

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

BOSTON PUBLIC LIBRARY  
PROFESSIONAL STAFF

Case No. MUP-19-7681

Date Issued: September 27, 2022

Hearing Officer: Meghan Ventrella, Esq.

Appearances:

Nicole Horberg Decter, Esq.

Representing the Boston Public Library  
Professional Staff

Kate Kleimola, Esq.

Representing the City of Boston

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the City of Boston (City), acting through the  
2 Boston Public Library (BPL), violated Section 10 (a)(5), and derivatively, Section 10(a)(1)  
3 of Massachusetts General Law Chapter 150E (the Law) by: 1) failing and refusing to  
4 bargain in good faith by refusing to bargain upon demand with the Boston Public Library  
5 Professional Staff Association (Union) over the impacts of the renovation project at the  
6 Chinatown Trade Center on the bargaining unit members' (unit members) terms and  
7 conditions of employment; and 2) closing the Chinatown Boston Public Library branch  
8 without providing the Union with prior notice and an opportunity to bargain to resolution  
9 or impasse over the impacts of the Chinatown branch closure on unit members' terms  
10 and conditions of employment. I find that the City violated the Law as alleged.

STATEMENT OF CASE

1  
2           On November 6, 2019, the Union filed a charge of prohibited practice (Charge)  
3 with the Department of Labor Relations (DLR) alleging that the City had violated Section  
4 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On November 8, 2019, the City  
5 filed a response to the Charge. On January 16, 2020, a DLR Investigator investigated the  
6 Charge. On January 31, 2020, the Investigator issued a two-count Complaint of  
7 Prohibited Practice (Complaint) alleging that the City violated Section 10(a)(5) and,  
8 derivatively, Section 10(a)(1) of the Law. On February 14, 2020, the City filed its Answer  
9 to the Complaint. On January 28, 2021, April 1, 2021, and May 20, 2021, I conducted a  
10 hearing by video conference during which the parties received a full opportunity to be  
11 heard, to examine and cross-examine witnesses, and to introduce evidence.<sup>1</sup> On August  
12 27, 2021, the parties filed post-hearing briefs. Based on my review of the record, including  
13 my observation of the demeanor of the witnesses, I make the following findings of fact  
14 and render the following opinion.

STIPULATIONS OF FACT

- 15  
16  
17       1.) The Professional Staff Association (“Union” or “PSA”) is an employee organization  
18       within the meaning of G.L. c. 150E § 1. PSA is the exclusive bargaining  
19       representative for non-managerial librarians and other professional staff employed  
20       by the City of Boston at the Boston Public Library [who] provide service to patrons  
21       and the public in-person and remotely.  
22  
23       2.) The City of Boston (“City”) is a public employer within the meaning of G.L. c. 150E  
24       § 1. The Boston Public Library is a sub-division of the City.  
25  
26       3.) The Boston Public Library (“Library”) has a central location, located in Copley  
27       Square (“Central Library”), and 25 other branches located throughout the City.  
28

---

<sup>1</sup> I conducted the hearing remotely pursuant to the Governor Baker’s teleworking directive to executive branch employees.

- 1 4.) The Chinatown Branch opened in 2018 in the China Trade Center (“CTC”), which  
2 is owned by the City and managed by the Boston Planning and Development  
3 Authority. Branch hours are 12:00 p.m. to 8:00 p.m. on Monday, 10:00 a.m.[to]  
4 6:00 p.m. Tuesday [through]Thursday, and 9:00 a.m. to 5:00 p.m. Friday. The  
5 Chinatown Branch is closed weekends.  
6
- 7 5.) The China Trade Center (“CTC”) is a large building situated in the heart of Boston’s  
8 Chinatown. The building is approximately six stories tall, including a basement.  
9 The CTC houses a number of non-profits and small businesses. CTC has a large  
10 glass and metal atrium, extending from the basement to the top floor of the  
11 building.  
12
- 13 6.) The Chinatown Branch is located in one basement room of the CTC. Its maximum  
14 capacity is twenty-five (25) individuals. There is one public entrance to the Library,  
15 through the atrium at the bottom of stairs to the basement.  
16
- 17 7.) At all relevant times between the opening of the Chinatown Branch and the  
18 commencement of renovations, the Chinatown Branch’s librarians used the CTC  
19 atrium routinely for youth and adult programming.  
20
- 21 8.) Additionally, the Chinatown Branch librarians utilized a designated storage space  
22 in the CTC basement for their programming materials.  
23
- 24 9.) Sometime prior to September 2019, the Boston Planning and Development  
25 Authority began planning for the renovation of the CTC.  
26
- 27 10.) The City’s renovation was focused primarily on repairing and painting the atrium’s  
28 walls and ceiling. Due to the height of the walls and ceiling, the plan required crews  
29 to put up scaffolding over the course of a month, perform painting and repairs for at  
30 least three (3) months, and then disassemble scaffolding for another month.  
31

32 FINDINGS OF FACT

33 Background

34 The Union serves as the exclusive collective bargaining representative for non-  
35 managerial librarians and other professional staff employed by the City of Boston (City)  
36 at the Boston Public Library (BPL) and provides service to patrons and the public in-  
37 person and remotely. The Union and the City are parties to a collective bargaining  
38 agreement. The BPL has twenty-five (25) branches around the City, including a location

1 in Chinatown.<sup>2</sup> The Chinatown branch is in the basement of the Chinatown Trade Center  
2 (Trade Center) and is a single room library with a small staff break room.<sup>3</sup>

3 The Chinatown branch can only hold 25 individuals at a time, including staff  
4 therefore many of the adult and children programs provided by the branch were  
5 conducted in the build's atrium located outside the branch's doors in the basement of the  
6 Trade Center. Additionally, the atrium was used for additional seating when the library  
7 was at maximum capacity.<sup>4</sup> The Chinatown branch reached maximum capacity several  
8 days a week at varying times, and the staff would have to ask the patrons to take seats  
9 out in the atrium.<sup>5</sup> When the atrium was filled to capacity, the staff asked the patrons to  
10 go to the Central Library branch.

11 In June of 2019, BPL hired Charlie Gluck (Gluck) as a Youth Services Librarian for  
12 the Chinatown library branch.<sup>6</sup> As the Youth Services Librarian, Gluck managed the  
13 children and teen book collections in the branch, reached out to several youth

---

<sup>2</sup> Within the BPL, the different branches have different days and hours of operation.

<sup>3</sup> The BPL is a tenant of the Trade Center. The Boston Planning & Development Agency (BPDA) owns the Trade Center and employs a third-party facility management company to run the daily operations of the Trade Center. Like the Chinatown branch, the BPL is not the owner of the buildings where the Grove Hall and Uphams Corner branches are located.

<sup>4</sup> In the fall of 2019, the Chinatown branch was open Monday through Thursdays from 10:00 a.m. to 6:00 p.m., and Fridays from 9:00 a.m. to 5 p.m. A few weeks before the branch closure, the BPL decided to extend hours of operation for the branch on Monday.

<sup>5</sup> The BPL's lease with the BPDA granted the BLP primary use of the atrium in Trade Center.

<sup>6</sup> In addition to Gluck, the Chinatown branch's staff included another full-time librarian, a full-time circulation supervisor and the part-time circulation staff.

1 organizations, and created and conducted several children's programs.<sup>7</sup> For example,  
2 Gluck created and conducted programs that included story times, sensory story times,  
3 and craft programs. Also, Yan Wang (Wang), the Chinatown branch's other librarian,  
4 utilized the atrium for adult programs. Wang conducted adult programs including,  
5 Mandarin and Cantonese discussion groups, book discussion groups, and ESL courses.

6 Since 1986, the City employed Karen Shafts (Shafts) as the Curator of Prints in  
7 the Arts Department for the BPL. For approximately twenty years, Shafts has been the  
8 chief steward for the Union, and as such she filed grievances, answered members  
9 questions, and engaged in bargaining on behalf of the Union with the BPL.<sup>8</sup> Since 2000,  
10 Shafts served as co-chair for the BPL's Health and Safety Committee (Committee). The  
11 Committee is a joint committee comprised of Union members, the American Federation  
12 State, County and Municipal Employees (AFSCME) members, and representatives from  
13 BPL management.<sup>9</sup> The Committee meets monthly to discuss issues that arise at the  
14 various BPL facilities regarding health or safety measures.

15 When the BPL conducts renovation or construction projects in a branch, the BPL  
16 notifies the Committee and updates are provided, and the Committee makes  
17 recommendations to resolve a particular question or issue.<sup>10</sup> For example, the Union

---

<sup>7</sup> Gluck hosted three children programs a week, and each were conducted in the atrium.

<sup>8</sup> In October of 2019, the Union's leadership included Shafts, Union president Emily Todd, Union Vice President Elisa Birdseye (Birdseye), Union secretary Bryce Healy (Healy), and Union treasurer Christopher Glass (Glass).

<sup>9</sup> Priscilla Foley (Foley), Director of Neighborhood Services testified that the purpose of the Committee is to discuss issues, not bargain.

<sup>10</sup> The Union, AFSCME and members of management do not actually bargain over the issues presented to the Committee. The Committee members for management usually

1 brought the issue of a unit member being assaulted by a patron in the Mattapan branch  
2 to the Committee's attention. However, Shafts and management bargained separately  
3 over the transfer of said unit member to another branch. In addition to safety issues, the  
4 Committee deals with issues pertaining to a branch renovation. For example, in 2004, the  
5 BPL renovated the Connolly branch, and the BPL attempted to keep the branch open  
6 during construction. However, the Connolly branch was eventually temporarily closed  
7 because the construction caused too much dust, debris, and noise which caused the staff  
8 and patrons logistical and health problems. Shortly thereafter in 2004, the BPL and the  
9 Union entered into a memorandum of agreement (MOA) that stated the BPL would notify  
10 the Committee of any hazardous conditions in a renovation or construction project at a  
11 branch. If complaints of workplace hazards are not resolved within ten working days, the  
12 Union may file a demand to arbitrate.<sup>11</sup>

13         When the BPL experienced an unplanned event, such as a plumbing emergency,  
14 at one of the branches that necessitated a temporary closure of that branch, the BPL  
15 would work out reassignments directly with the staff. For example, a few years ago, the  
16 Roxbury branch experienced a flood that resulted in a two-week branch closure.<sup>12</sup> For

---

take the issues raised and the Committee's recommendation back to the members of management involved with the project. Afterwards, the BPL and the Union meet to bargain over the issues.

<sup>11</sup> In this case the Union did not file a demand to arbitrate because the Chinatown branch was ultimately closed.

<sup>12</sup> In 2015, the BPL conducted a renovation project in the Central Library branch in Copley Square that required scaffolding in a section of the facility. The BPL did not close the library for the project.

1 emergency closures, the BPL allowed the unit members to pick which location they would  
2 work during the closures, and the BPL informed the Union of the situation.

3 In all other branch closures, the BPL and the Union worked together to bargain  
4 where unit members would be reassigned. For example, BPL's Assistant Manager of  
5 Neighborhood Services, Peter Coco (Coco) oversaw the replacement of a water heater  
6 in a branch that resulted in a temporary closure of the branch for two weeks. In that case,  
7 the BLP and the Union worked together to figure out unit members' reassignments. Also,  
8 for long term closures of branches, such as the closure of the Faneuil Hall branch, the  
9 BPL and Union worked together to reassign unit members. On several occasions, Priscilla  
10 Foley (Foley), Director of Neighborhood Services engaged in impact bargaining with the  
11 Union when a library branch temporarily closed for a renovation project, including at the  
12 Parker Hill, Dudley, Adams, and Hyde Park branches.

13 In the last five years, the BPL has temporarily closed five branches for renovations.  
14 In those instances, the BPL notified the Union that a certain branch was closing for  
15 renovations, and that the staff would be transferred.<sup>13</sup> After the BPL notified the Union of  
16 the closure, not just the Committee, the parties bargained over the impacts of said  
17 closure, including the transfer of staff.

### 18 Construction

19 In the summer of 2019, Gluck heard rumors from the Trade Center security guards  
20 that the BPDA planned to renovation the Trade Center. In August, Gluck noticed

---

<sup>13</sup> In the past few years, the Union and the BPL have met to discuss the closure of the Jamacia Plain, Parker Hill, Roxbury, South End Roslindale Hyde Park and Faneuil branches.

1 individuals moving boxes in the vacant space next to the library in the Trade Center. As  
2 such, Gluck reached out to Coco regarding the renovation rumors.<sup>14</sup> However, Coco did  
3 not know anything about the BPDA's renovation plans for the Trade Center. In early  
4 September, Gluck and Wang asked Peter Sun (Sun) the contractor working on  
5 renovations in the Trade Center about the plans. Sun informed Gluck that the construction  
6 crew was fixing parts of the ceiling which required them to build scaffolding in the atrium.  
7 Sun stated that the scaffolding would start in October. Gluck informed Coco that  
8 construction would commence in October, and that the atrium would contain a large  
9 scaffolding and essentially consume the atrium space.

10 By email dated September 6, 2019, Dolores Fazio (Fazio), the Senior Project  
11 Engineer for the BPDA, forwarded Coco the construction floorplan for the Trade Center,  
12 including the scaffolding in the atrium. On or about September 12, 2019, Gluck emailed  
13 the Union to express concerns about the construction in the Trade Center and the impacts  
14 on the unit members and patrons. On September 13, 2019, the Executive Board for the  
15 Union spoke with Wang, and she confirmed Gluck's concerns about the construction for  
16 the Trade Center. On September 19, 2019, the Committee met for its monthly meeting.  
17 During the meeting, the Union asked for any information pertaining to the renovation  
18 project at the Trade Center. Foley mentioned that she did not have much information on  
19 the project because the BPDA was in charge, but she would look into it.<sup>15</sup>

---

<sup>14</sup> In 2019, as the Assistant Manager of Neighborhood Services, Coco supervised seven library branches, including the Chinatown branch.

<sup>15</sup> Shafts, Foley, Crystal Houston, and Lauren Lepanto, another Union representative and children's librarian for West End branch were present at the meeting. In the Committee's July meeting, Foley briefly mentioned the Trade Center project, but no one had any information.



1           By email dated September 25, 2019, Shafts submitted to Foley an information  
2 request regarding the BDPA's renovation project at the Trade Center. By email dated  
3 October 10, 2019, Shafts reached out to Foley regarding the status of the information  
4 request. Additionally, Shafts informed Coco that the Chinatown branch staff had informed  
5 the Union that scaffolding would be erected in the atrium on or about October 22, 2019.  
6 Shafts highlighted to Coco the Union's concern that the construction and scaffolding  
7 would impact the unit member's health and safety as well as the loss of the atrium space  
8 on overflow for patrons. Shafts demanded that the parties meet to bargain over the  
9 impacts of the construction project on the unit member's terms and conditions of  
10 employment.

11           By email dated October 11, 2019, Foley informed Shafts that BPDA estimated that  
12 scaffolding would take about three weeks to erect and dismantle, and about three months  
13 for the work on the sky light and ceiling to be completed. Foley stated that the BPDA  
14 estimated the project would be completed in February of 2020. Also, Foley provided  
15 Shafts with the plan for the scaffolding and informed her that the project would include  
16 painting and plastering and work on the skylight and ceiling. Foley informed Shafts that  
17 the Chinatown branch would continue to serve as a pickup/drop off location for circulating  
18 BPL materials and laptops would be available to the public. Additionally, Foley stated that  
19 a meeting room would be provided to allow staff to provide programming while the atrium  
20 was being renovated.

21           On or about October 17, 2019, the Committee met for its monthly meeting. During  
22 the meeting, the City did not provide any further information on the Trade Center project,  
23 nor did it respond to the Union's demand to bargain. By letter dated October 18, 2019,

1 Shafts informed Foley that the information she provided to the Union on the renovation  
2 project at the Chinatown branch had not satisfied the Union's concerns about the health  
3 and safety of the unit members. Again, Shafts informed Foley that the Union was  
4 demanding to bargain over the impacts of the renovation project at the Chinatown branch  
5 as soon as possible as the project was estimated to start on October 22.<sup>16</sup>

6 On or about October 22, 2019, BPDA started construction on the atrium. By email  
7 dated October 23, 2019, Wang informed Coco that the construction at the Chinatown  
8 branch had started, which led to the unit members placing signage explaining that the  
9 stairs were closed due to construction. Wang explained that the construction structure  
10 was too close to the handicap ramp and made it too narrow to turn the corner. By email  
11 dated October 23, 2019, Gluck informed Coco that:

12 "I'd like to add to the noise level note and point out that in addition to the  
13 construction itself being extremely loud and disruptive, the construction  
14 workers are very loud and have been having a shouting 'conversation'  
15 the entire time. I tried to approach at one point to ask that they keep their  
16 voices at a lower level and they laughed it off. They are currently blocking  
17 off the one handicapped railing and are shouting over each other.  
18 Patrons are filtering out and expressing sympathy or apologizing for the  
19 noise. We need the ability to document (photograph) the construction  
20 process to assess impacts and we need the construction workers to  
21 respect our requests (that the construction itself will be noisy but we ask  
22 that they keep their voices to a lower level). Everything echoes in the  
23 atrium and closing most of the doors do[es not] shut out any of the  
24 sound."  
25

---

<sup>16</sup> Shafts informed Foley that the Union demanded to bargain over health and safety, hours, expected workload, and alternative locations for providing public services.

1 Coco responded to Gluck's email that he was "passing it on."<sup>17</sup> Later that day, Coco went  
2 to the Chinatown branch, however, the construction had ended for the day.<sup>18</sup>

3 By letter date October 24, 2019, Shafts informed Foley that the Union once again  
4 demanded to bargain with the City over the impacts on the unit members from the  
5 construction project at the Chinatown branch. Shafts listed the following impacts:

- 6 - The main stairway that runs through the Atrium from the building's first floor to  
7 the basement floor where the library space is located has not been blocked off,  
8 and there is no signage to indicate that the atrium is closed. Thus, patrons  
9 continue to walk through an active construction zone to get to the library.  
10
- 11 - Noise from the construction is extremely loud and disruptive. In addition, the  
12 construction workers are communicating by shouting to one another. Despite  
13 library staff requests to lower the noise level of the conversations, the shouting  
14 has continued.  
15
- 16 - The scaffolding has been erected right next to the handicap ramp and [it]  
17 narrows the space at the bottom. Staff are concerned that there is not sufficient  
18 space for a patron in a wheelchair [to] safely turn the corner at the bottom of  
19 the ramp and on the opposite side in order to access the library. This creates  
20 a hazard that staff are not prepared to handle.  
21
- 22 - The conference room on the build's first floor is too long and narrow to  
23 accommodate either adult or children's programs. In addition, there is not  
24 sufficient ventilation in the room when the door is closed.  
25
- 26 - On Wednesday, October 23, the library space reached its capacity for  
27 occupants twice. Staff had to suggest that patrons who could not be  
28 accommodated seek services at the Central branch.  
29

---

<sup>17</sup> Coco testified that he passed the information along to Foley.

<sup>18</sup> For the duration of construction, Foley had arranged for the Chinatown branch to utilize a conference room on the first floor of the Trade Center for programing. The Trade Center did not want strollers in the conference room making it difficult for individuals with small children to attend the programming conducted in the conference room. Also, the Trade Center limited the number of times the unit members had access to the conference room per week to conduct programing.

1 Again, Shafts reiterated the Union's demand to bargain and requested that the City  
2 provide dates for the following week that the parties could meet to bargain.

3 By email dated October 28, 2019, Foley informed the Union that as discussed in  
4 the September and October Committee meetings, the Trade Center renovation was  
5 temporary and the BPL planned on keeping the branch open during construction. Foley  
6 stated that the City did not see any bargainable impacts raising out of the temporary  
7 project and that any health and safety issues could be addressed by the Committee.  
8 However, Foley stated that the City was available October 31 or November 4 to meet with  
9 the Union.

10 From October 22 until October 31, the construction crew raised the scaffolding in  
11 the atrium which caused constant loud noises and dust to pollute the air. In addition to  
12 constructing a scaffolding in the atrium, the construction crew began sanding and  
13 repainting the atrium. Once construction started, the unit members and patrons of the  
14 Chinatown branch listened to constant loud hammering and other noises. As a result of  
15 the construction, the Trade Center limited the use of the atrium and blocked off the main  
16 staircase. The Trade Center would not allow the BPL to utilize the atrium for programs or  
17 overflow of patrons once the library was at capacity. Therefore, Gluck and Wang were  
18 forced to cancel several of their programs.<sup>19</sup>

19 In addition to the loud noises and dust, the Trade Center co-opted the storage  
20 closet that the Chinatown branch was utilizing to store supplies. The unit members had  
21 to store the library's supplies in their breakroom. As a result, the space was significantly

---

<sup>19</sup> The loud noises and dust caused unit members headaches and patrons to complain. Gluck and Yan informed Coco of their health issues.

1 smaller, and Gluck and Wang had to try to find a table in the library to work from which  
2 was often difficult with the patrons using the entire space. In addition to the noise and loss  
3 of space, the atrium was filled with dust from the construction. Wang and Gluck  
4 documented their complaints regarding the construction and informed Coco on an almost  
5 daily basis via phone and in-person when he conducted a site visits. Coco would relay  
6 those concerns to Foley.

7 Closure

8 On the morning of October 31, 2019, Coco notified Wang and Gluck that the BPL  
9 would be closing the Chinatown branch.<sup>20</sup> Coco called Gluck and stated that they were to  
10 report to the Trade Center but not open the library. Coco told Gluck and Wang that he did  
11 not know how long the library branch would be closed. Coco stated that Wang and Gluck  
12 must report to another branch for the rest of the day.<sup>21</sup> Coco told Gluck to report to the  
13 West End Library branch.<sup>22</sup> Gluck called Coco back and requested to go to the children's  
14 room in the Central branch, and Coco ultimately informed Gluck that they would be sent  
15 to the Central branch.<sup>23</sup> The BPL's Central branch is much larger than the Chinatown  
16 branch and was already staffed with five librarians. Laura Koenig (Koenig), the head of

---

<sup>20</sup> Additionally, Foley emailed all Chinatown and Central branch staff stating that due to the disruptive construction, the BPL decided to temporarily close the Chinatown branch.

<sup>21</sup> Coco informed Gluck she could take a personal day if she did not want to report to the West End branch, but Gluck declined.

<sup>22</sup> Gluck's commute to work was much longer to the West End branch than it had been to the Chinatown branch.

<sup>23</sup> Gluck informed Coco that she was concerned her schedule would change when she went the Central branch. Ultimately, BPL did not change Gluck's schedule when she was sent to the Central branch.

1 the children's room in the Central branch did not know how long Gluck would be assigned  
2 to the Central branch, and therefore found it difficult to assign Gluck programs. Gluck  
3 remained temporarily assigned to the Central branch's children from October 31 until the  
4 end of February, 2020.

5 By email dated October 31, 2019, Foley informed the Union that the Chinatown  
6 branch would be temporarily closed. Foley stated:

7 "Due to the disruption of the scaffolding construction, the Library has  
8 decided to close BPL Chinatown temporarily. We anticipate this could  
9 take up to 3 weeks and will update you with an exact date of reopening.  
10 Chinatown Branch Staff have indicated where they want to go during  
11 this short-term closure. The library [wa]s able to accommodate these  
12 requests."  
13

14 Also, Foley indicated that Gluck went to the Children's Room in the Central branch, and  
15 Wang went to tech services and content discovery in the Central branch.

16 By email dated October 31, 2019, Shafts informed Foley that the Union  
17 appreciated the City's decision to close the Chinatown branch and to reassign the staff  
18 during the construction, however, the Union still demanded to bargain over the impacts  
19 of the closure and the proposed reassignments. Shafts mentioned that the parties could  
20 meet on November 4. Shortly thereafter, Foley emailed Shafts stating that the City was  
21 no longer available on November 4, but she would send her dates that the City was  
22 available next week. By email dated November 6, 2019, Foley informed the Union that  
23 the BPL was available to meet on November 12 or November 14.

24 On or about November 12, 2019, the City and the Union met to discuss the closure  
25 of the Chinatown branch. During the meeting, the City informed the Union that that the  
26 branch would be reopened once the scaffolding was constructed. Shafts informed the  
27 City that the Union wanted the City to: 1) close the branch throughout the duration of the

1 construction project, 2) test the air quality, and 3) conduct a health and safety walk  
2 through before staff returned. Additionally, Shafts informed the City that the parties still  
3 needed to bargain over the job duties expected of Wang and Gluck while they were at  
4 their temporary assignments.<sup>24</sup> The Union wanted to know if Wang and Gluck would be  
5 able to continue their programs in their new assignments. The City restated that the  
6 branch would be reopened once the scaffolding was constructed, and that there were no  
7 health and safety impacts to bargain. Also, the City stated that Gluck and Wang's  
8 reassignments were temporary and therefore there was no need to bargain over their  
9 working conditions. The City informed the Union that any issues or questions about what  
10 programs the unit members worked on in their new assignments would be discussed with  
11 department head for that library branch. The City maintained that the branch would  
12 reopen after the scaffolding was constructed but proposed that it conduct an air quality  
13 test and health and safety walk through before the staff returned. The parties did not  
14 engage in further discussions over the closure of the Chinatown branch.<sup>25</sup>

15 By email dated December 4, 2019, Jessica Dembro (Dembro), the Director of  
16 Human Resources for BPL, informed the Union that based on the continued state of  
17 construction, the City did not have a scheduled date for re-opening the Chinatown branch.  
18 Dembro informed the Union that if the City decided to open the branch before the  
19 construction project was completed it would inform the Union and schedule a walkthrough  
20 prior to the opening. The Chinatown branch was reopened on March 25, 2020, and staff

---

<sup>24</sup> The Union did not ask the City to change Yan or Gluck's reassignments.

<sup>25</sup> By email dated November 22, 2019, Robert Boyle (Boyle), attorney for the City, informed the Union that it had failed to articulate any health and safety conditions that would warrant the Chinatown branch to be closed throughout the construction project.

1 returned to work at the branch. Between December 4 and March 25, the City did not reach  
2 out to the Union to bargain over the impacts of the Chinatown branch closure.

3  
4  
5  
6  
7

### Opinion

#### 10(a)(5) Renovation

8 Section 6 of the Law requires public employers and employees' representatives to  
9 meet at reasonable times to negotiate in good faith with respect to wages, hours,  
10 standards of productivity and performance, and any other terms and conditions of  
11 employment. Refusing to meet and bargain on demand concerning mandatory subjects  
12 of bargaining is a violation of Section 10(a)(5) of the Law. See New Bedford Housing  
13 Authority, 27 MLC 21, 27, MUP-1650 (September 7, 2000); Boston School Committee,  
14 11 M LC 1219, 1225, MUP-5315 (October 22,1984). The Union argued that the  
15 renovation project at the Trade Center impacted the health and safety, workload, and job  
16 duties of the unit members. At the time of the demand to bargain, the City contended that  
17 the renovation did not impact the unit members' terms and conditions of the employment.

18 First, the Union established that it demanded that the City bargain over the impacts  
19 of the renovation project at the Chinatown Trade Center on the unit members' terms and  
20 conditions of employment on October 10, and followed up on its demand to bargain on  
21 October 18 and 24 after the City failed to meet with the Union. Additionally, the Union  
22 established that the construction at the Trade Center created debris and dust in the air  
23 as well as extremely loud noises that created headaches and other respiratory concerns  
24 for the unit members. As such, the Union established that the renovation project at the  
25 Trade Center impacted the health and safety of the unit members working at the  
Chinatown branch. Employee safety is a mandatory subject of bargaining. City of Boston,



1 30 MLC 38, MUP-01-2940 (September 12, 2003). Furthermore, the Union demonstrated  
2 that the construction in the atrium of the Chinatown Trade Center impacted the unit  
3 members' job duties and workload as the Chinatown branch was forced to cancel several  
4 of the offered programs the unit members hosted. Commonwealth of Massachusetts, 28  
5 MLC 36, SUP-4345 (June 29, 2001).

6 The City argued that it did not violate the Law because it had a managerial right to  
7 close the Chinatown branch. However, the Union demanded to bargain with the City over  
8 the impacts of the renovation project at the Trade Center before the City decided to  
9 temporarily close the Chinatown branch. The City's argument that it had a managerial  
10 prerogative to close the Chinatown branch does not explain its refusal to bargain with the  
11 Union over the impacts of the renovation project. Before the City decided to close the  
12 Chinatown branch, the City informed the Union that it would discuss the renovation project  
13 but it did not believe that the renovation project created any bargainable impacts on unit  
14 members. As explained above, the renovation project at the Trade Center impacted the  
15 safety, workload, and job duties of the unit members at the Chinatown branch.

16 Next, the City argued that it did bargain in good faith when it offered to bargain the  
17 impacts of the renovation project and the City's decision to temporarily close the  
18 Chinatown branch on November 12. However, on October 28, 2019, the City informed  
19 the Union that it did not agree that renovation project created any bargainable impacts,  
20 but was willing to meet with the Union to discuss the matter. The parties did not meet to  
21 discuss the renovation project at the Trade Center before the City decided to temporarily  
22 close the Chinatown branch on October 31. Moreover, the parties did not meet until after  
23 the Union filed the prohibited practice charge in this matter.

1           As explained above, on November 12, 2019, the parties met to discuss the  
2 renovation project and the closure of the Chinatown branch. During the November 12  
3 meeting, the City asserted that the Chinatown branch would be reopened once the  
4 scaffolding was constructed, and that there were no health and safety impacts to bargain.  
5 Additionally, the City stated that the unit members' reassignments were temporary, thus  
6 there was no need to bargain over their working conditions. The City argued that it did  
7 bargain in good faith with the Union over the impacts of the renovation project because it  
8 made movement on its counter proposal to the Union at the November 12 meeting.

9           At the November 12 meeting, the City informed the Union that it decided to  
10 temporarily close the Chinatown branch only until the scaffolding was built in the atrium.  
11 The Union demanded that the Chinatown branch remain closed during the renovation  
12 project, and that the City conduct an air quality test before reopening the branch. The City  
13 argued it fulfilled its obligation to bargain in good faith when it moved off its original  
14 position and informed the Union that the Chinatown branch would reopen after the  
15 scaffolding was built, but it would conduct an air quality test and a walk-through prior to  
16 reopening. However, the Trade Center renovation project and the City's decision to close  
17 the Chinatown branch impacted the unit members' job duties and workload as well as  
18 health and safety. The City's movement on one proposal regarding safety does not mean  
19 that the parties had reached resolution or impasse on the matter. Therefore, the City's  
20 movement on one proposal regarding health and safety, while maintaining that there were  
21 no bargainable impacts, does not fulfill its obligation to bargain in good faith.

22           Before the November 12 meeting and during it, the City maintained that the  
23 renovation project did not create bargainable impacts. As such, the City did not engage

1 in meaningful bargaining on all the impacts of renovation project in response to the  
2 Union's demand to bargain. Despite the City's movement on one proposal, it did not fulfill  
3 its obligation to bargain to resolution or impasse on all the impacts created by the  
4 renovation project on the unit members' terms and conditions of employment.

5 Next, the City argued that at the November 12 meeting, the Union requested the  
6 Chinatown branch remain closed until the renovation project was completed, and  
7 ultimately the City did not reopen the branch until after the project was completed in March  
8 of 2020. However, the record demonstrates that the City did not decide to keep the  
9 Chinatown branch closed until March because it accepted the Union's proposal during  
10 bargaining. The parties only met once to discuss the renovation project and the closure  
11 of the Chinatown branch. During the one and only meeting on November 12, the City  
12 refused to keep the Chinatown branch closed until the renovation was complete. It was  
13 not until after weeks of silence, that the City made the decision to keep the Chinatown  
14 branch closed during the renovation project. As such, the City cannot hold its unilateral  
15 decision to keep the branch closed during the renovation as evidence of good faith  
16 bargaining.

17 Again, the City maintained at all times that the renovation project did not create  
18 bargainable impacts, thus City's willingness to "discuss" the matter with the Union does  
19 not indicate that it met with the Union on November 12 with an open and fair mind and  
20 with the sincere purpose of reaching an agreement. Given that the City ignored the  
21 Union's demand to bargain while the Chinatown branch was still open and maintained at  
22 all times that that the renovation project did not create bargainable impacts, it is clear that  
23 the City did not bargain in good faith. The Union demonstrated that the parties' meeting

1 on November 12 did not fulfill the City's obligation to bargain to resolution or impasse over  
2 the impacts of the renovation project at the Trade Center on unit members' terms and  
3 conditions of employment.

4 **10(a)(5): Closure of the Chinatown Branch**

5 A public employer violates Section 10(a)(5) of the Law when it changes an existing  
6 condition of employment or implements a new condition of employment involving a  
7 mandatory subject of bargaining without providing the employees' exclusive collective  
8 bargaining representative with prior notice and an opportunity to bargain to resolution or  
9 impasse. School Committee of Newton v. Labor Relations Commission, 338 Mass. 557  
10 (1983). The duty to bargain extends to both conditions of employment that are established  
11 through past practice as well as by a collective bargaining agreement. Commonwealth of  
12 Massachusetts, 27 MLC 1, 5, SUP-4304 (June 30, 2000); City of Boston, 16 MLC 1429,  
13 1434, MUP-6697 (December 19, 1989); Town of Wilmington, 9 MLC 1694, MUP-4688  
14 (March 18, 1983).

15 The Union has established that the City changed the unit members' existing  
16 condition of employment when it temporarily closed the Chinatown branch. For example,  
17 the City's decision to temporarily close the Chinatown branch impacted the unit members  
18 work location and job duties because the City reassigned the unit members to other BPL  
19 branches. The City argued that its reassignment of Wang and Gluck did not materially  
20 alter the terms and conditions of their employment. I disagree. When the City decided to  
21 reassign Gluck and Wang due to the Chinatown branch temporary closure, the decision  
22 impacted their job duties as they were assigned different tasks at the Central Library than  
23 they normally perform at the Chinatown Branch. For example, Gluck and Wang were no

1 longer permitted to create and run programming for the public. As such, the City's decision  
2 to close the Chinatown branch impacted Gluck and Wang's work location, job duties, and  
3 workload.

4 Additionally, the Union established that the City decided to temporarily close the  
5 Chinatown branch without first providing the Union notice and an opportunity to bargain  
6 over the impacts of that decision on unit members' terms and conditions of employment  
7 to resolution or impasse. It is undisputed that the City decided to temporarily close the  
8 Chinatown branch on October 31 without first notifying the Union and bargaining over the  
9 impacts of its decision to temporarily close the Chinatown branch.

10 The City argues that it did not have to provide the Union notice and opportunity to  
11 bargain over the impacts of the decision to close the Chinatown branch because it was  
12 following the parties' established protocol for emergency closures. The City asserted that  
13 the BLP frequently closed branches on a temporary basis for emergencies without notice  
14 to the Union. According to the City, the process for temporary closures of branches for  
15 emergencies was notifying staff, working directly with staff on temporary reassignments  
16 and then notifying the Union. However, the City failed to establish that the Chinatown  
17 branch was closed for an emergency. The record established that the parties considered  
18 "emergencies" that necessitated a temporary closure of branch to include unexpected  
19 events such as a flooding from a burst pipe, not a renovation project that the City knew  
20 about for months. As explained above, the Union informed the City of the disruptive nature  
21 of the construction and the health and safety impacts weeks before the City closed the  
22 Chinatown branch. Given the City was put on notice about the renovation project months  
23 prior to closure and was informed of the health and safety concerns of the staff weeks

1 prior to the temporary closure, it cannot be considered an “emergency” closure. Thus, the  
2 City’s actions did not fall within the parties’ accepted procedures for “emergency”  
3 temporary closures of BPL branches.

4 The City’s decision to temporarily close the Chinatown branch because of the  
5 renovation project did not fit into the parties’ practice for emergency closures. However,  
6 the Union demonstrated that the parties had an established past practice for temporarily  
7 closing BPL branches for renovations. To establish a violation, a union must show that:  
8 1) the employer altered an existing practice or instituted a new one; 2) the change affected  
9 a mandatory subject of bargaining; and 3) the change was established without prior notice  
10 and an opportunity to bargain. Commonwealth of Massachusetts, 20 MLC 1545, 1552,  
11 SUP-3460 (May 13, 1994); City of Boston, 20 MLC 1603, 1607, MUP-7976 (May 20,  
12 1994). To determine whether a practice exists, the Commonwealth Employment  
13 Relations Board (Board) analyzes the combination of facts upon which the alleged  
14 practice is predicated, including whether the practice has occurred with regularity over a  
15 sufficient period of time so that it is reasonable to expect that the practice will continue.  
16 Swansea Water District, 28 MLC 244, 245, MUP-2436 and MUP-2456 (January 23,  
17 2002); Commonwealth of Massachusetts, 23 MLC 171, 172, SUP-3586 (January 30,  
18 1997). A condition of employment may be found despite sporadic or infrequent activity  
19 where a consistent practice that applies to rare circumstances precipitating the practice  
20 recur. Commonwealth of Massachusetts, 23 MLC at 172, SUP-3586 (January 30, 1997).

21 The Union established that over the years, each time the City closed a certain  
22 branch on temporary or permanent basis for non-emergent reasons, such a renovation  
23 project, that it notified the Union of the closure and the parties bargained over the

1 reassignments of the unit members.<sup>26</sup> In this case, the BLP decided to temporarily close  
2 the Chinatown branch during the construction of the scaffolding for the Trade Centers'  
3 renovation project. Despite the established practice and the Union's demand to bargain  
4 over the impacts of the renovation project, the City did not inform the Union of the closure  
5 until after it shut down the branch and reassigned unit members.

6       The City argued that it was a managerial right to decide to temporarily close the  
7 Chinatown branch, therefore it did not violate the Law when it determined whether and  
8 when to close the branch. The City asserted that it did not need to bargain the decision  
9 to close the Chinatown branch, and as the City followed its well established practice of  
10 closing a branch during an emergency, it did not have to negotiate any impacts of the  
11 closure before following the established process. In this case, the issue is whether the  
12 City violated the Law when by closing the Chinatown branch without providing the Union  
13 notice and opportunity to bargain to resolution or impasse over the *impacts* of the closure,  
14 not the decision. Also, as explained above, the City failed to establish that the Chinatown  
15 branch was closed for "an emergency" that would allow for the City to forgo notifying the  
16 Union of the closure or bargaining with the Union over reassignments.

17       Next, the City argued that it temporarily closed the Chinatown branch under  
18 exigent circumstances as it received health and safety complaints from staff at the branch.  
19 An employer who relies on this narrow exception to the rule prohibiting unilateral changes  
20 in employees' working conditions must show that circumstances beyond its control  
21 require the imposition of a deadline for negotiations, the deadline imposed was

---

<sup>26</sup> The Union did not provide any evidence to establish that the parties bargained over the actual decision to temporarily close a BLP branch for renovations, just that the parties impact bargained over the decision.

1 reasonable and necessary, and the union was on notice that the change would be  
2 implemented on a certain date. Town of Plymouth, 26 MLC 220, 223, MUP-1465 (June  
3 7, 2000). The City argued that Trade Center was owned by the BPDA, which is a separate  
4 entity from the City or the BPL, therefore it did not have any control over the renovation  
5 project at the Trade Center. However, the BPDA did not require that the City to close the  
6 Chinatown branch due to the renovation project, the City decided to close the branch. As  
7 such, the City failed to explain how the BPDA's control of the renovation project prevented  
8 the City from impact bargaining with the Union over its decision to temporarily close the  
9 Chinatown branch. Furthermore, the City never gave the Union a deadline for  
10 negotiations or any sort of notice that the Chinatown branch would be closed on a certain  
11 date.

12         Again, the Union and unit members informed the City that the renovation project  
13 had created health and safety risks from the onset of the project, but the City ignored the  
14 complaints. Not only did the City ignore the complaints, but on October 28 it informed the  
15 Union that the renovation project did not create an bargainable impacts and any health  
16 and safety complaints could be addressed by the Committee. The City's argument that it  
17 was excused from bargaining the impacts of the decision to temporarily close the  
18 Chinatown branch for exigent circumstances falls short when it ignored the unit members  
19 and Union's complaints about health and safety conditions at the Chinatown branch for  
20 almost two weeks and asserted only a few days before deciding to close the branch that  
21 the renovation project did not create bargainable health and safety impacts. As such, the  
22 City did not meet the standard for exigent circumstances. Rather, it should have followed



1 the parties' past practice of bargaining with the Union over reassignments when it decides  
2 to close a BPL branch.

3 Next, the City contends that on November 12, the parties met and bargained the  
4 impacts of Gluck and Wang's reassignments. As explained above, the Union established  
5 that the parties had a past practice of the City notifying the Union of a temporary branch  
6 closure and bargaining over reassignments before the branch was closed. In this case,  
7 the City did not adhere to the parties' past practice, and temporarily closed the Chinatown  
8 branch without first notifying the Union or bargaining with the Union over the  
9 reassignments of Wang and Gluck. Moreover, at the November 12 meeting, the City  
10 informed the Union that Gluck and Wang's reassignments were temporary, and therefore  
11 there was no need to bargain over their working conditions. The City informed the Union  
12 that any issues or questions about what programs the unit members worked on in their  
13 new assignments would be discussed with the department head for that library branch.  
14 Therefore, the City and the Union never reached resolution or impasse over the impacts  
15 of the City's decision to temporarily close the Chinatown branch.

16 **CONCLUSION**

17 Based on the record and for the reasons explained above, I find that the City failed  
18 to bargain in good faith by refusing to bargain upon demand with the Union over the  
19 impacts of the renovation project on bargaining unit members' terms and conditions of  
20 employment in violation of Section 10(a)(5), and derivatively 10(a)(1) of the Law.  
21 Additionally, I find that the City decided to temporarily close the Chinatown branch without  
22 providing the Union with prior notice and an opportunity to bargain to resolution or  
23 impasse with the Union over the impacts of the Chinatown branch closure on unit

1 members' terms and conditions of employment in violation of Section 10(a)(5), and  
2 derivatively 10(a)(1) of the Law.

3 Order

4 WHEREFORE, based on the foregoing, it is hereby ordered that the City shall:

- 5  
6 1. Cease and desist from:  
7  
8 a. Failing or refusing to bargain in good faith by refusing to bargain upon demand  
9 with the Union over the impacts of a renovation project at a Boston Public  
10 Library branch on the unit members' terms and conditions of employment;  
11  
12 b. Failing or refusing to bargain in good faith with the Union to resolution or  
13 impasse over the impacts of closing a BLP branch for renovations on the unit  
14 members' terms and conditions of employment;  
15  
16 c. In any like or similar manner interfering with, restraining or coercing employees  
17 in the exercise of their rights protected under the Law.  
18  
19 2. Take the following affirmative actions that will effectuate the purpose of the Law:  
20  
21 a. Upon request, bargain with the Union in good faith to resolution or impasse on  
22 the impacts of a renovation project at a BLP branch on unit members' terms  
23 and conditions of employment;  
24  
25 b. Bargain with the Union in good faith to resolution or impasse on the impacts of  
26 the City's decision to close a BPL branch for renovations on unit members'  
27 terms and conditions of employment;  
28  
29 c. Sign and post immediately in conspicuous places employees usually  
30 congregate or where notices to employees are usually posted, including  
31 electronically, if the Employer customarily communicates to its employees via  
32 intranet or e-mail, and maintain for a period of thirty (30) consecutive days  
33 thereafter signed copies of the attached Notice to Employees;  
34  
35 d. Notify the DLR within ten (10) days after the date of service of this decision  
and order of the steps taken to comply with its terms.

36 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



---

MEGHAN VENTRELLA, 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.



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

A hearing officer of the Massachusetts Department of Labor Relations has held that the City of Boston (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. Chapter 150E (the Law) by failing to bargain in good faith by refusing to bargain upon demand with the Union over the impacts of the renovation project at the Chinatown Trade Center on bargaining unit members' terms and conditions of employment and deciding to temporarily close the Chinatown branch of the Boston Public Library for the renovation project without providing the Union prior notice and opportunity to bargain to resolution or impasse with the Union over the impacts of the Chinatown branch closure on unit members' terms and conditions of employment.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain in good faith by refusing to bargain upon demand with the Union over the impacts of a renovation project at a Boston Public Library branch on bargaining unit members' terms and conditions of employment.

WE WILL NOT fail to bargain in good faith by deciding to temporarily close a Boston Public Library branch for a renovation project without providing the Union prior notice and opportunity to bargain to resolution or impasse over the impacts of the decision to temporarily close the branch unit members' terms and conditions of employment.

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

\_\_\_\_\_  
City of Boston

Date:\_\_\_\_\_

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

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617- 626-7132).