and that he still accesses the second floor because the City still stores Sewer Department materials in that area. Pena testified that "as far as I know" the second floor of Building 1 is no longer used for storage. Pena also testified that he "infrequently" visits the Yard. I credit Silva's testimony, which is based upon personal knowledge rather than assumption.

¹⁷ Jaquez did not indicate that the City had addressed Nicotera's recommendations.

1 transferred to a temporary reporting location while the City conducts any necessary
2 remediation, or that they be relocated permanently to “a safe working environment.”
3 Additionally, they clarified that the Union did not seek remediation “before testing is
4 completed.” This letter continues, in relevant part:

5 The Union asserts that the above-referenced testing is necessary in all locations
6 at the DPW Yard where bargaining unit members perform work, pass through, or
7 otherwise access in the course of their job duties. This includes all locations where
8 vehicles, materials, and equipment are stored. We believe that encompasses all
9 of the buildings in the Yard with the exception of Building 9, as identified on the
10 DLS # 18S-5423 Inspection Report – which, based on the City’s representation,
11 has been condemned and slated for demolition.

12
13 The DPW Yard complex dates back to the late 1800s. Given the age and
14 dilapidated state of the buildings in the Yard, the Union has legitimate concerns
15 about the potential presence of asbestos, mold, PCBs, lead, and any other harmful
16 contaminants. Guidance from both the EPA and OSHA set permissible exposure
17 limits for such contaminants. [internal citation omitted]

18
19 With regard to asbestos, the City represented at bargaining that Building 9 will
20 need to be remediated for asbestos prior to demolition. There is likely to be
21 asbestos in other buildings as well. For example, bargaining unit members have
22 raised concerns about exposed pipes in Building 7.¹⁸

23
24 With regard to mold, approximately 10 years ago the abutting Spicket River
25 overflowed and flooded the Yard, causing substantial damage. While some
26 cleanup was done, to our knowledge the City did not test for mold. Odors in the
27 offices in Building 6 and 3 suggest that there may be unresolved air quality issues
28 that carry adverse health consequences for employees who work in those
29 enclosed spaces day in and day out.¹⁹ [internal citation omitted]

¹⁸ During the hearing, the Union offered testimony regarding the possible presence of asbestos in Buildings 2, 6, and 7. Specifically, the Union expressed concern, supported by photographic evidence, that old piping in areas of these buildings accessible to bargaining unit members is wrapped in a failing material that contains asbestos. Gary testified for the City that any wrapping is fiberglass and does not contain asbestos. The record does not indicate whether Nicotera visually inspected the wrapping of the pipes in these buildings.

¹⁹ Fritschy testified that workers at the Yard have been left on their own to clean up what they could after flooding in the Yard, and that he does not recall the City remediating any water damage. In addition to flooding, the interiors of numerous buildings are exposed to the elements due to their poor condition: the roof leaks in Buildings 2, 4, and 8; the roof

1
2 With respect to PCBs, in addition to concerns about PCB contaminants in the
3 building materials themselves, bargaining unit members may have exposure to
4 PCBs through the public's disposal of old florescent lights, electric appliances, oils,
5 and other hazardous waste in the Yard.
6

7 City Rejects Union's January 17, 2018 Proposal
8

9 By letter to McKissock and Decter dated February 7, 2018, Crystal asserted that
10 the Union's January 17, 2018 proposal "appears to be regressive" because the Union "is
11 now changing and expanding its demands." After summarizing the course of the parties'
12 negotiations, Crystal wrote that after the City expedited Nicotera's inspection of the Yard,
13 the Union "raised a new concern" by "indicating a new issue that the DLS report would
14 not be sufficiently comprehensive to address all Union concerns." According to Crystal,
15 despite the Union's claim, DLS "has jurisdiction over external and internal air quality, soil
16 quality, and structural integrity," and Nicotera's report "provided a detailed summary of
17 the occupational risks he saw and his recommendations."²⁰ Crystal further stated that
18 the Union "offers very little explanation for seeking additional testing outside the DLS
19 processes" and she opined that "if there were a PCB, asbestos, mold or lead concern at
20 the DPW Yard, DLS would certainly have identified it and informed the City if remediation
21 was required." This letter concludes:

of Building 12 is falling down; and parts of the roof are missing on Buildings 9 and 13. Silva testified that Buildings 3 and 6 have musty, moldy odors. When asked if he had "experienced" noxious odors in Building 3, Gary said no. Pena, who infrequently enters Building 6, testified that he has not "observed" any offensive smells or odors in Building 6.

²⁰ Nicotera did not test air or soil quality. Additionally, Nicotera testified that he was a biologist, not an engineer; and although he cited the landing in the mechanic's area, which appears at Item 13 in his Inspection Report, he also stated that he was "not that good at structure."

1 DLS is the agency with occupational health and safety expertise. The expertise
2 covers all the concerns raised by the Union, and, in fact, the Union suggested a
3 DLS inspection and report at the initial bargaining session. The City worked with
4 the Union and DLS to accomplish the inspection as quickly as possible and will
5 continue to ensure that each issue identified by Nicotera in his report is addressed.
6 The City is not willing to seek testing not recommended by Nicotera in his report
7 and rejects the proposal by the Union to do so. However, the City will work with
8 the Union, in the newly formed health and safety committee to address specific
9 concerns.

10 11 Union Requests Access to the Yard

12 By letter to Crystal dated April 9, 2018, Decter and McKissock responded to
13 Crystal's February 7, 2018 letter that, "Since the first day of negotiations, the Union has
14 consistently asked the City to hire a third-party expert to test the DPW Yard for harmful
15 contaminants." They wrote that, "The Union has made clear that neither party has the
16 expertise to determine which harmful contaminants may or may not be present in the
17 Yard – which is exactly why the Union has been steadfast in it[s] position that testing
18 should be completed by a qualified third party." The letter continues, in relevant part:

19 Even before Mr. Nicotera's inspection, the Union expressed concerns that DLS's
20 investigation might be too limited to address all occupational hazards in
21 negotiations. Moreover, the Union learned directly from Mr. Nicotera in a
22 conversation on September 13 that DLS's inspection would be limited to issues
23 like trip hazards, hazardous waste labeling, electrical hazards, and general risks
24 to health and safety in high-occupancy areas of the Yard. Mr. Nicotera specifically
25 noted that DLS does not regulate air quality, soil quality, or structural integrity. In
26 addition, DLS does not test for all potentially hazardous and life-threatening
27 contaminants as a matter of course. The Union conveyed that information to the
28 City in bargaining. As such, the City's statement that DLS's expertise covers all
29 areas of concern raised by the Union is inaccurate.

30
31 The letter then reiterates the Union's proposal that the City conduct testing, that the City
32 provide the Union with a copy of any report, and that the City relocate bargaining Union
33 members temporarily during any necessary remediation, or permanently relocate the
34 members. The letter continues:

1 If the City refuses to conduct the above testing or to bargain further with the Union
2 regarding this matter, the Union requests access to the DPW Yard for the purpose
3 of having an expert conduct sampling for the presence of hazardous contaminants.
4 Such testing will be completed at reasonable times, with reasonable notice, and in
5 a reasonable manner.

6
7

8
9 The Union seeks such access to obtain relevant and reasonably necessary
10 information about its members' working conditions. Whether DLS or other
11 government agencies require testing under the circumstances has no impact on
12 the Union's ability to access the premises. While testing may not be required,
13 remediation may be required as a result of such testing.

14
15

16
17 Please advise whether the City will agree to the Union's demand that the City retain
18 a qualified environmental testing company to test for asbestos, mold, lead, PCBs,
19 and animal refuse or, alternatively, allow the Union access to the DPW Yard to
20 conduct testing in accordance with the same as soon as possible.

21
22 City Denies the Union Request for Access to the Yard

23
24 By letter to McKissock and Decter, dated April 27, 2018, Crystal denied the Union's
25 request for access to the Yard. This letter states, in relevant part:

26 [T]he Union has not offered a sufficient basis to suggest that the DPW Yard
27 working environment (mostly outside) has the hazards about which the Union
28 seeks access and testing. Despite the City's previous request for clarification on
29 this precise point, the Union's most recent letter did not include one scintilla of a
30 fact-based cause for concern. Furthermore, in this case, the parties have
31 bargained about the health and safety environment and the City has adhered to
32 the DLS oversight demand by the Union. Indeed, the City is complying with the
33 remediation that followed the DLS inspection.

34
35 The Union is apparently not satisfied with the DLS inspection and required
36 remediation. Yet, during the course of bargaining the Union demanded this precise
37 approach. The City will not agree to the Union's shifting testing and inspection
38 requests, especially where there is no evidence that there is any basis for such a
39 shift. The Union's reliance on the *Worcester* case to demand access to see if a
40 different inspector has an alternative approach is misplaced.

41
42 In light of the bargaining that has occurred and the fact that the City has been
43 remediating in accordance with the findings and directives of the DLS and based
44 on the Union's failure to provide an explanation for why its demand for access and

1 separate testing is reasonably necessary to its duties as the exclusive bargaining
2 representative of the employees in the unit, the City will not agree to the Union's
3 access and testing request.
4

5
6

7 Applying the Section 10(a)(5) information request standard here, the Union has
8 failed to show that the requested access is relevant and reasonably necessary.
9 Moreover, even if the Union had made a sufficient relevancy finding, which it has
10 not, the City has adequately responded to the Union's access request in any case.
11 The City has articulated legitimate and substantial concern[s] regarding the
12 Union's shifting requests and sought further clarification from the Union. Although
13 the Union has not adequately addressed the basis for its access request, the City
14 has provided the Union as much information as it has resulting from the DLS report.
15 Thus, making reasonable efforts to provide the Union with as much of the
16 information as possible consistent with the Union's expressed concerns.
17

18 OPINION

19 The issue is whether the City violated the Law by denying the Union access to the
20 Yard for an expert to conduct sampling for the presence of hazardous contaminants.
21 Generally, a public employer violates Section 10(a)(5) of the Law if it refuses a union's
22 request to provide information it has that is relevant and reasonably necessary to the
23 union's performance of its duties as collective bargaining representative. This obligation
24 arises both in the context of negotiations and contract administration. Boston School
25 Committee, 10 MLC 1501, 1513, MUP-4468 (April 17, 1984). Once a union has
26 established that the requested information is relevant and reasonably necessary to its
27 duties as the exclusive representative, an employer may justify its refusal to provide
28 information by demonstrating that it has legitimate and substantial concerns about
29 disclosure of the information, and that it has made reasonable efforts to provide as much
30 information as possible, consistent with its expressed concerns. Boston School
31 Committee, 13 MLC 1290, 1294, MUP-2905 (November 2, 1986). The employer's
32 concerns are then balanced against those of the union, and the employer's refusal will be

1 excused where its concerns outweigh those of the union. Commonwealth of
2 Massachusetts, 11 MLC 1440, 1443 SUP-2746 (February 21, 1985). In Worcester
3 School Committee, 43 MLC 218, 219, MUP-10-6005 (March 30, 2017), the
4 Commonwealth Employment Relations Board (CERB), guided by NLRB v. Holyoke Water
5 Power Co., 778 F.2d 49 (1st Cir. 1985), adopted the principle that an employer's duty to
6 furnish relevant and reasonably necessary information encompasses providing access to
7 the worksite to obtain health and safety information.²¹

8 Timeliness

9 I preliminarily address the City's argument that the Charge is untimely. Section
10 15.04 of the DLR's Rules and Regulations, 456 CMR 15.04, states: "Except for good
11 cause shown, no charge shall be entertained by the Department based upon any
12 prohibited practice occurring more than six months prior to the filing of a charge with the
13 Department." A charge of prohibited practice must be filed with the DLR within six months
14 of the alleged violation or within six months from the date that the violation became known
15 or should have become known to the charging party. Town of Lenox, 29 MLC 51, MUP-
16 01-3214, MUP-01-3215 (September 5, 2002) (citing Town of Dennis, 26 MLC 203, MUP-
17 1868 (April 21, 200)). It is well-established that the six-month limitation period begins to
18 run when the party adversely affected receives actual or constructive notice of the

²¹ The CERB did not decide whether to apply its traditional balancing test for information cases or to apply the balancing test used by the NLRB, which weighs a union's interest in obtaining access to the employer's property to obtain health and safety information against an employer's interest in controlling its property, because it concluded that doing so was not crucial to the outcome of that case. Worcester School Committee, 43 MLC at 220-221 n.12. Here, the City has not argued that I should adopt the NLRB balancing test, and like in Worcester School Committee, the same outcome would result from either test.

1 conduct alleged to be an unfair labor practice. Id. (citing Wakefield School Committee,
2 27 MLC 9, MUP-2441 (August 16, 2000)).

3 Here, the City argues that on February 7, 2018, it “made clear that it would neither
4 provide nor allow any testing beyond the scope of the DLS report.” The Union did not file
5 the Charge until August 28, 2018, more than six months after February 7, 2018.
6 Accordingly, the City argues, the Charge is untimely. I disagree.

7 As the Union argues, it proposed throughout bargaining that the City engage and
8 pay for an expert to test for hazardous contaminants throughout the Yard. The City did
9 not definitively reject that proposal until February 7, 2018. After the City rejected the
10 Union’s bargaining proposal that the City engage and pay for an expert to test, which the
11 City was free to do as part of the bargaining process, the Union changed its position. On
12 April 9, 2018, for the first time, the Union requested access to the Yard for its own expert
13 to conduct testing for hazardous contaminants at the Union’s expense. The City rejected
14 this request on April 27, 2018, and the Union filed the Charge within six months of the
15 City rejecting that request for access to the Yard. Accordingly, I find the Charge timely.

16 Sampling Request Relevant and Reasonably Necessary

17 Turning to the merits of this case, the standard the CERB applies for determining
18 relevance of an information request is a broad and liberal one, similar to the standard for
19 determining relevance in discovery proceedings in civil litigation. Worcester School
20 Committee, 43 MLC at 219 (union’s request for access to sample caulking for PCB levels
21 was relevant and reasonably necessary to determine whether there were PCBs in the
22 schools’ exterior caulking that needed to be removed). Information concerning terms and
23 conditions of employment of union represented employees is presumptively relevant and

1 necessary for the union to carry out its statutory duties in representing those employees.
2 City of Lynn, 27 MLC 60, 61, MUP-2236, 2237 (December 1, 2000). Additionally, the
3 relevance of requested information must be determined by the circumstances that exist
4 at the time the Union requests the information. Id. at 61.

5 Here, Nicotera's visual inspection of the Yard "identified conditions which place
6 employees at risk of work-related injury or illness." In addition to ordering corrective
7 action, Nicotera recommended that the City take further action related to the storage of
8 certain chemicals, contact the Department of Environmental Protection "for guidance on
9 proper management and disposal" of the street sweepings in the Yard, and implement a
10 Safety and Health Management System. In short, Nicotera identified potentially unsafe
11 working conditions beyond the conditions that he had the authority to regulate. His
12 Inspection Report therefore supports the Union's position that conditions in the Yard
13 warrant further inspection.

14 Additionally, untreated sewage is regularly present on the ground in the Yard and
15 the soil emits a foul odor when disturbed.²² Water enters numerous buildings when it
16 rains due to leaking and or missing roofs, the Yard has flooded without undergoing
17 comprehensive remediation, and musty odors have been noticed within buildings,
18 establishing that mold may exist undetected throughout the Yard. Moreover, wild
19 animals, including feral cats and rats, live in the Yard. Finally, asbestos, which had to be
20 twice remediated from Building 14, may also be present in other areas of the Yard.

²² Exposure to untreated sewage in the Yard would be exposure beyond job related exposure that may occur in the field, and, at any rate, not all bargaining unit members work with untreated sewage.

1 As the City acknowledges in its brief, matters involving employee safety are
2 mandatory subjects of bargaining that fall within the ambit of a union's representation of
3 its members. Worcester School Committee, 43 MLC at 219. Yet, the City's blanket
4 refusal to allow the Union access to the Yard for an expert to conduct testing for the
5 presence of hazardous contaminants prohibits the Union from obtaining information about
6 its members' working conditions and forces the Union to rely solely on the City's
7 representations regarding the health and safety of the represented employees. The
8 CERB rejected a similar position in Worcester School Committee, and citing Holyoke
9 Water Power Co., described it as "patently fallacious." Id. at 220. Accordingly, I find that
10 the totality of the Union's evidence satisfies the "broad and liberal" standard that the
11 CERB applies for determining whether an information request is relevant and reasonably
12 necessary. Id. at 219.

13 I briefly address the City's arguments that the foregoing analysis does not resolve.
14 The City initially argues in its post-hearing brief that it did not violate the Law when it
15 "refused to allow further testing for contaminants" at the Yard. This position misstates the
16 facts because the City did not allow any testing at the Yard. Bonet and Gabriel walked
17 the Yard together only to view and discuss the Union's concerns. More importantly,
18 Nicotera's role as a safety inspector differs from that of an industrial hygienist, and rather
19 than testing for hazardous contaminants, his limited inspection concerned physical,
20 observable hazards. Although the City allowed a visual inspection of the Yard to occur,
21 it did not allow any testing for hazardous contaminants, which the preponderance of the
22 Union's evidence establishes may be present in the Yard. The City, while arguing that

1 the Union cannot prove that the Yard contains hazardous contaminants, has denied the
2 Union access to obtain this very information.

3 The City argues that the Investigator's dismissal of the Union's surface bargaining
4 and bad faith allegations reflects that the City met its bargaining obligation regarding the
5 underlying matter and allowed the Union access to the Yard during the bargaining
6 process. This position, and also the City's contention that it did not violate the Law
7 because it reached agreement with the Union over syringe pick-up, ignores the central
8 issue, which is whether the City violated the Law by denying the Union access to the Yard
9 for an expert to test for the presence of hazardous contaminants.

10 Finally, the City argues that to award testing "would allow countless charges and
11 remedial orders arising from bare assertions and broad descriptions alone." The City
12 again conflates the issue. This case concerns only this Union's right to request
13 information in the form of obtaining access to the Yard for an expert to test for hazardous
14 contaminants. Any alleged "bare assertions and broad descriptions" in the Union's case
15 arise from the City denying the Union the information the City argues that it lacks.
16 Furthermore, any order to remediate the Yard would depend on the results of the testing.
17 See Id. at 220.

18 No Articulated Legitimate and Substantial Concerns

19 In its brief, the City does not argue that it has legitimate and substantial concerns
20 for refusing the Union's request beyond its argument that the request for expert access
21 to the Yard for contaminants testing is neither relevant nor reasonably necessary to the
22 Union's execution of its duties as the exclusive representative. Nor did it raise any
23 legitimate and substantial concerns to the Union. Crystal's April 27, 2018 assertion that,

1 “The City has articulated legitimate and substantial concern regarding the Union’s shifting
2 requests and sought further clarification from the Union,” does not articulate any specific
3 concern beyond limiting the Union’s access to information to Nicotera’s report. Having
4 already agreed with the Union that its request for access for an expert to conduct
5 sampling, which Nicotera did not do during his physical inspection, was relevant and
6 reasonably necessary, I conclude that the City has not articulated any legitimate and
7 substantial concerns that would justify refusing the Union access to the Yard for an expert
8 to conduct sampling for the presence of hazardous contaminants.

9 Balancing of Interests

10 The Union’s request for access to the Yard for an expert to conduct sampling for
11 the presence of hazardous contaminants is relevant and reasonably necessary to the
12 Union’s execution of its duties as the exclusive representative. The City has not
13 articulated any legitimate and substantial concerns regarding granting the Union access
14 to the Yard. Accordingly, I find that the Union’s interest in gaining access to the Yard
15 outweighs the City’s interest in denying the Union access to the Yard.

16 CONCLUSION

17 The City violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of the Law
18 when it refused the Union’s April 9, 2018 request for access to the Yard for an expert to
19 conduct testing for hazardous contaminants, which directly relates to health and safety,
20 a mandatory subject of bargaining.

21 ORDER

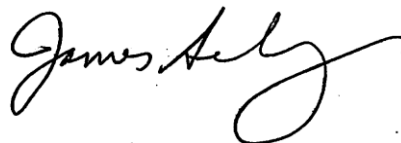
22 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the City
23 shall:

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- 1. Cease and desist from:
 - a. Failing to bargain in good faith by refusing to grant the Union access to the Yard for an expert to conduct sampling for the presence of hazardous contaminants.
- 2. Take the following affirmative action that will effectuate the purpose of the Law:
 - a. Upon the Union’s request, provide the Union’s expert access to all areas of the Yard to conduct sampling for the presence of hazardous contaminants at reasonable times, with reasonable notice, and in a reasonable manner.
 - b. Post immediately in all conspicuous places where members of the Union’s bargaining unit usually congregate, or where notices are usually posted, including electronically if the City customarily communicates with these members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - c. Notify the DLR in writing of steps taken to comply with this Order within ten (10) days of receipt.

SO ORDERED.

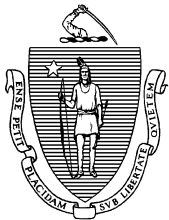
COMMONWEALTH OF MASSACHUSETTS
DEPARMTENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
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 become final and binding on the parties.



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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 Lawrence (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by denying the Firemen and Oilers, Local 3, SEIU (Union) access to the City's DPW Yard (Yard) for an expert to test for the presence of hazardous contaminants.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT fail and refuse to bargain in good faith with the Union by denying the Union access to the Yard for an expert to test for the presence of hazardous contaminants.

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

WE WILL, upon the Union's request, provide the Union's expert access to all areas of the Yard to conduct sampling for the presence of hazardous contaminants at reasonable times, with reasonable notice, and in a reasonable manner.

City of Lawrence

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).