

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

SALARIED EMPLOYEES OF NORTH  
AMERICA, LOCAL 9158

Case No.: MUP-23-9866

Date Issued: October 16, 2025

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Alfred Gordon O'Connell, Esq. - Representing the Salaried Employees of  
North America, Local 9158

Tanya Dennis, Esq. - Representing the City of Boston

**HEARING OFFICER'S DECISION**

**SUMMARY**

1 The issue in this case is whether the City of Boston (City or Employer)  
2 discriminated against Lawrence Pennucci (Pennucci) for engaging in concerted activity  
3 protected by Section 2 of Massachusetts General Laws, Chapter 150E (the Law), when  
4 it bypassed him for promotion on February 10, 2023, in violation of Section 10(a)(4),  
5 Section 10(a)(3) and, derivatively, Section 10(a)(1). For the reasons explained below, I  
6 find that the City violated the Law in the manner alleged.

**PROCEDURAL BACKGROUND**

7  
8  
9 On February 14, 2023, the Salaried Employees of North America, Local 9158  
10 (SENA or Union) filed a Charge of Prohibited Practice (Charge) with the Department of

1 Labor Relations (DLR), alleging that the City had engaged in prohibited practices within  
2 the meaning of Sections 10(a)(4), 10(a)(3) and, derivatively, Section 10(a)(1) of the Law  
3 by refusing to promote Pennucci to the position of Assistant Superintendent of Operations  
4 (Supt. of Automotive Maintenance)<sup>1</sup> in retaliation for his exercise of concerted activity,  
5 protected under Section 2 of the Law. By letter dated March 10, 2023, the DLR deferred  
6 the Charge to the parties' grievance and arbitration procedures. By letter dated October  
7 18, 2023, the Union requested that the DLR reconsider its decision on deferral based on  
8 the Union's submission of additional information. By letter dated October 30, 2023, the  
9 DLR reconsidered its decision on deferral and directed a DLR investigator to investigate  
10 the Charge.

11 On January 3, 2024,<sup>2</sup> the DLR Investigator issued a two-count Complaint of  
12 Prohibited Practice (Complaint), alleging that the City had violated Sections 10(a)(4),  
13 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by refusing to promote Pennucci  
14 to the position of Assistant Superintendent of Operations (Supt. of Automotive  
15 Maintenance) in retaliation for his exercise of concerted activity, protected under Section

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<sup>1</sup> The Complaint refers to the disputed position as "Assistant Superintendent of Operations (Supt. Of [sic] Automotive Maintenance)." However, in their joint exhibits and respective briefs, the parties refer to the position as either "Assistant Superintendent of Operations, Superintendent of Automotive Maintenance," or "Assistant Superintendent of Operations (Supt. of Automotive Maintenance)," or Superintendent of Automotive Maintenance." For purposes of consistency, I refer to the position as Assistant Superintendent of Operations (Supt. of Automotive Maintenance).

<sup>2</sup> The original Complaint included an erroneous issue date of January 3, 2023, instead of the correct issue date of January 3, 2024. Pursuant to DLR Regulation 456 CMR 15.06(2) and pursuant to the parties' Statement of Stipulated Facts and Exhibits and Waiver of Hearing, I amend the Complaint to correct this error.

2 of the Law. On January 11, 2024, the City filed its Answer to the Complaint. On March 11 and 12, 2025, the Union and the City, respectively, filed a Joint Statement of Stipulated Facts and Exhibits and Waiver of Hearing. On April 23, 2025, both parties filed a Stipulated Record comprising Joint Stipulations of Fact and Joint Exhibits. On April 23, 2025, the parties filed their respective post-hearing briefs.

### STIPULATED RECORD

The parties stipulate the following facts:

1. The City of Boston ("City") is a public employer within the meaning of Section 1 of G.L. c. 150E (the "Law").
2. Salaried Employees of North America, Local 9158 ("SENA" or "Union") is an employee organization within the meaning of Section 1 of the Law.
3. SENa is the exclusive collective bargaining representative for a City-wide unit of certain supervisory and administrative employees, including employees in the City's Department of Public Works.
4. At all times relevant, the City and the Union, hereinafter referred to as the "Parties," were signatories to a collective bargaining agreement ("CBA") covering the terms and conditions of [employment of] employees in the bargaining unit described in paragraph 3. Joint Exhibit 1 is a true and accurate copy of the CBA covering the period October 1, 2017, through September 30, 2020. Joint Exhibit 2 is a true and accurate copy of the CBA covering the period October 1, 2020, through September 30, 2023.
5. Since 2010, Lawrence Pennucci ("Pennucci") has held the position of Principal Administrative Assistant in the Central Fleet Maintenance group in the Department of Public Works, a position in the SENa bargaining unit. Joint Exhibit 17 is a true and accurate copy of the job description for Pennucci's position. Joint Exhibit 18 is a true and accurate copy of the organizational chart for Central Fleet Maintenance.
6. In or around September 2019, Pennucci applied for the permanent position of Superintendent of Automotive Maintenance contained in Job Posting 2019-17291. Joint Exhibit 3 is a true and accurate copy of the job posting. Joint Exhibit 4 is a true and accurate copy of the application materials Pennucci submitted in response to the job posting.

- 1       7. Pennucci was interviewed for the position on or around October 30, 2019. Joint  
2       Exhibit 5 is a true and accurate copy of the interview materials relating to  
3       Pennucci's October 30, 2019, interview. Joint Exhibit 6 is a true and accurate copy  
4       of the score sheet produced as a result of the interviews of the candidates for the  
5       position, redacted of all of the candidates' names with the exception of Pennucci  
6       and the selected candidate, Matthew Bradley ("Bradley").  
7
- 8       8. Pennucci was not selected for the position.  
9
- 10      9. On or about November 26, 2019, the Union and Pennucci grieved his non-  
11      selection for the position described in paragraph 6 as an unjust promotional  
12      bypass, and the Union subsequently advanced the grievance to arbitration. Joint  
13      Exhibit 7 is a true and accurate copy of the grievance.  
14
- 15      10. In an award issued on or about July 6, 2021, and [in] a subsequent revised award  
16      issued on or about July 28, 2021, an arbitrator ruled that the City violated the  
17      Parties' collective bargaining agreement by arbitrarily and capriciously bypassing  
18      Pennucci for the position described in paragraph 6 and ordered the City to  
19      implement the selection process for the position forthwith, with Pennucci as the  
20      only candidate. Joint Exhibit 8 is a true and accurate copy of the revised award.  
21
- 22      11. On or about August 4, 2021, the City filed a complaint in Suffolk Superior Court,  
23      seeking to vacate the arbitration award described in paragraph 10. Joint Exhibit 10  
24      is a true and accurate copy of the Superior Court complaint.  
25
- 26      12. On or about March 14, 2022, the Union filed case number MUP-22-9172 with the  
27      DLR alleging that the City has retaliated against Pennucci for engaging in the  
28      grievance and arbitration process described in paragraphs 9 and 10 by denying  
29      him regular overtime opportunities. Joint Exhibit 11 is a true and accurate copy of  
30      charge in case number MUP-22-9172.  
31
- 32      13. On or about August 8, 2022, the DLR issued a Complaint, and on or about August  
33      15, 2022, the DLR issued an Amended Complaint, in case number MUP-22-9172.  
34      Joint Exhibit 12 is a true and accurate copy of the original Complaint. Joint Exhibit  
35      13 is a true and accurate copy of the Amended Complaint.
- 36      14. On or about September 19, 2022, the City and the Union executed a settlement  
37      agreement whereby, among other things, the City agreed to re-interview Pennucci  
38      for the position described in paragraph 6 and dismiss the Superior Court complaint  
39      described in paragraph 11. Joint Exhibit 14 is a true and accurate copy of the  
40      settlement agreement.

1 15. Pursuant to the settlement agreement described in paragraph 14, a new interview  
2 panel consisting of Scott Alther ("Alther"), Michael Brohel ("Brohel"), and Abigail  
3 Milewski ("Milewski") interviewed Pennucci on or about January 18, 2023. Joint  
4 Exhibits 15(a) through 15(d) are true and accurate copies of the score sheets and  
5 interview notes from the January 18, 2023, interview.  
6

7 16. On or about February 10, 2023, the City notified Pennucci that it did not select him  
8 for the position described in paragraph 6. Joint Exhibit 17 is a true and accurate  
9 copy of notification to Pennucci of his non-selection.  
10

11 17. Abigail Milewski, Scott Alther, and Michael Brohel did not directly participate in any  
12 of Pennucci's prior protected activities.  
13

14 18. Scott Alther and Michael Brohel were active SENA members when they  
15 interviewed Pennucci in January 2023 to present. Abigail Milewski was an active  
16 SENA member from March 18, 2019, until September 9, 2022. Neither Alther, nor  
17 Brohel, nor Milewski has ever served as an officer, agent or representative of  
18 SENA.  
19

## 20 **The 2020 - 2023 CBA**

21 Article 8 of the parties' 2020-2023 CBA pertained to "Management Rights" and  
22 stated, in full:

23 Section 1. The Municipal Employer reserves and retains the sole and  
24 exclusive right to manage, operate and conduct all of its Department's  
25 operations and activities, except as otherwise specifically and expressly  
26 provided in this Agreement. The enumeration of management rights in this  
27 Article is not to be construed as a limitation of management's rights, but  
28 rather as an illustration of the nature of the rights inherent in management.  
29

30 Section 2. The Municipal Employer, subject to the express and specific  
31 provisions of this Agreement, reserves and retains the exclusive right to  
32 hire, promote, assign, transfer, suspend, discipline, discharge, lay off and  
33 recall personnel; to establish, create, revise and implement reasonable  
34 work rules and regulations including performance evaluations and the  
35 criterion upon which bargaining unit members shall be evaluated which shall  
36 be used to determine promotions, demotions, layoffs, compensation, and  
37 discipline and discharge; to require bargaining unit members to assist the  
38 Appointing Authority/designee in the conduct of performance evaluations of  
39 those employees supervised by bargaining unit employees whether these  
40 employees are members of this or any other bargaining unit; to establish

positions and job descriptions and the classifications thereof; to reclassify existing positions based on assigned duties and responsibilities, or make changes in assigned duties and responsibilities; to schedule work as required; to study and use, introduce, install new or improved methods, systems, facilities and/or equipment; to determine methods, processes and procedures by which work is to be performed; to subcontract out work where the purpose is not to undermine the bargaining unit, to schedule and assign work; and in all respects to carry out the ordinary and customary functions of municipal management.

Article 14 of the parties' 2020-2023 CBA pertained to "Temporary or Permanent

Vacancies" and stated in full:

Section 1. When there is an existing Civil Service list for a bargaining unit position to be filled on a temporary or permanent basis, the selection of an employee to perform service in such position shall be made in accordance with Civil Service rules. When there is no existing Civil Service list for the bargaining unit position to be filled, the provisions of Section 2 shall apply. All position vacancies within the bargaining unit shall be posted City-wide as well as in the department in which such opening exists, for a period of seven (7) working days. Applications from bargaining unit members are encouraged and must be received within the specified open period 14[.]

Section 2. Recognizing the career manager status of members of this bargaining unit, the Appointing Authority's selection of employees to fill temporary or permanent vacancies shall be made on the basis of qualifications and abilities including, but not limited to, managerial skills, interpersonal skills, technical skills and work history. The Appointing Authority shall be the sole judge of qualifications and abilities required for the job. The selection of the most qualified applicant shall be subject to challenge by a more senior applicant only insofar as the grievance alleges the selection to be arbitrary or capricious.

### **The Position Posting**

On or around September 13, 2019, the City posted a vacancy for the position of Assistant Superintendent of Operations (Supt. of Automotive Maintenance), which included the following job description:

....

1 Under administrative direction, performs work of unusual difficulty directing  
2 the operation of Central Fleet Management (CFM) to ensure the effective  
3 maintenance and repair of the department's fleet of 1200 plus vehicles and  
4 numerous pieces of equipment of various municipal departments.  
5

- 6 • Organizes repair and maintenance work to ensure maximum  
7 efficiency of all motor vehicles under the control of CFM.
- 8 • Plans, schedules and assigns work to subordinates engaged in the  
9 repair and maintenance of all automotive, specialized and heavy  
10 motor equipment.
- 11 • Monitors and supervises subordinates to ensure adherence to  
12 quality and safety standards.
- 13 • Administers Preventive Maintenance Program for Fleet vehicles.
- 14 • Ensures adherence to maintenance schedules.
- 15 • Responsible for maintaining Vehicle Maintenance Information and  
16 Fuel Management Systems software.
- 17 • Administers all cost/labor ratios for cost effective vehicle  
18 management; schedules Mass. State Inspections.
- 19 • Handles manufacturer's warranty recalls.
- 20 • Insures compliance with all in house warranty programs.
- 21 • Prepares budget projections.
- 22 • Ensures shop is in compliance with environmental regulations  
23 pertaining to the operations and repair of motor vehicles.
- 24 • Performs related work as required.  
25

26 Must be available to work snow emergency [sic] and any necessary  
27 operations as required by the Chief of Street or designee.  
28

29 Minimum Entrance Qualifications:

30 At least four (4) years of full-time, or equivalent part-time, paid experience  
31 involving planning, organizing, staffing and directing the maintenance and  
32 repair of automotive and heavy motor equipment, including at least one (1)  
33 year which must have been in a supervisory capacity to include budget  
34 planning, control and operational analysis.  
35

36 Previous experience as an automotive/truck technician preferred.  
37 Preference will also be given for certifications pertaining to Fleet  
38 Management, Automotive Service Excellence (ASE) and other recognized  
39 factory training certifications.

1 Must be familiar with Vehicle Maintenance Information Systems and Fuel  
2 Management software, Commonwealth of Massachusetts Inspection &  
3 Maintenance (I&M) Program, industry standards for labor and time guides.

4 Ability to exercise good judgment and focus on detail as required by the job.  
5 Must have and maintain a current Massachusetts driver's license. A  
6 Massachusetts commercial driver's license (CDL) with air brake  
7 endorsement is preferred.  
8

9 Substitutions: An Associate degree in mechanical power engineering or  
10 related fields may be substituted for up to two (2) years of the required  
11 experience. Supervisory experience may not be substituted.  
12 ....

13  
14 **Pennucci's 2019 Interview**

15 Pursuant to the posting, Pennucci applied for the position of Superintendent of  
16 Automotive Maintenance in September of 2019. Pennucci's application included a copy  
17 of his resume, his ASE Certification Status, and copies of his Massachusetts Commercial  
18 Driver's License and his Massachusetts Safety/Emissions Inspector License. Pennucci's  
19 resume listed the following duties that he performed as Fleet Inventory Manager at CFM:

- 20 • Manage City of Boston's Motor Vehicle Management Bureau;  
21 registering vehicles, decommissioning motor vehicles and related  
22 property, auctioning of vehicles, resolving title issues, and  
23 maintain[ing] inventory (approximately 1,100 vehicles and equipment)
- 24 • Work closely with Director of Central Fleet in order to identify and  
25 recommend ways to improve the efficiency of day-to-day operations  
26 of the department
- 27 • Assist Director of Central Fleet in managing all aspects of  
28 departmental chargeback system and monitoring CFM expenditures  
29 and overtime costs
- 30 • Coordinate all activities relating to the acquisition, modification, and  
31 delivery of vehicles to appropriate departments, including  
32 manufacturer safety recalls, warranty repairs, and compliance with all  
33 relevant requirements and standards
- 34 • Support in the establishment and supervision of CFM vendor contracts  
35 and related accounts payable



- Monitor vendors by periodically meeting with them to discuss vehicle related repairs and/or service concerns
- Manage all aspects of records, registration, inventory, and statistical data for the City's fleet of motor vehicles and equipment
- Perform various duties related to accident report management, including coordinating with the Law Department to procure vehicle registration, accident reports, estimates, and repair costs relating to accident damage
- Perform various duties related to Purchasing while adhering to Chapter 30B for procurement of goods and services
- Maintain software updates and licensing, as well as maintenance and functionality for computers, laptops, specialty scan tools and related automotive diagnostic tools for technicians
- Work closely with City of Boston's Department of Innovation and Technology (DOIT) to troubleshoot network issues for the City's seven vehicle fueling sites
- Act as departmental liaison with all City departments
- Managed the three-person Communication Shop, whose responsibilities include maintaining the City of Boston's 800-mhz radio system, installing GPS and communication equipment, vehicle lettering and decaling

On October 30, 2019, the City interviewed seven candidates<sup>3</sup> including Pennucci and Matt Bradley (Bradley)<sup>4</sup> for the position. The City's interview panel comprised Jane Calobrisi (Calobrisi) and William M. Coughlin (Coughlin), who completed separate Interview Ratings Forms. In Calobrisi's Form, she gave Pennucci the following ratings [emphasized in bold font with an asterisk]<sup>5</sup> based on the following factors:

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<sup>3</sup> Both parties declined to identify the other five candidates and redacted all joint exhibits that referenced their names.

<sup>4</sup> At all relevant times, Bradley possessed less seniority than Pennucci.

<sup>5</sup> Calobrisi marked her original ratings with circles.

	Unsatisfactory for this position	Fair	Average	Good	Excellent for this position
FACTORS					
Performance/Experience	1	2	3	<b>4*</b>	5
Job knowledge required	1	2	3	<b>4*</b>	5
Job Skills required	1	2	3	<b>4*</b>	5
Interpersonal Skills	1	2	<b>3*</b>	4	5
Past Discipline <sup>6</sup>	1	2	3	4	5

1 In her Form, Calobrisi also summarized Pennucci's "Major Assets," noting that he  
2 possessed "licenses," had "9 yrs [sic] in Fleet," and had "knowledge of how position  
3 works" [sic]. She further summarized his "Major Shortcomings," noting that Pennucci had  
4 "limited procurement/contract exp.," had "limited software exp.," and had "limited billing  
5 exp."<sup>7</sup>

6 In Coughlin's Form, he gave Pennucci the following ratings [emphasized in bold  
7 font with an asterisk]<sup>8</sup> based on the following factors:

	Unsatisfactory for this position	Fair	Average	Good	Excellent for this position
FACTORS					
Performance/Experience	1	2	3	4	<b>5*</b>
Job knowledge required	1	2	3	<b>4*</b>	5
Job Skills required	1	2	3	<b>4*</b>	5
Interpersonal Skills	1	2	3	<b>4*</b>	5

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<sup>6</sup> Calobrisi did not rate this factor.

<sup>7</sup> Calobrisi's Form also included six interview questions and her handwritten notes that paraphrased Pennucci's answers to these questions.

<sup>8</sup> Coughlin marked his original ratings with circles.

Past Discipline	1	2	3	4 <sup>9</sup>	5
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In his Form, Coughlin summarized Pennucci's "Major Assets," noting that he possessed "automotive knowledge" and was "certified in various skills." Coughlin also summarized Pennucci's "Major Shortcomings," noting that he "did not express knowledge of the actual job as noted before the interview."<sup>10</sup>

At the conclusion of all seven interviews, Calobrisi and Coughlin gave the following combined, total interview scores: 40.00<sup>11</sup> (Bradley), 34.00 ([redacted]), 32.00 (Pennucci), 26.00 ([redacted]), 21.00 ([redacted]), 14.00 ([redacted]), and 10.00 ([redacted]). At some point between October 30, 2019 and November 26, 2019, the City declined to select Pennucci for the position.

### **The Grievance and Arbitration**

On November 26, 2019, the Union filed a grievance on behalf of Pennucci, alleging a violation of Article 14, Section 2 of the parties' CBA based on an "unjust promotional bypass." On July 6, 2021, Arbitrator Richard Boulanger (Boulanger) issued an award that upheld the grievance and directed the City to vacate the position of Superintendent of Automotive Maintenance and to implement a new selection and evaluation process to consider only two candidates, i.e., Pennucci and Bradley. In his award, Boulanger found

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<sup>9</sup> Coughlin initially rated this factor as a "4" but later struck through this rating. It is unclear from the record whether Coughlin intended for this factor to remain unrated.

<sup>10</sup> Coughlin's Form included the same six interview questions as Calobrisi's Form, which included his handwritten notes that paraphrased Pennucci's answers to these questions.

<sup>11</sup> 40 was the highest possible combined score that both panelists could give, while 20 was the highest possible individual score that each panelist could give.

1 that at the time of their interviews, Pennucci “possessed all minimum entrance  
2 qualifications, both required and preferred,” while Bradley “did not possess [the] required  
3 minimum entrance qualifications.” Boulanger also found that Coughlin and Bradley  
4 shared a “personal relationship” which “influenced [Coughlin’s] selection of Mr. Bradley in  
5 lieu of the grievant.” Specifically, Bradley “was acquainted with Mr. Coughlin’s children  
6 when they were of grade school age,” and Coughlin “attended Mr. Bradley’s wedding”  
7 prior to his interview. Further, Boulanger found that Bradley “had an advantage [over  
8 Pennucci] in receiving the interview questions [from Coughlin] in advance of the  
9 interview.” Based on these findings, Boulanger concluded that the City violated Article 14,  
10 Section 2 of the CBA by acting in an arbitration and capricious manner when it bypassed  
11 Pennucci in favor of Bradley. Despite this conclusion, Boulanger also stated the following:

12 My decision should not be taken to mean that Mr. Bradley is not an  
13 exemplary employee. Evidence of his experience and accomplishments, as  
14 reflected on his resume, are impressive. It appears from his resume that he  
15 is well suited to other promotional opportunities in the bargaining unit.  
16 However, as to the Superintendent’s position, the City posted the position  
17 with the minimum entrance qualifications, and by Mr. Bradley’s own candid  
18 assessment, and to his credit, he admitted that he had not obtained or  
19 possessed some of the required minimum entrance qualifications for the  
20 Superintendent’s position.

21  
22 Between July 6 and 28, 2021, the parties filed a joint motion for clarification of the  
23 award; and, by ruling issued on July 28, 2021, Arbitrator Boulanger allowed the motion  
24 and issued the following clarification and revised award which stated, in pertinent part:

25 ....On July 6, 2021, [I issued an award in which....] I decided that a  
26 “candidate for the Superintendent of Automotive maintenance position not  
27 possessing requisite minimum entrance qualifications, will not be  
28 interviewed, or otherwise considered for the position...” While I ruled that  
29 during the second and revised Superintendent of Automotive Maintenance

1 position selection process, only Mr. Pennucci and Mr. Bradley could be  
2 considered for the position[,] I also found that Mr. Bradley did not satisfy the  
3 required minimum entrance qualifications.... Therefore, it is only Mr.  
4 Pennucci who can be considered for the Superintendent of Automotive  
5 Maintenance position. Consequently, I allow the parties' joint motion, and  
6 revise my original award as follows[:]  
7

8 The City violated Article 14 §2 of the collective bargaining agreement by  
9 acting in an arbitrary and capricious manner when it by-passed Mr.  
10 Lawrence Pennucci for the position of Superintendent of Automotive  
11 Maintenance. The Superintendent of Automotive Maintenance position  
12 shall be vacated forthwith. The selection process for that position shall be  
13 implemented forthwith. Interviewers will be other than the original  
14 interviewers for the position. It is only Mr. Pennucci that shall be considered  
15 for the Superintendent of Automotive Maintenance position. Qualifications  
16 and abilities of Mr. Pennucci shall be evaluated as of September, 2019  
17 when the position was originally posted. Qualifications and abilities  
18 specified for the position will be identical to those selected by the City in  
19 2019 with the same required and preferred minimum entrance  
20 qualifications, and other qualifications and abilities included therein.  
21

## 22 **The Court Complaint and Settlement Agreement**

23 On August 4, 2021, the City filed a complaint in Suffolk superior court seeking to  
24 vacate the arbitration award. On or about September 19, 2022, the parties entered a  
25 settlement agreement in which they agreed to the following terms:

- 26 1. The City will vacate the promotion and will, on or before November  
27 1, 2022, interview Pennucci and any other candidates the City  
28 chooses to interview from among the candidates who submitted their  
29 applications in the original posting period and who met the minimum  
30 entrance qualifications as of September 2019.
- 31 2. Interviewers will be other than the original interviewers for the  
32 position. Qualifications and abilities of the candidates shall be  
33 evaluated as of September, 2019 when the position was originally  
34 posted. Qualifications and abilities specified for the position will be  
35 identical to those selected by the City in 2019 with the same required  
36 and preferred minimum entrance qualifications, and other  
37 qualifications and abilities included therein.

3. The City will notify Pennucci of its promotional decision on or before December 1, 2022.

....

### **Pennucci's 2023 Interview**

Pursuant to the parties' settlement agreement, the City convened a second interview panel which included panelists Scott Alther (Alther), Michael Brohel (Brohel), and Abigail Milewski (Milewski), all of whom interviewed Pennucci on or about January 18, 2023.

In Alther's Form, he gave Pennucci the following ratings [emphasized in bold font with an asterisk]<sup>12</sup> based on the following factors:

	Unsatisfactory for this position	Fair	Average	Good	Excellent for this position
FACTORS					
Performance/Experience	<b>1*</b>	2	3	4	5
Job knowledge required	1	<b>2*</b>	3	4	5
Job Skills required	<b>1*</b>	2	3	4	5
Interpersonal Skills	1	<b>2*</b>	3	4	5
Past Discipline <sup>13</sup>	1	2	3	4	5

In his Form, Alther also summarized Pennucci's "Major Assets," noting that he was "ASE certified" and possessed a "CDL B." Alther further summarized Pennucci's "Major Shortcomings," noting that he: "Lacks supervisory experience; Lacks budget and budgetary planning experience; Not Fleet certified; and Lost composure at interview."

<sup>12</sup> Alther marked his original ratings with circles.

<sup>13</sup> Alther did not rate this factor.

1 Finally, Alther's Form included the following seven interview questions under which  
2 Alther typed notes about Pennucci's respective answers:<sup>14</sup>

3 1) What are the four stages of a diesel engine?

4 LP:<sup>15</sup> Air-Fuel-Combustion-Exhaust

5  
6 Answer:<sup>16</sup> Compression-Combustion-Expansion-Cooling

7  
8 2) What does C-C-C refer to with regards to warranty reimbursement?

9  
10 LP: Complaint-Cause-Correction

11  
12 Answer: Complaint-Cause-Correction

13  
14 3) Describe a time when you resolve [sic] a disagreement with an equal or  
15 superior? How was it handled?

16 LP: I was out on Vacation [sic]. A piece of equipment was sent  
17 to the body shop based on the lowest bid, it was then brought  
18 up to the D.O.F.<sup>17</sup> James McGonagle.

19  
20 LP: When I returned from vacation a meeting was held.

21 I asked the D.O.F. why it was an issue.

22 I was told it was my fault you need it to be apple to apple and  
23 use a 3 estimate system.

24  
25 LP: I said no problem, I will not question going forward [sic].

26 I went to get up and James McGonagle closed the door to  
27 stop me from leaving.

28  
29 LP: (D.O.F.) Unprofessional/Borderline criminal[.]

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<sup>14</sup> All emphases omitted.

<sup>15</sup> "LP" refers to Lawrence Pennucci and his answers as paraphrased by Alther.

<sup>16</sup> "Answer" refers to an answer or answers that were not given by Pennucci but were included by Alther based on what Alther considered to be the correct or ideal answers to the interview questions.

<sup>17</sup> The parties did not clarify the term D.O.F.

1 LP: I was a new manager [sic] it was tough love (D.O.F. I could  
2 demote you)[.]  
3 Try to save money-got past this [sic]  
4 Made tough can't manage aggressive [sic]  
5

6 4) Identify who is able to take a CDL vehicle out of service:  
7

8 LP: Pre-Trip/Circle check Operator (pending on situation)  
9 Inspector also [sic]  
10

11 Answer: Any CDL operator who finds an unsafe condition[.]  
12

13 5) What does the term Mechatronic mean? Please be specific:  
14

15 LP: Does not ring a bell[.]  
16

17 Answer: A mechanical system that is controlled by a computer  
18 system using motors or other electrical devices.

19 6) Do you have a U.S.T. class A/B operator Certificate?  
20

21 LP: Not in Massachusetts (Maine Reciprocity)  
22

23 7) What is the definition of a level 2 EV charger? Please be specific  
24 (M.B./S.A.)

25 LP: Vehicle charging station Pod stand Doesn't require a pass  
26 key [sic]  
27 [A]uto maker sets range owner's manual to use 220V 4 hour  
28 charge [.]

29 Answer: A single or three phase alternating current(AC)EVSE  
30 devise at 208-240V that can supply up to 80A[.]  
31

32 In Milewski's Form, she gave Pennucci the following ratings [emphasized in bold  
33 font with an asterisk]<sup>18</sup> based on the following factors:

---

<sup>18</sup> Milewski marked her original ratings with circles.



	Unsatisfactory for this position	Fair	Average	Good	Excellent for this position
FACTORS					
Performance/Experience	1*	2	3	4	5
Job knowledge required	1	2*	3	4	5
Job Skills required	1*	2	3	4	5
Interpersonal Skills	1*	2	3	4	5
Past Discipline <sup>19</sup>	1	2	3	4	5

In her Form, Milewski summarized Pennucci's "Major Assets," noting that he "Answered technical questions with good understanding," and that he "[h]as worked with City departments and vendors." Milewski also summarized Pennucci's "Major Shortcomings," noting that he:

Does not meet the qualification of 4 years of supervisory experience[.]  
[Emphasis in original.]

When presented certain questions, candidate grew upset and asked "how this pertained to the job" and mentioned his "tone of voice" is an area for management improvement[.]

Due to lack of supervisory experience, he has not directed work or handled employee disagreements to a resolution.

Finally, Milewski's Form included the following eleven, handwritten interview questions and answers:<sup>20</sup>

Q: Supervisory background, how many [sic]

A: Manager at CF for 13 years, manage [illegible] shop 4 or so members or a couple of years – depends on shop availability – asked by CF Director [sic] It went well, day to day issues, tardiness encountered, 1 or 2 people, 1 person consistent issues worked closely with HR [sic] mentored person to help, game plan to improve judgment[.]

<sup>19</sup> Milewski did not rate this factor.

<sup>20</sup> All emphases omitted.

1 Q: How resolved [sic]  
2 A: EE had issues w [sic] another employee, went to arbitration 3  
3 mechanics, sr [sic] radio tech had issues w/ employee. Worked w/  
4 HR, make sure they had work. Don't single people out, address as a  
5 whole... specifically dealing w/ issues. Lost camera digital surplus –  
6 discipline wen to higher-level, removed from the resolution because  
7 went to law dept. Didn't follow-up, not sure how it ended, but worked  
8 out well – Theo Drego, other employee no longer works here. Tom  
9 Pollins wanted to make sure ee [sic] was effectively managing staff,  
10 help individual, forgot to put the time in – helped. Basic rules people  
11 need to follow-up on no discipline given at direction of HR. Radio  
12 shop – managed in new and old buildings, more than 2 years.

13 Q: Current # managing [sic]  
14 A: Manage down, foreman, come to ask about questions [sic]  
15

16 Q: 4 stages diesel engine [sic]  
17 A: Asked how this pertained to the job.  
18 Air fuel, combustion, exhaust[.]  
19

20 Q: What does CCC refer to w/ regards to warranty reimbursement?  
21 A: Asked – complaint, cause, correction.  
22

23 Q: Working w/ other depts [sic]?  
24 A: Extensively w/ other departments – inspections  
25 Manage the entire inspection – help technicians coordinating w/ vims  
26 software – schedule.  
27 Pull up the last position.  
28 Deal with people, complaint based on the needs – FH warranty  
29 extremely well – performance reviews – exceeded customer service,  
30 treated respectfully.  
31 Street lighting, [sic]  
32

33 Q: Dealing with DOIT, auditing, City Hall, contracts [sic]  
34 A: Work with Saltan (sp?) for PWD[.]  
35 Dealing issues w/ anti corruption BPD, BPD Autotheft, Marie Murray  
36 or auditing side work very well. Chris Radcliffe – Procurement Law –  
37 accident reports. Require new vehicles turning in, interact OPS EMS  
38 dept [sic] work well with head of BPD fleet Kevin Foley budget  
39 process[.]  
40 DOIT – head of networking Robert Paines to eliminate phone teams  
41 w/ Dan Gillespie [sic] Christine O'Leary manage GPS system. Went  
42 well but didn't have problems. [Illegible] + Trimble worked with that.

1 Q: Familiar w/ Samsara [sic]

2 A: Samsara, yes. Has taken it away for radio tech and to Matt Bradley.

4 Q: Policy didn't agree w/ but had to enforce it?

5 A: Policy issues – lost camera and didn't do anything. Needed to be in  
6 working area need to work off chargeback model. City Hall going  
7 home early holiday [sic], sometimes unfortunate don't agree [sic].  
8 When managing people stayed [sic]. As a manager need to use cell  
9 phones but policy not to use during work. Explain personal reasons,  
10 dealing w/ outside vendors for official use.

12 Q: Disagreement w/ equal or superior?

13 A: Time out on vacation, veh [sic] sent to autobody shop, three  
14 estimates go with the lowest one included in the estimate, lowest bid  
15 – felt dir [sic] approached unprofessional or criminal. Why sent out?  
16 [Illegible] yelled at him about [illegible], appraisal to fix it. Didn't send  
17 vehicle out, went to say we're good. Closed the door, not going  
18 anywhere [sic] Scott was there. 10+ years of management,  
19 unprofessional. I cut [illegible] you back down on the floor, looking  
20 out for [illegible] tough manager, appreciate person in tune w/  
21 employees, took it out on [sic].

23 Q: Management areas for improvement + what you did?

24 A: Improvement – tone of the voice, I may come off as excited, head  
25 with empathy, respect, hold composure, discipline w/o losing control.  
26 Doing more training, could benefit from Dana Weber – beneficial,  
27 unconscious bias training – Mayor highlighted as diverse group of  
28 people, offensive, eye-opening, complaining about it.  
29 Operate at a high level of professionalism.  
30 Issues address [sic] training Lauren + [illegible]...further my  
31 education MCPPL designation. Nate Carrington – is that something  
32 the City pays [sic] funded for it. Intensive training.

34 In Brohel's Form, he gave Pennucci the following ratings [emphasized in bold font

35 with an asterisk]<sup>21</sup> based on the following factors:

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<sup>21</sup> Brohel marked his original ratings with circles.

	Unsatisfactory for this position	Fair	Average	Good	Excellent for this position
FACTORS					
Performance/Experience	1*	2	3	4	5
Job knowledge required	1	2*	3	4	5
Job Skills required	1	2*	3	4	5
Interpersonal Skills	1*	2	3	4	5
Past Discipline <sup>22</sup>	1	2	3	4	5

In his Form, Brohel also summarized Pennucci's "Major Assets," noting that "Larry has worked for PWD/CFM for 20 years," and summarized his "Major Shortcomings," noting that:

- Larry has a history of issues w/ both co-workers, subordinates as well as other City workers in divisions/departments that [illegible] PWD/CFM work.
- In interview [sic], reportedly said what was "taken from him by way of access, but did little to describe his core job functions and his aptitude therein. Also, took multiple opportunities to knock other employees/managers while answering questions on his work.
- Does not oversee any employees in his role.
- Spent a limited time as a TOG in the Radio Shop before it was removed due to poor management.
- Larry has limited [sic] history of budget work.

Finally, Brohel's Interview Ratings Form included 41 questions related to the following topics: Decision Making; Administration; Financial; Leadership; Employee Relations; and Organizational Relationships.<sup>23</sup>

<sup>22</sup> Brohel did not rate this factor.

<sup>23</sup> Although Brohel's Form included handwritten notes which summarized Pennucci's answers, some of these notes are illegible.

1 After the interview, the panelists gave Pennucci a total, combined score of 17<sup>24</sup>  
2 which comprised the following individual scores from each panelist: Brohel 6, Milewski 5,  
3 and Alther 6. By email on February 10, 2023, Patricia Casey from the City notified  
4 Pennucci that the City did not select him for the position.

#### 5 **Pennucci's Retaliation Charge**

6 On March 14, 2022, the Union filed a charge with the DLR in case no. MUP-22-  
7 9172,<sup>25</sup> which alleged that the City violated Section 10(a)(3) and, independently and  
8 derivatively, Section 10(a)(1) of the Law in retaliation for his concerted, protected activity  
9 around November of 2021. On May 27, 2022, a DLR investigator investigated that charge  
10 and, on August 8, 2022, issued a complaint alleging that the City had retaliated against  
11 Pennucci by reducing his “regularly scheduled overtime for non-emergency snow events.”  
12 The DLR investigator issued an amended complaint on August 15, 2022, which corrected  
13 an error in paragraph 8 of the original complaint.<sup>26</sup>

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<sup>24</sup> 20 was the highest possible individual score that an individual panelist score could give while 60 was the highest possible score that all panelists combined could give.

<sup>25</sup> In its brief, the Union requests that I take administrative notice of the record of the full hearing in MUP-22-9172, which includes the hearing transcript and the hearing officer's decision that issued on May 12, 2025. The City's brief is silent on administrative notice as it pertains to the hearing record in MUP-22-9172. However, as shown above, the City stipulates jointly to that charge and that complaint and amended complaint as part of the official record in this case. Thus, based on the totality of this evidence, I take administrative notice of the record of the full hearing in MUP-22-9172.

<sup>26</sup> Paragraph 8 of the initial complaint in MUP-22-9172 alleged erroneously that, “On or about September 2019, Pennucci and Coughlin—among others—applied for the permanent position of Superintendent of Automotive Maintenance.” Paragraph 8 of the amended complaint in MUP-22-9172 corrected the initial allegation by alleging that, “On

1 On September 13, 2023, a DLR hearing officer conducted a hearing into MUP-22-  
2 9172, in which Pennucci gave testimony; and, on May 12, 2025, that hearing officer  
3 issued a decision which found that the City had violated Section 10(a)(3) and, derivatively,  
4 Section 10(a)(1) of the Law in the manner alleged in the amended complaint.<sup>27</sup>

### DECISION

#### **Section 10(a)(3)**

6 A public employer that retaliates or discriminates against an employee for  
7 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the  
8 Law. Southern Worcester Regional Vocational School District v. Labor Relations  
9 Commission, 386 Mass. 414 (1982); School Committee of Boston v. Labor Relations  
10 Commission, 40 Mass. App. Ct. 327 (1996). To establish a prima facie case of a Section  
11 10(a)(3) violation, the charging party must show that: (1) the employee engaged in  
12 concerted activity protected by Section 2 of the Law; (2) the employer knew of the  
13 concerted, protected activity; (3) the employer took adverse action against the employee;  
14 and, (4) the employer's action was unlawfully motivated by a desire to penalize or  
15 discourage the protected activity. City of Holyoke, 35 MLC 153, 156, MUP-04-4503  
16 (January 9, 2009); Town of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008); City

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or about September 2019, Pennucci and *Bradley*—among others—applied for the permanent position of Superintendent of Automotive Maintenance.” [Emphasis added.]

<sup>27</sup> On or about May 21, 2025, the City filed a notice of appeal of the hearing officer's decision in MUP-22-9172, which remains pending before the Commonwealth Employment Relations Board.

1 of Boston, 35 MLC 289, 291, MUP-04-4077 (May 20, 2009); Town of Clinton, 12 MLC  
2 1361, 1365, MUP-5659 (November 9, 1985).

### 3 **The Union's Prima Facie Case**

#### 4 **1. Pennucci's Concerted Protected Activity**

5 Here, the Union argues that Pennucci was engaged in concerted activities  
6 protected by Section 2 of the Law when he filed a grievance on November 26, 2019 which  
7 challenged the City's earlier decision to bypass him for promotion to the position of  
8 Assistant Superintendent of Operations (Supt. of Automotive Maintenance). He was also  
9 engaged in concerted, protected activity when he participated in the contractual grievance  
10 process at the arbitration hearing on March 17, 2021. Because the City does not dispute  
11 that Pennucci filed the grievance or that he participated in the arbitration hearing, and  
12 because the record evidence supports these facts, I find that the Union has proven the  
13 first element of its prima facie case by demonstrating that Pennucci was engaged in  
14 concerted protected activities pursuant to the parties' contractual grievance-arbitration  
15 procedures. See, e.g., City of Newton, 32 MLC 37, 47-48 MUP-2849 (June 29, 2005)  
16 (citing Boston City Hospital, 11 MLC 1065, 1072, MUP-4893 (July 25, 1984) (filing and  
17 processing of grievance by employee constituted concerted, protected activity because  
18 employee was seeking to enforce provisions of a collectively bargained agreement, even  
19 though the employee was acting in his or her own self-interest)).

#### 20 **2. Employer Knowledge**

21 The City contends that the Union cannot demonstrate any requisite knowledge  
22 because none of Pennucci's interviewers in 2023 knew about Pennucci's prior grievance.

1 Conversely, the Union argues that the City knew about Pennucci's grievance, arbitration,  
2 and related litigation in MUP-22-9172 because the City received the grievance,  
3 participated in the grievance-arbitration process, and participated in the DLR  
4 investigations for MUP-22-9172 and for the instant case. While the Union concedes that  
5 panelists Alther, Brohel, and Milewski did not participate directly "in any of Pennucci's  
6 prior protected activities," it maintains that they knew of these activities when they  
7 interviewed him in January of 2023 because the sole purpose of that interview was to  
8 satisfy the terms of the parties' settlement agreement which the City and the Union had  
9 finalized in September of 2022.

10 Concerning Alther, specifically, the Union asserts that knowledge can be inferred  
11 based on his close working relationship with Pennucci who was Alther's "direct  
12 subordinate," Alther's relationship with Bradley who was Alther's "counterpart as  
13 Superintendent," and with Coughlin who was Alther's "boss" and who had given a copy  
14 of the interview questions to Bradley prior to his interview in 2019.<sup>28</sup> While the Union  
15 concedes that Brohel and Milewski were not directly connected to Pennucci's protected  
16 activities prior to his interview in January of 2023, because their interview scores and  
17 comments were "so patently flawed," the Union asserts that their knowledge of his  
18 activities can be inferred because they could only reach these results based on "animus."

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<sup>28</sup> In the alternative, the Union argues that because Alther was Pennucci's direct supervisor when the Union filed the grievance, and because Alther was "the person responsible for maintaining the overtime list" and he "would have been fully aware" that the City had "significantly reduced" Pennucci's overtime earnings, which support a finding of knowledge. However, because the record is void of evidence pertaining to reduced overtime earnings, I decline to address it.



1 Moreover, the Union contends that Alther, Brohel, and Milewski all “gave plainly pretextual  
2 reasons” for Pennucci’s low scores which, based on the Appeals Court’s reasoning in  
3 Trustees of Forbes Library v. Labor Relations Commission, 384 Mass. 559, 566 (1981),  
4 supports an inference of knowledge by the City based on the totality of the circumstances.

5 Based on the evidence presented, I am persuaded by the Union’s argument that  
6 the Employer knew about Pennucci’s concerted, protected activity because they received  
7 the grievance, participated in the contractual grievance-arbitration procedures, and  
8 reached a settlement agreement with the Union in September of 2022. See, e.g., Town  
9 of Carver, 35 MLC at 48 (selectman knew about grievant’s protected activities because  
10 selectman heard the grievance at the step two hearing) I am also persuaded by the  
11 Union’s argument that knowledge can be inferred to Alther, Brohel, and Milewski because  
12 the sole purpose of convening the interview panel in January of 2023 was to satisfy the  
13 terms of the parties’ settlement agreement, and because Pennucci was the only person  
14 interviewed for the disputed position pursuant to the terms of the arbitrator’s award and  
15 his clarification via the amended award. See, e.g., Id. (CERB inferred town’s knowledge  
16 of grievant’s union activity based on documents submitted by town at selectmen’s hearing  
17 coupled with individual selectman’s personal knowledge of grievant’s seniority dispute  
18 with town); see, also, Massachusetts Department of Transportation, 43 MLC 65, 75, SUP-  
19 14-3576 and SUP-14-3640 (H.O. September 8, 2016), aff’d 44 MLC 1, 2-3 (July 31, 2017)  
20 (CERB affirmed finding of inferred knowledge based on circumstantial evidence of animus  
21 and hostility despite the employer not having any direct knowledge of the concerted,  
22 protected activity). For all these reasons, I find that the Union has proven the second

1 element of its prima facie case by demonstrating that the City knew about Pennucci's  
2 concerted, protected activities.

### 3 **3. Adverse Action**

4 Next, the City argues that the Union cannot demonstrate that Pennucci suffered  
5 any adverse action when it bypassed him for promotion to the position of Assistant  
6 Superintendent of Operations in 2023 because the promotional bypass did not materially  
7 disadvantage Pennucci in terms of salary, grade, or any other objective term or condition  
8 of employment. Specifically, it contends that Pennucci possessed "no guarantee or  
9 legitimate expectation of selection," and the "mere fact of [his] applying for a promotion  
10 and being granted an interview [did] not create an entitlement to the position." Rather, the  
11 City relies on the management rights clause of the parties' CBA which gives it the "sole  
12 discretion to determine qualifications and abilities" for the disputed position and, absent  
13 a showing of arbitrary or capricious action, Pennucci cannot show that he was materially  
14 disadvantaged by his non-selection pursuant to these rights.

15 Conversely, the Union argues that the City's decision to bypass Pennucci for  
16 promotion in 2023 was an adverse personnel action based on the CERB's established  
17 holdings in: Massachusetts Department of Transportation, 43 MLC at 75, aff'd 44 MLC at  
18 3 (employer's failure to promote employee and its refusal to consider him for promotion  
19 were adverse actions); Town of Mashpee, 36 MLC 163, 171, MUP-02-3653 (April 15,  
20 2010) (town's failure to promote employee adversely affected his employment and CERB  
21 ordered it to offer employee the position along with seniority, benefits, and appropriate  
22 wage increases he would have earned but for the bypass); and Town of Andover, 14 MLC

1 1571, 1582, MUP-6443 (H.O. March 3, 1988), aff'd 17 MLC 1475, 1482, MUP-6443  
2 (February 6, 1991) (CERB affirmed hearing officer's findings that town's decision not to  
3 promote employee was adverse and ordered the town to offer him the position and make  
4 him whole for any loss of wages and other benefits he may have suffered due to the  
5 bypass).

6 Despite the City's arguments, the record shows that its promotional bypass of  
7 Pennucci in 2023 did materially disadvantage him because it affected his ability to earn  
8 additional wages, perform additional supervisory and/or managerial duties, and receive  
9 other related benefits that accompanied the position of Assistant Superintendent of  
10 Operations (Supt. of Automotive Maintenance). See, e.g., Town of Andover, 14 MLC at  
11 1582, aff'd 17 MLC at 1482 (denial of promotion constituted adverse action because  
12 promotion carried increase in rank and compensation, as well as possibility of future  
13 promotion); see, generally, City of Boston, 35 MLC at 291 (other citations omitted)  
14 (termination, reduction in pay or benefit, and changes in employment that significantly  
15 affected employee's future career prospects and constituted material employment  
16 disadvantage). Moreover, the City's reliance on the management rights clause of the  
17 parties' 2020-2023 CBA is misplaced. While Article 8, Section 2 gave the City the  
18 exclusive right to "promote," it was silent on the specific issue of promotional bypass as it  
19 relates to complaints pursued under Chapter 150E and any material disadvantages that  
20 may accompany such a bypass.

21 Thus, based on the totality of this evidence, I find that Pennucci suffered an  
22 adverse action when the City bypassed him for promotion in 2023 because it materially

1 disadvantaged his future career prospects and his ability to earn higher wages and  
2 increased benefits. Accordingly, the Union has proven the third element of its prima facie  
3 case.

#### 4 **4. Unlawful Motivation**

5 Here, the Union contends that the City's decision to bypass Pennucci was  
6 motivated by unlawful animus based on its disparate treatment of Pennucci compared to  
7 Bradley during the panel interviews in 2019 because those panelists gave Bradley  
8 "perfect scores on knowledge, skills[,] and experience" and, ultimately, promoted Bradley  
9 into the disputed position despite his "lacking even the required minimum qualifications."  
10 It also contends that Bradley "had no prior experience as an automotive or truck  
11 technician," "had only six months of supervisory experience...[which] did not even meet  
12 the minimum qualification[s]," and did not possess the preferred fleet certification when  
13 the City bypassed Pennucci in favor of Bradley in 2019.

14 The Union contends further that the City's decision to bypass Pennucci in 2023  
15 was unlawfully motivated based on the "dramatic shift" in its reasoning from 2019 when  
16 the panelists had "concluded that Pennucci was qualified for the promotion," and which  
17 was later confirmed by the arbitrator, to the 2023 non-selection notice which stated  
18 generally that the panelists were impressed with Pennucci's qualifications but  
19 "never...explicitly stated why Pennucci was not selected."

20 Next, the Union argues that the 2023 bypass decision was unlawfully motivated  
21 based on the "trivial and incorrect reasons" given by the panelists. For instance, it asserts  
22 that Alther, Brohel, and Milewski did not assess Pennucci's qualifications as they existed

1 in 2019, and that it is “inconceivable” that Pennucci’s “experience, knowledge and skills  
2 could have degraded so far [in 2023] when they were supposed to have been frozen in  
3 time [since 2019].” Rather, the Union maintains that Alther, Brohel, and Milewski  
4 disregarded the arbitrator’s findings that Pennucci had met the minimum qualifications,  
5 and made contrary comments that Pennucci lacked supervisory experience even though  
6 he possessed the minimum qualification of “one (1) year...in a supervisory capacity” by  
7 “manag[ing] about four members in the communications shop for a ‘couple’ of years.”

8 Concerning Milewski, the Union argues that she commented specifically that  
9 Pennucci’s purported lack of experience was a “major shortcoming” because he “has not  
10 directed work or handled employee disagreements to resolution.” Milewski also misstated  
11 the required supervisory experience as “four years” instead of one year, in addition to  
12 ignoring Pennucci’s resume and her own interview notes which show that he had  
13 experience managing “4 or so members” in the “comm shop” for several years. Next, the  
14 Union points to Milewski’s comment about Pennucci’s “tone of voice” which could have  
15 been alternatively perceived as “excited” or “passionate,” and that Milewski relied on this  
16 comment to penalize Pennucci for inquiring about why the panelists had asked him such  
17 “technical questions in an interview for a non-technical position.” Specifically, Milewski  
18 noted that “[w]hen presented [with] certain questions, candidate grew upset and asked[,]  
19 ‘how this pertained to the job,’” and that Pennucci’s “‘tone of voice’ is an area for  
20 management improvement.”

21 Concerning Alther, the Union argues that he commented about Pennucci’s lack of  
22 supervisory experience and lack of budgetary planning experience, despite never asking

1 Pennucci any questions about this type of experience and never referring to his resume  
2 which showed that Pennucci had experience “support[ing] the director of Central Fleet  
3 with budget and planning control and operational analysis.” The Union also points to  
4 Ather’s interview question about the four stages of the diesel engine, which it contends is  
5 “a hugely technical question for a position that did not require any experience in  
6 automotive maintenance.” Moreover, the Union contends that “there is nothing in the  
7 duties and functions of the position that would require such knowledge.”

8       Concerning Brohel, the Union argues that his comments that Pennucci “[d]oes not  
9 oversee any employees in his role,” and “[s]pent a limited time as a [Temporary Out of  
10 Grade] in the Radio Shop before it was removed due to poor management” are incorrect  
11 because Pennucci did oversee employees for a “couple” of years prior to 2023, even  
12 though he was no longer supervising employees by the time of his second interview. The  
13 Union also argues that Brohel possessed animus toward Pennucci because Brohel relied  
14 on misinformation “from some external source...likely...Coughlin” about the reason why  
15 the City had taken away Pennucci’s supervisory duties. Specifically, because it was  
16 Coughlin who had transferred Pennucci “in and out of the supervisor role in the Radio  
17 Shop” prior to 2023, the Union maintains that Brohel “adopted Coughlin’s animus” by  
18 noting that Pennucci “did little to describe his core job functions and his aptitude therein,”  
19 and noting that the City had removed Pennucci as the supervisor of the radio shop “due  
20 to poor management,” despite Pennucci never mentioning the reason for his removal from  
21 supervisory duties during his interview.

1           Conversely, the City asserts that its decision to bypass Pennucci in 2023 was not  
2           unlawfully motivated because the Union cannot show that the City harbored any anti-  
3           union animus or hostility toward Pennucci. Moreover, the City asserts that it never  
4           deviated from its hiring process when it interviewed Pennucci in 2019 or in 2023, and it  
5           has offered a consistent, legitimate rationale for its non-selection of Pennucci in 2023.  
6           Specifically, it maintains that, at all relevant times, Pennucci lacked the essential  
7           qualifications for the disputed position; and that the temporal gap between Pennucci's  
8           concerted, protected activity (i.e., beginning in November of 2019 with the grievance, and  
9           culminating in September of 2022, with the settlement agreement) and his promotional  
10          bypass in January of 2023 is "far too attenuated" to support a finding of improper motive.

11          Despite the City's assertions, I am persuaded by the Union's arguments that the  
12          timing of the City's bypass decision in January of 2023, in relation to Pennucci's  
13          concerted, protected activities, when coupled with the City's deviation from its 2019  
14          selection procedures and its inconsistent, insubstantial, and/or triviality of reasoning for  
15          the bypass, demonstrates unlawful motivation.

16                   **a. Deviation from Prior Practices**

17          Several factors may suggest unlawful motivation, including: the timing of the  
18          alleged discriminatory act in relation to the protected activity; the triviality of reasons given  
19          by the employer; disparate treatment by the employer; the employer's deviation from past  
20          practices; or expressions of animus or hostility by the employer towards the protected  
21          activity or the union. City of Holyoke, 38 MLC at 157. To support a claim of unlawful  
22          motivation, a charging party may rely on circumstantial evidence and reasonable

1 inferences drawn from that evidence. Id.; Town of Dracut, 25 MLC at 133-34;  
2 Commonwealth of Massachusetts, 24 MLC 116, 118-19, SUP-4050 (June 10, 1998);  
3 Board of Regents, 12 MLC 1315, 1335, SUP-2758 (October 25, 1985) (citing Trustees of  
4 Forbes Library, 384 Mass. at 569-70).

5 The record shows that the City deviated from the interview-selection process that  
6 it used in 2019, by asking Pennucci different questions and applying different selection  
7 criteria during his interview and subsequent bypass in 2023. For instance, during his  
8 interview in October of 2019, panelists Calobrisi and Coughlin both asked Pennucci the  
9 same six questions:

- 10 1) Are all noted certificates and licenses current and what are they?
- 11 2) As a Superintendent of Automotive [M]aintenance[,] tell us what you
- 12 think a typical work day would look like[?]
- 13 3) If you could relive the last 10 years of your life, what would you do?
- 14 4) What do you expect from a Supervisor?
- 15 5) What do you do when you know your boss is wrong?
- 16 6) Please let us know the last time you had a disagreement with a coworker
- 17 and how was it resolved[?]
- 18

19 However, in January of 2023, panelists Alther, Milewski, and Brohel all asked  
20 Pennucci completely new questions, with Alther asking seven questions, Milewski asking  
21 11 questions, and Brohel asking 41 questions. Also, Alther asked Pennucci a technical  
22 question about the four stages of the diesel engine, which was not listed as a qualification  
23 or requirement in the position description, and which was not asked in 2019. Moreover,  
24 Milewski commented negatively about Pennucci's "tone of voice" as an area for  
25 "management improvement" when Pennucci asked the panel to explain how Alther's  
26 technical question "pertained to the job."



1           The record also shows that the City applied different selection criteria when it  
2   decided to bypass Pennucci in 2023 because it evaluated him based on qualifications,  
3   knowledge, and experience that he did not possess as of September of 2019, which was  
4   required by the language of the arbitration awards and the terms of the parties' settlement  
5   agreement. Specifically, in Boulanger's arbitration award from July 6, 2021, he ordered  
6   the City to implement a specific selection process pursuant to the "[q]ualifications and  
7   abilities...identical to those selected by the City in 2019 with the same required and  
8   preferred minimum entrance qualifications, and other qualifications and abilities included  
9   therein," and that any "candidate...not possessing the requisite minimum entrance  
10   qualifications, will not be interviewed, or otherwise considered for the position."  
11   Additionally, in Boulanger's revised award from July 28, 2021, he ordered the City to  
12   vacate the disputed position, to consider "only Mr. Pennucci" for the position, and  
13   reiterated his earlier order that the City evaluate Pennucci based on his qualifications and  
14   abilities "as of September, 2019." Similarly, the terms of the parties' settlement agreement  
15   from September 19, 2022, restated much of what Boulanger had ordered in his awards,  
16   including an agreement to "vacate" the position, "to interview from among the candidates  
17   who submitted their applications in the original posting period and who met the minimum  
18   entrance qualifications as of September 2019," and to evaluate candidates' qualifications  
19   and abilities "as of September, 2019 when the position was originally posted."

20           Despite the clear requirements of the arbitration awards and the settlement  
21   agreement to evaluate Pennucci based on his qualifications and abilities as of September  
22   of 2019, the City deviated from these requirements by relying on certain qualifications

1 and abilities outside of Pennucci's 2019 employment history. For instance, Brohel noted  
2 that Pennucci "has a history of issues w[ith] both co-workers, subordinates[,] as well as  
3 other City workers in divisions/departments that support PWD/CFM work," without  
4 clarifying whether this "history" occurred prior to, during, or after September of 2019.  
5 Brohel also noted that Pennucci had "spent a limited time as a TOG [Temporary Out of  
6 Grade] in the Radio Shop before it was removed due to poor management," but failed to  
7 clarify whether this tenure occurred before or after September of 2019, and whether "it"  
8 referred to Pennucci's tenure or something else.<sup>29</sup>

9 Based on the totality of this evidence, I find that the City deviated from its 2019  
10 interview-selection process by ignoring the terms of the arbitration awards and the parties'  
11 settlement agreement, and by asking different questions and applying a different  
12 interview-selection criteria when it interviewed Pennucci in January of 2023. See, e.g.,  
13 City of Holyoke, 38 MLC at 157 (several factors may suggest unlawful motivation,  
14 including the timing of the alleged discriminatory act in relation to the protected activity

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<sup>29</sup> To the extent that the Union argues that Brohel was improperly influenced by Coughlin's animus, there is insufficient evidence in the record to support this argument. While the evidence shows that Coughlin's actions in or around October of 2019 were improper, especially as summarized by the arbitrator in his award, there is no evidence that either Coughlin or Brohel continued to act improperly through January of 2023, prior to or during Pennucci's second interview. Compare Town of Dracut, 25 MLC at 133-34 (CERB found no evidence of unlawful motivation after finding that the vice-chairman of the board selectmen was not influenced by a conversation between another member and the town manager when he voted to close town hall); contrast Commonwealth of Massachusetts, 24 MLC 116, 118-19, SUP-4050 (June 10, 1998) (citing Trustee of Forbes Library, 384 Mass. at 569 (CERB found that while personnel director did not have direct authority to layoff nurses, he influenced the employer's layoff decisions based on his expression of hostility toward nurses in relation to the timing of layoffs)).

1 and the employer's deviation from past practices); see also Town of Mashpee, 36 MLC  
2 163, 171, (April 15, 2010) (CERB found town deviated from its promotion procedures and  
3 practices when it promoted employee A over employee B, even though employee B  
4 scored higher than the other candidates); compare Town of Andover, 14 MLC at 1582,  
5 aff'd 17 MLC at 1482 (CERB affirmed hearing officer's finding that town departed from its  
6 prior practice when it bypassed employee for promotion to sergeant in view of long-  
7 standing practice of promoting patrol officers to sergeant based on their civil service  
8 ranking).

9 **b. Shifting or Inconsistent, and Insubstantial Reasoning**

10  
11 Next, the record shows that the City gave shifting, inconsistent, and insubstantial  
12 reasons for its decision to bypass Pennucci in January of 2023. First, as addressed  
13 above, the City failed to reconcile why it deviated from the six original questions that both  
14 Calobrisi and Coughlin had asked Pennucci during his interview in 2019. Second, the City  
15 failed to explain why it shifted to asking new questions during Pennucci's interview in  
16 2023. Third, the City failed to explain the inconsistency in the total number of questions  
17 asked by each panelist, i.e., why Alther asked seven questions, why Milewski asked 11  
18 questions, and why Brohel asked 41 questions. Fourth, the City failed to explain why it  
19 asked technical questions during Pennucci's interview in 2023 (e.g., about the four stages  
20 of the diesel engine), even though the panelists did not ask any technical questions in  
21 2019, and the job description as posted in September of 2019 did not specify technical  
22 knowledge of diesel engine as a requirement. Finally, the City failed to explain why  
23 panelists relied on supervisory and budgetary experience during Pennucci's interview in

1 2023, when neither panelist asked Pennucci about these types of experiences during his  
2 interview in 2019 and nor relied on it during his evaluation. Instead, Calobrisi and Coughlin  
3 merely noted Pennucci's "expectations" as they pertained to his version of an ideal  
4 supervisor.

5 Further, the City failed to reconcile why Calobrisi and Coughlin offered summaries  
6 of Pennucci's "Major Assets" that were inconsistent with the summaries of Alther, Brohel,  
7 and Milewski. Specifically, Calobrisi and Coughlin concluded that Pennucci had  
8 "knowledge of how [the] position works," had "automotive knowledge" and was "certified  
9 in various skills." However, Alther, Milewski, and Brohel summarized that Pennucci's only  
10 "Major Assets" were that he is "ASE certified," possesses a "CDL B" license, "[a]nswer[s]  
11 technical questions with good understanding," and "worked for PWD/CFM for 20 years."

12 The totality of this evidence shows that the City's reasons for bypassing Pennucci  
13 for promotion in January of 2023, were shifting, inconsistent, and insubstantial when  
14 compared to its reasoning for the promotional bypass in October of 2019. City of Holyoke,  
15 38 MLC at 157; see also Everett Housing Authority, 13 MLC 1001, 1006-1007, MUP-5656  
16 (June 4, 1986) (dismissed on other grounds, CERB inferred animus after employer gave  
17 shifting and inconsistent reasons for employee's layoff coupled with timing of layoff in  
18 relation to employee's protected activities); see generally Commonwealth of  
19 Massachusetts, 14 MLC 1743, 1749, SUP-3081 (May 9, 1988) (CERB found employer's  
20 reasons for terminating employee "lack[ed] substance" when coupled with timing of the  
21 termination and employee's protected activities).

1                   **c. Triviality of Reasoning**

2  
3           Finally, the record shows that the City's reasoning for bypassing Pennucci in  
4 January of 2023, was trivial based on the interview notes from Milewski, Alther, and  
5 Brohel. For instance, Milewski misstated that Pennucci needed "four years" of supervisory  
6 experience instead of one year as stated in the position description; and, she also  
7 inexplicably ignored Pennucci's resume which shows that he had supervised a "three-  
8 person Communication Shop" beginning in November of 2010 and continuing through  
9 January of 2023. Alther also misstated that Pennucci lacked budgetary planning  
10 experience despite never asking Pennucci about this type of experience during his  
11 interview. Like Milewski, Alther also inexplicably failed to refer to Pennucci's resume  
12 which showed his experience "[w]ork[ing] closely with Director [of Central Fleet  
13 Management] on budget planning and maintenance." Brohel made misstatements about  
14 Pennucci, noting that he "[d]oes not oversee any employees in his role," even though his  
15 resume shows that he did oversee a three-person team in the Communication Shop.

16           This evidence demonstrates a triviality of reasoning by the City for bypassing  
17 Pennucci for promotion in January of 2023. City of Holyoke, 38 MLC at 157; see, e.g.,  
18 Town of Plainville, 22 MLC 1337, 1356-57, MUP-8517 (January 4, 1996) (CERB found  
19 employer's reasons for failing to warn employee of perceived performance problems  
20 "appear[ed] trivial in nature" and showed that employee's union activity, rather than his  
21 performance, was the dominant reason for his non-reappointment); cf. Luana's Mexican  
22 Hat Restaurant, Inc. 8 MLC 1207, 1211 (1981) (employer's reasoning was trivial based  
23 on unsubstantiated allegations that employee was "bad-mouthing" employer's wife, was

1 personally involved with customers, and because employer admitted to working in a  
2 location separate from employee and "did not really know" what occurred in the dining  
3 room where employee worked).

4 For all these reasons, I find that the Union has successfully proven the fourth and  
5 final element of its prima facie case.

### 6 **The Employer's Shifting Burden**

7 Once the charging party has established a prima facie case, the burden shifts to  
8 the employer to produce legitimate, non-discriminatory reasons for taking the adverse  
9 action. See Trustees of Forbes Library, 384 Mass. at 565-66 (when an employer produces  
10 evidence of a legitimate, non-discriminatory reason for taking the adverse action, the case  
11 becomes one of "mixed motives" and the CERB shifts the burden to the charging party to  
12 demonstrate that "but for" the protected activity, the employer would not have taken the  
13 adverse action). The employer must show a lawful reason for its decision and "produce  
14 supporting facts indicating this reason was actually a motive in the decision." Quincy  
15 School Committee, 27 MLC 83, 92-93, MUP-1986 (December 29, 2000) (quoting Boston  
16 School Committee, MUP-9067 (March 2, 1994), aff'd sub. nom. School Committee of  
17 Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996), further app. rev.  
18 den'd, 422 Mass. 1111 (1996)). If the employer can produce lawful reasons for its actions,  
19 the employee must then prove that "but for" the protected activity, the employer would not  
20 have taken the adverse action. Quincy School Committee, 27 MLC at 93 (other citations  
21 omitted).

**1. Legitimate, Non-Discriminatory Reasons**

The City argues that it had legitimate and non-discriminatory reasons for its decision to bypass Pennucci for a promotion in January of 2023, which were based on Pennucci's lack of qualifications and experience, his questionable leadership capabilities, and his "loss of composure" and "unprofessional behavior" during his interview. The City also points to Boulanger's arbitration award which, despite finding that Pennucci had possessed the "minimum qualifications" for the disputed position, cannot substitute for the City's exclusive managerial role as the sole Appointing Authority with the power to grant an appointment, reappointment, promotion, or termination. The City points further to the interviewers' "institutional knowledge" and their "interpersonal[,] managerial, and situational competencies" which, again, cannot be substituted for the arbitrator's award because it allows them to assist the City in the promotional process, including by assessing whether Pennucci possessed the technical requirements of the disputed position. The City asserts that these facts demonstrate that the award was "factually inaccurate and a serious departure" from an "appropriate" arbitration decision because it presumed to determine position qualifications which, by Law, is a non-delegable determination reserved solely for the City. Finally, to the extent that Milewski erred by noting that Pennucci did not possess four years of supervisory experience "even though the job description only required one year," the City maintains that this error "d[oes] not change the outcome of the process, and is not attributed to a retaliatory agenda."<sup>30</sup>

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<sup>30</sup> To support its argument, the City also relies on City of Newton, 49 MLC 237, MUP-18-6946 and MUP-19-7379 (February 23, 2023). However, the City's reliance in that case is

1           Conversely, the Union argues that the City cannot demonstrate any legitimate,  
2 non-discriminatory reasons for its decision to bypass Pennucci for promotion in 2023.  
3 Specifically, it asserts that the City's reliance on the interviewers' scores and ratings is  
4 "simply incredible" because it shows a direct inconsistency with Pennucci's total score of  
5 32 out of 40 in 2019 versus his total score of 17 out of 60 in 2023. The Union also asserts  
6 that the interviewers' comments about Pennucci's lack of supervisory and budgetary  
7 experience in January of 2023 "are belied by [his] resume" and also by the comments of  
8 the prior interviewers and the arbitrator who found that Pennucci did possess the  
9 minimum supervisory and budgetary experience required for the position.

10           For the following reasons, I agree with the Union. First, I am unpersuaded by the  
11 City's argument that Pennucci lacked the necessary qualifications and experience  
12 required for the position. Specifically, his resume showed that he had supervisory  
13 experience by managing a three-person team in the "comm shop," and had budgetary  
14 planning experience by working "closely" with the CFM Director on "budget planning and  
15 maintenance." Additionally, Coughlin gave Pennucci a top rating of 5 (i.e., "Excellent for  
16 this position") in the category of "Performance/Experience," while Calobrisi gave Pennucci  
17 a 4 in that same category. Moreover, neither Coughlin nor Calobrisi commented that  
18 Pennucci lacked any required experience or failed to meet any of the minimum

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misplaced because, there, the CERB found that the employer had failed to meet its burden of demonstrating legitimate reasons for transferring the affected employee. Specifically, the CERB held that "while the [c]ity provided ostensibly valid reasons for its transfer...its explanation was unaccompanied by any evidence that these reasons factored into the transfer decision." Id., 49 MLC at 243.



1 qualifications; and arbitrator Boulanger concluded that Pennucci did possess the  
2 minimum qualifications in 2019 when the City bypassed him in favor of Bradley.

3 I am also unpersuaded by the City's argument that the arbitration award was an  
4 unlawful attempt by the arbitrator to substitute his decision for the City's exclusive  
5 managerial authority to promote employees, or for the interviewers' "institutional  
6 knowledge" and "interpersonal[,] managerial, and situational competencies" to assist in  
7 that promotional process. The record shows that the City agreed to the parties'  
8 contractual grievance-arbitration procedures and, pursuant to that agreement, the City  
9 also agreed to defer to that process and be bound by Boulanger's decision absent  
10 evidence that he exceeded his arbitral authority. Although the City filed a complaint  
11 in superior court alleging that Boulanger did exceed his authority, it later reached a  
12 settlement agreement with the Union to resolve the complaint by agreeing to "vacate the  
13 promotion" and interview Pennucci and evaluate him based on the minimum entrance  
14 qualifications that he had met as of September of 2019. Thus, the City's attempt to now  
15 disavow these settlement terms to justify Pennucci's promotional bypass in 2023 is  
16 disingenuous and, thus, not legitimate. See generally Salem School Committee, MUP-  
17 04-2008 (April 14, 2009) (based on employee's open and frequent protected activities,  
18 CERB found it was "disingenuous" of employer to claim that it did not know of employee's  
19 reason for taking leave and, thus, found it reasonable to infer that employer's criticism of  
20 employee was intended to chill his protected activity).

21 For all these reasons, I find that the City has failed to meet its burden of producing  
22 legitimate, non-discriminatory reasons for its decision to bypass Pennucci for promotion

1 in 2023. City of Newton, 49 MLC at 243-44; cf. Higher Education Coordinating Council,  
2 24 MLC 97, 103, SUP-4095, SUP-4096, SUP-4098, and SUP-4099 (April 27, 1998)  
3 (decision not to reappoint employee after reviewing and evaluating other faculty  
4 members' credentials and qualifications to seek better candidates was not based on a  
5 legitimate reason because employer made decision without reviewing or evaluating  
6 employee's credentials and qualifications). Consequently, the City is unable to rebut the  
7 presumption of discrimination created by the Union's prima facie case.

#### 8 **Section 10(a)(4)**

9 The same elements of proof apply to alleged violations of both Section 10(a)(3)  
10 and Section 10(a)(4) of the Law. City of Boston, 35 MLC 289, 290, MUP-04-4077 (May  
11 20, 2009). To satisfy the first prong in a Section 10(a)(4) case, the charging party must  
12 establish that the employee signed or filed an affidavit, petition or complaint or gave  
13 information or testimony as part of a DLR proceeding. Commonwealth of Massachusetts,  
14 25 MLC 44, 46, SUP-4128 (August 24, 1998). If the charging party establishes a prima  
15 facie case through circumstantial evidence, the employer has the burden of producing  
16 evidence in support of one or more lawful reasons for taking the adverse action. Town of  
17 Brookfield, 28 MLC at 329. If the employer satisfies this burden, the charging party must  
18 prove by a preponderance of the evidence that "but for" the protected activity, the  
19 employer would not have taken the unlawful action. Id. (citing Trustees of Forbes Library,  
20 384 Mass. at 564-66) (additional citations omitted).

#### 21 **1. The Union's Prima Facie Case**

1           The record shows that Pennucci filed a charge (MUP-22-9172) with the DLR on  
2   March 14, 2022, and gave testimony on September 13, 2023, as part of the hearing into  
3   the related complaint and amended complaint which the DLR had previously issued on  
4   August 8 and 15, 2022, respectively. The hearing officer issued her decision in that matter  
5   on May 12, 2025, and the City filed a timely request for review on May 21, 2025, which  
6   remains pending before the CERB. By this evidence Pennucci has satisfied the first  
7   element of his prima facie case. Commonwealth of Massachusetts, 25 MLC at 46. To  
8   satisfy the remaining three elements of its prima facie case, the Union must establish that:  
9   (1) the City knew of the complaint and amended complaint in MUP-22-9172, and knew  
10   about Pennucci's protected activity when he gave testimony at the hearing; (2) the City  
11   took adverse action against Pennucci; and (3) the City was motivated to take the adverse  
12   action against Pennucci to penalize or discourage his protected activity. Id.

13           The record shows that the City knew of Pennucci's participation in MUP-22-9172  
14   because the charge, the complaint, the amended complaint, and the hearing officer's  
15   decision all referenced Pennucci by his name. The City also knew about Pennucci's  
16   participation in the DLR's investigation into that charge, and does not dispute that he  
17   testified at that hearing. Further, as established above, the City took adverse action  
18   against Pennucci when it bypassed him for promotion in January of 2023. Finally, the  
19   evidence shows that the City was unlawfully motivated by a desire to penalize or  
20   discourage Pennucci's protected activity when it took this action against him based on  
21   the timing of this action (i.e., January of 2023) in relation to his protected activity (i.e.,  
22   March of 2022 to present), coupled with other circumstantial evidence. First, Pennucci

1 filed the charge in MUP-22-9172 in March of 2022, which resulted in the DLR issuing a  
2 complaint and amended complaint in August of 2022, and which the parties continued to  
3 litigate via the hearing in September of 2023, and via the City's pending request for review  
4 of the hearing officer's decision in May of 2025. Moreover, the City's decision to bypass  
5 Pennucci in January of 2023 occurred while his litigation in MUP-22-9172 was pending  
6 at the DLR, and the parties do not dispute this fact. Finally, as established above, the City  
7 was unlawfully motivated to bypass Pennucci for promotion in January of 2023 based on  
8 its deviation from prior interview practices, and based on its reasoning for that decision  
9 which I have found to be trivial, shifting, inconsistent, and insubstantial.

10 Based on the totality of this evidence, I find that the Union has successfully proven  
11 its prima facie case.

## 12 **2. The Employer's Shifting Burden**

13 As noted above, once the charging party establishes its prima facie case, the  
14 CERB shifts the burden to the employer to produce evidence of one or more lawful  
15 reasons for taking the adverse action. Commonwealth of Massachusetts, 25 MLC at 46  
16 (citing Trustees of Forbes Library, 384 Mass. at 559) (other citations omitted). An  
17 employer that fails to satisfy its burden of production at this stage also fails to rebut the  
18 presumption of discrimination created by the charging party's prima facie case. Higher  
19 Education Coordinating Council, 24 MLC at 103.

20 Again, as addressed above, the City is unable to meet its burden of producing  
21 legitimate, non-discriminatory reasons for its decision to bypass Pennucci for promotion  
22 in January of 2023. This is because despite the City's contention, Pennucci possessed

1 the necessary qualifications and experience required for the position at the time of his  
2 interview based first on his resume which showed that he had all relevant supervisory  
3 and budgetary planning experience as of September of 2019. Moreover, the City failed to  
4 reconcile why Coughlin had given Pennucci a top rating of 5 (i.e., "Excellent for this  
5 position") in the category of "Performance/Experience," and why Calobrisi gave Pennucci  
6 the next top rating of 4 (i.e., "Good") in that same category during his interview in October  
7 of 2019, with why Alther, Brohel, and Milewski gave him much lower ratings during his  
8 interview in January of 2023. Finally, while the City argued that arbitrator Boulanger  
9 exceeded his authority by finding that Pennucci met the minimum qualifications for the  
10 position, I found that this argument was disingenuous based on the parties' settlement  
11 agreement where the City agreed to resolve its superior court complaint by vacating the  
12 2019 promotion and interviewing and evaluating Pennucci based on the minimum  
13 entrance qualifications that he had met "as of September of 2019."

14 For all these reasons, I find that the City has failed to meet its burden of producing  
15 legitimate, non-discriminatory reasons for its decision to bypass Pennucci for promotion  
16 in 2023. Commonwealth of Massachusetts, 25 MLC at 46-47. Consequently, the City is  
17 unable to rebut the presumption of discrimination created by the Union's prima facie case.

#### 18 REMEDY

19 Section 11 of the Law grants the CERB broad authority to fashion appropriate  
20 orders to remedy a public employer's unlawful conduct. Labor Relations Commission v.  
21 Everett, 7 Mass. App. Ct. 826 (1979). The CERB fashions remedies for violations of the  
22 Law by attempting to place charging parties in the positions they would have been in but

1 for the unfair labor practice. Massachusetts Department of Transportation, 43 MLC  
2 67, SUP-14-3576 and SUP-14-3640, (H.O. September 8, 2016) aff'd 44 MLC 1, 4-5 (July  
3 31, 2017) (citing Commonwealth of Massachusetts, 41 MLC 186, 187, SUP-12-1829  
4 (January 16, 2015)). In failure to promote cases, the CERB has, with judicial approval,  
5 ordered the employer to offer the discriminatee the promotional position along with  
6 seniority, wages, benefits, and all rights and privileges from the date that the promotion  
7 would have been made. Town of Mashpee, 36 MLC 163, 173, MUP-02-3653 (April 15,  
8 2010) (citing Town of Clinton, 12 MLC 1361, 1367, MUP-5659 (November 9, 1985); City  
9 of Malden, 5 MLC 1752, 1769, MUP-3017 (March 20, 1979) (other citations omitted)).

10 Here, the Union argues for the specific remedy of instating Pennucci to the position  
11 of Assistant Superintendent of Operations (Supt. of Automotive Maintenance) and making  
12 him whole for all lost wages and benefits due to his unlawful bypass as of October 11,  
13 2021. It contends that this is the appropriate instatement date based on the City's appeal  
14 of the arbitrator's award to superior court, which delayed the second interview ordered by  
15 the arbitrator in his award. It also contends that October 11, 2021, is the appropriate date  
16 because the parties' subsequent settlement agreement required the City to conduct that  
17 interview within "73 days" of the date of the award which Boulanger issued on July 6,  
18 2021, and revised on July 28, 2021. In the alternative, the Union contends that the  
19 appropriate instatement date should fall on December 1, 2022, which is when the City  
20 agreed to notify Pennucci of its promotional decision. Conversely, the City contends that  
21 the Union's proposed remedy to instate Pennucci with backpay and interest is  
22 inappropriate because it would "encroach upon fundamental management rights"

1 reserved for the City, and “would interfere with the City’s contractual authority to  
2 determine qualifications and make staffing decisions critical to the efficient and safe  
3 operations of its departments and their ability to deliver critical public services.” In the  
4 alternative, the City contends that the only appropriate remedy is a cease and desist order  
5 and a notice posting.

6 Despite the City’s contentions, I find that the appropriate remedy is to offer  
7 Pennucci the position of Assistant Superintendent of Operations (Supt. of Automotive  
8 Maintenance) and, if he accepts this offer, to make him whole for all lost wages and  
9 benefits due to his unlawful bypass as of February 10, 2023, when the City decided to  
10 bypass him for promotion to that position. See, generally, Town of Mashpee, 36 MLC at  
11 173, (because town deviated from promotion procedures by promoting candidate with  
12 lower scores over discriminatee with higher scores, CERB ordered town to offer position  
13 to discriminatee as of date that candidate assumed the position). However, I disagree  
14 with the Union that the appropriate instatement date should fall on either October 11,  
15 2021, or on December 1, 2022. This is because the record is void of evidence showing  
16 that the parties had agreed to a 73-day time frame to conduct the second interview  
17 ordered by Boulanger; and, neither Boulanger’s award, nor his revised award, nor the  
18 parties’ settlement agreement reference a “73-day” period anywhere in these exhibits.  
19 Moreover, while the parties’ settlement agreement does reference November 1, 2022, as  
20 the priority date for the City to “vacate the promotion and...interview Pennucci,” and while  
21 it also references December 1, 2022, as the priority date for the City to “notify Pennucci  
22 of its promotional decision,” the Union has failed to demonstrate that the City repudiated

1 the terms of the settlement agreement by interviewing Pennucci on January 18, 2023, or  
2 by notifying him of its promotional bypass decision on February 10, 2023; and there is no  
3 evidence in the record to support such an allegation of repudiation.

4 CONCLUSION

5 In conclusion, I find that the City discriminated against Pennucci for engaging in  
6 concerted activity protected by Section 2 of the Law, when it bypassed him for promotion  
7 on February 10, 2023, in violation of Sections 10(a)(3), 10(a)(4) and, derivatively, Section  
8 10(a)(1) of the Law.

9 ORDER

10 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City of  
11 Boston shall:

12 1. Cease and desist from:

- 13  
14 a) Discriminating against Lawrence Pennucci for engaging in  
15 concerted, protected activities;  
16  
17 b) In any like or related manner interfering with, restraining or coercing  
18 employees in the exercise of their rights guaranteed under the Law.  
19

20 2. Take the following affirmative action:

- 21 a) Offer Lawrence Pennucci the position of Assistant Superintendent of  
22 Operations (Supt. of Automotive Maintenance), a position that the  
23 City shall deem that he has held since February 10, 2023, in terms of  
24 seniority, benefits, and all rights and privileges;  
25  
26 b) Make Lawrence Pennucci whole for any economic losses that he may  
27 have suffered due to the discriminatory denial of his promotion to the  
28 position of Assistant Superintendent of Operations (Supt. of  
29 Automotive Maintenance) as of February 10, 2023. The City shall pay  
30 him a sum equal to the difference between what he would have  
31 earned as the Assistant Superintendent of Operations (Supt. of



1 Automotive Maintenance) and his salary as Principal Administrative  
2 Assistant in the Central Fleet Maintenance group of the Department  
3 of Public Works from February 10, 2023, to the date of compliance  
4 with this order, plus interest on all sums owed at the rate specified in  
5 M.G.L. c. 231, Section 6I, compounded quarterly;  
6

7 c) Post immediately, signed copies of the attached Notice to Employees  
8 in all conspicuous places where members of the Union's bargaining  
9 unit usually congregate or where notices are usually posted, including  
10 electronically if the City customarily communicates with these unit  
11 members via intranet or email, and display for a period of thirty (30)  
12 days thereafter; and  
13

14 d) Notify the DLR in writing of the steps taken to comply with this Order  
15 within ten (10) days of its receipt.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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KENDRAH DAVIS, ESQ.  
HEARING OFFICER

#### APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L., Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review 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**

The City of Boston (City) has discriminated against Lawrence Pennucci for engaging in concerted activity protected by Section 2 of Massachusetts General Laws, Chapter 150E (the Law) when it bypassed him for promotion on February 10, 2023, in violation of Section 10(a)(4), Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law.

The Law gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; 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. Based on these rights, the City assures its employees that:

WE WILL NOT discriminate against Lawrence Pennucci for engaging in concerted, protected activities;

WE WILL offer Lawrence Pennucci the position of Assistant Superintendent of Operations (Supt. of Automotive Maintenance), a position that the City shall deem that he has held since February 10, 2023, in terms of seniority, benefits, and all rights and privileges;

WE WILL make Lawrence Pennucci whole for any economic losses that he may have suffered due to the discriminatory denial of his promotion to the position of Assistant Superintendent of Operations (Supt. of Automotive Maintenance) as of February 10, 2023. The City shall pay him a sum equal to the difference between what he would have earned as the Assistant Superintendent of Operations (Supt. of Automotive Maintenance) and his salary as Principal Administrative Assistant in the Central Fleet Maintenance group of the Department of Public Works from February 10, 2023, to the date of compliance with the DLR order in this case, plus interest on all sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly;

WE WILL refrain from interfering with, restraining or coercing employees in the exercise of their rights under Section 2 of the Law.

---

City of Boston

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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 Labor Relations, 2 Avenue de Lafayette, Boston, MA 02111-1750 (Telephone: 617-626-7132).