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Marjorie F. Wittner, Chair
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of Worcester, Inc.

SUMMARY

1 On June 8, 2016, a Department of Labor Relations (DLR) Hearing Officer issued
2 a decision holding that the Worcester School Committee (School Committee or
3 Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
4 Massachusetts General Laws Chapter 150E (the Law) by denying a request made by
5 the Educational Association of Worcester, Inc. (EAW or Union) in February 2010 for

1 access to three schools in the Worcester Public School System.¹ The EAW sought
2 access for purposes of having an environmental expert conduct sampling for the
3 presence of polychlorinated biphenyl, an organic compound commonly known as
4 PCB's, in the schools' exterior caulking. The Hearing Officer found that the Union's
5 request was relevant and reasonably necessary for it to execute its duties as the
6 exclusive bargaining representative of employees who worked in the Worcester Public
7 Schools. She also concluded that, on balance, the EAW's interest in obtaining access
8 to the three schools to gather information outweighed the Employer's stated interests in
9 preventing the environmental expert from taking caulking samples. She therefore
10 ordered the School Committee to, upon request, provide the EAW's environmental
11 expert with access to the schools to conduct PCB sampling, "at reasonable times, with
12 reasonable notice and in a reasonable manner."²

13 The School Committee filed a timely notice of appeal and supplementary
14 statement with the Commonwealth Employment Relations Board (CERB). Its main
15 arguments on appeal are that the Hearing Officer erred as a matter of Law when she
16 found the request relevant and reasonably necessary without: a) first making a
17 determination that PCBs posed a safety and health risk to EAW members; or b) taking
18 into consideration the fact that the Union had already obtained exterior caulking
19 samples. Regarding the weight accorded the parties' respective interests, the School
20 Committee argues that the Hearing Officer should have found in its favor because the
21 EAW has already achieved its objectives of testing for PCBs and engaged in extensive

¹ North High School (H.S.), Burncoat H.S., and Doherty H.S.

² By the time the Hearing Officer issued the Order, North H.S. had been demolished, so the Order ordered the Employer to grant access only to Burncoat H.S. and Doherty H.S.

1 representation of its members as to this issue. Finally, the School Committee argues,
2 as it did to the Hearing Officer, that the Union's "unclean hands" stemming from its
3 having allegedly engaged in self-help and acted out of self-interest precluded a ruling in
4 the Union's favor. The EAW filed a response to the supplementary statement
5 countering the School Committee's arguments and urging affirmance.

6 For the reasons set forth below, we reject the School Committee's arguments
7 and affirm the Hearing Officer's decision in its entirety.

8 Facts

9 The facts in this case are complex and lengthy. After a thorough review of the
10 record below, we have decided to adopt the Hearing Officer's findings of fact, which are
11 not challenged on appeal, except as noted herein. We will therefore not reiterate the
12 Hearing Officer's detailed factual findings. In the discussion below, we have provided
13 only the factual background necessary to an understanding of the decision. Further
14 reference may be made to the facts set out in the Hearing Officer's decision reported at
15 43 MLC 283 (June 16, 2016).

16 Opinion³

17 As a general principle, a public employer violates Section 10(a)(5) of the Law if it
18 refuses a union's request to provide information it has that is relevant and reasonably
19 necessary to the union's performance of its duties as collective bargaining
20 representative. This obligation arises both in the context of negotiations and contract
21 administration. Boston School Committee, 10 MLC 1501, 1513, MUP-4468 (April 17,
22 1984). Once a union has established that the requested information is relevant and

³ The CERB's jurisdiction is not contested.

1 reasonably necessary to its duties as the exclusive representative, an employer may
2 justify its refusal to provide information by demonstrating that it has legitimate and
3 substantial concerns about disclosure of the information and that it has made
4 reasonable efforts to provide as much information as possible, consistent with its
5 expressed concerns. Boston School Committee, 13 MLC 1290, 1294, MUP-2905
6 (November 2, 1986). The employer's concerns are then balanced against those of the
7 union and the employer's refusal will be excused where its concerns outweigh those of
8 the union. Commonwealth of Massachusetts, 11 MLC 1440, 1443, SUP-2746
9 (February 21, 1985).

10 Here, the Union's information request was not for documents or data within the
11 Employer's possession, but for access to the Employer's property to obtain health and
12 safety information. Although there have been two hearing officer decisions addressing
13 access requests, including the one before us now, the CERB has not previously ruled
14 as to whether an employer's duty to provide information encompasses the provision of
15 access to the workplace to obtain health and safety information.⁴ Therefore, as a
16 preliminary matter, and guided by NLRB v. Holyoke Water Power Co., 778 .2d 49 (1st
17 Cir. 1985), *cert denied* 477 U.S. 905 (1986), we adopt the principle that an employer's
18 duty to furnish relevant and reasonably necessary information encompasses providing
19 access to the worksite to obtain that information. Id.

20 The Employer does not dispute this general principle. Instead, for the reasons
21 summarized above, it argues that the Hearing Officer erred as a matter of Law when

⁴ Prior to the instant case, in City of Boston, 21 MLC 1113, MUP-9048 (July 29, 1994), the Hearing Officer held that a request for information about health and safety matters encompassed a request for access.

1 she concluded that it violated the Law by not providing the Union with access. We
2 address these arguments below.

3 **Relevance and Reasonable Necessity**

4 The Employer first argues, as it did to the Hearing Officer, that it was not possible
5 for her to find that the Union's request for access to obtain samples of caulking to test
6 PCB levels was relevant and reasonably necessary without first definitively ruling that
7 PCBs pose a health and safety risk to EAW members. The Hearing Officer held that
8 she did not have to reach this issue or resolve differences in testimony⁵ regarding this
9 point because the letter that the EAW wrote to the Employer on February 26, 2010,
10 seeking access to conduct PCB sampling on window caulking and other building
11 materials, reflected that the Union was aware that Environmental Protection Agency
12 (EPA) regulations required the removal of building materials with PCB levels greater
13 than 50 parts per million (ppm).⁶ The Hearing Officer thus reasoned that it was relevant
14 and reasonably necessary for the EAW to seek access to the three schools for PCB
15 testing to determine whether its members' workplaces actually contained caulking that

⁵ The Hearing Officer allowed the Employer to introduce the testimony of James Okun (Okun), whom she designated as an expert witness based upon his education and experience. Among other things, Okun testified that the EPA regulation requiring removal of building materials that contained PCBs in concentrations greater than 50 ppm was a regulatory overreaction. Although Okun acknowledged that PCBs were a known carcinogen to rats, he testified that the EPA had characterized PCBs as only a "probable" carcinogen to humans because the results of studies purporting to draw a connection between the presence of PCBs in building materials and humans were not scientifically rigorous enough to be consistently duplicated. The Hearing Officer also found that, in seeking access to certain schools, the EAW relied upon the fact that the EPA's publications described PCBs as possible human carcinogens and identified caulk and other materials routinely used in buildings built or renovated between 1950 and 1978 as potential sources of PCBs.

⁶ The EAW cited 50 CFR, part 761. The Employer does not dispute that this EPA regulation contains this requirement.

1 would need to be removed pursuant to the EPA regulations and to request bargaining
2 over the impacts of caulking removal on unit members' terms and conditions of
3 employment, including their health and safety.

4 We affirm the Hearing Officer's conclusion that the extant EPA regulation
5 rendered the Union's request for information relevant and reasonably necessary. First,
6 as the Employer acknowledges on appeal, matters involving employee safety are
7 mandatory subjects of bargaining that fall within the ambit of a union's representation of
8 its members. See, e.g., Town of Bridgewater, 12 MLC 1612, 1615-1617 (February 7,
9 1986). Although the Employer's expert disagreed that building materials containing
10 PCB levels of greater than 50 ppm must be removed, it does not dispute that EPA
11 regulations contain this requirement. We further note that when the Union made its
12 request, it was aware of that the EPA had identified caulking and other materials
13 routinely used in buildings constructed or renovated between 1950 and 1978 as
14 potential sources of PCBs and the Union's request sought access to buildings built
15 during that time. The Union was also aware that PCBs had been outlawed in the United
16 States since 1979 and that at least two EPA publications had described PCBs as
17 potential or probable human carcinogens.⁷ The record further reflects that by the time
18 the Union made its 2010 request, several Burncoat H.S. teachers had approached the
19 EAW with concerns about the number of teachers who had been diagnosed with cancer

⁷ The Hearing Officer found that during the fall of 2008, Sireci reviewed an EPA document titled "Health Effects of PCBs," which described PCBs as "probable human carcinogens." She also found that when Sireci sent a letter to the School Superintendent in November 2009 asking for access to allow its experts to take sample, he reviewed an EPA publication titled "Current Best Practices in Caulk Fact Sheet – Interim Measures for Assessing Risk and Taking Action to Reduce Exposures." There, the EPA described PCBs as "potentially cancer-causing" in humans.

1 in that building, including five teachers who worked on a particular wing of the school
2 and two deceased teachers who worked in another wing. The Hearing Officer
3 determined that the Union was acting upon its members' health and safety concerns
4 when it requested access in February 2010.

5 The standard the CERB applies for determining relevance of an information
6 request is a broad and liberal one, similar to the standard for determining relevance in
7 discovery proceedings in civil litigation. Commonwealth of Massachusetts, 21 MLC
8 1499, 1503, SUP-3459 (December 14, 1994). Under this standard, based on the
9 Union's knowledge that certain Worcester Public School building had been constructed
10 during the regular time frame, the EPA regulation requiring removal of building materials
11 with PCB concentrations with greater than 50 ppm, related EPA publications, and
12 anecdotal evidence that seven teachers in Burncoat H.S. either had been diagnosed
13 with, or died from, cancer, we agree with the Hearing Officer that the Union's request for
14 access to sample caulking for PCB levels was relevant and reasonably necessary to
15 determine whether there were PCBs in the schools' exterior caulking that needed to be
16 removed. Further, given all of these factors, we agree that the Union was not required
17 to prove the precise known health effects on PCBs in humans before access was
18 granted, nor was the Hearing Officer obliged to reach this issue as a threshold analysis.
19 See City of Boston, 21 MLC at 1113 (finding union's request for access for an industrial
20 hygienist to evaluate a construction site for hazards relevant and reasonably necessary
21 without engaging in analysis of whether the dust, fumes and noise from the construction

1 site actually posed a known risk to employees' health and safety).⁸ In these
2 circumstances, the Union's request meets the CERB's standards for relevancy and
3 reasonable necessity.⁹

4 None of the Employer's remaining arguments on review persuade us otherwise.
5 The Employer argues that the Hearing Officer wrongly rejected its argument that access
6 was not necessary because Michael Sireci (Sireci), a Massachusetts Teachers
7 Association (MTA) field representative and the EAW's Executive Secretary from 2005-
8 2012, had already taken his own caulking samples from the schools in question.¹⁰ The

⁸ The School Committee's argument that the Union's request for access was not relevant or reasonably necessary absent a finding that PCBs are harmful to humans also rings hollow in light of the Employer's own actions from 2009-2011 in response to the potential presence of PCBs at schools. Those actions, as detailed in the Hearing Officer's decision, include communicating to parents about potential health risks and hiring two different environmental consultants to conduct a visual inspection of schools to assess the presence and condition of potential PCB containing building materials.

⁹ Given our conclusion, there is no need to remand this matter to the Hearing Officer for further findings, as the Employer alternatively requests.

¹⁰ Sireci was a member of the MTA's Health and Safety Committee (Committee). In June 2008, another Committee member, University of Massachusetts professor Chuck Levenstein (Levenstein), invited Robert Herrick (Herrick), a senior lecturer at the Harvard School of Public Health to speak at a Committee meeting about a study that Herrick was conducting concerning whether the presence of PCBs in exterior caulking could lead to elevated PCBs in the building occupants' blood levels. Sireci spoke with Herrick and Levenstein on several occasions after the meeting about the possibility of testing for PCBs in Massachusetts schools and decided he was interested in participating in the study. He contacted four locals, including the EAW, to see if they would be interested in participating. Around this time, Sireci was also enrolled in a doctoral program. At some point in the summer of 2008, Sireci met with his academic advisor to see if he could get academic credit for the work he would perform in connection with the study. In 2009, after Sireci's request to gain access to conduct sampling of caulking in certain school buildings was first granted by the School Committee under certain conditions, but then denied, Sireci received a telephone call from George Weymouth (Weymouth), who had previously worked with Herrick on two research studies. Weymouth informed Sireci that he had already taken samples of caulking from five Worcester Public schools and tested them. The studies showed PCB

1 Hearing Officer reasoned that because the Employer had questioned the chain of
2 custody of the samples,¹¹ the EAW's experts needed access for the schools to take
3 new samples for testing. The Employer does not dispute that it questioned the validity
4 of the samples the Union already had in its possession. It claims, however, that the
5 Hearing Officer's Order improperly gave effect to the Union's desire to compel the
6 Employer to acknowledge whatever test results ensued from the Hearing Officer's
7 Order, thereby compelling the Employer to remove the caulking. The Employer
8 contends that because the EPA does not require testing, this is a "fundamental misuse
9 of the information request." We disagree.

10 First, as the Union argues, the Employer cannot have it both ways, i.e., contest
11 the validity of the samples the Union obtained yet contend that further testing was
12 unnecessary because testing had already occurred. Furthermore, it is well-established
13 that an employer is required to produce relevant and reasonably necessary information
14 to a union upon request even if the information is available from the employees or
15 another source, unless the employer's interests in preventing disclosure outweigh the
16 union's interests. Higher Education Coordinating Council, 23 MLC 266, 269, SUP-4142
17 (June 6, 1997).

18 Next, the Employer provides no support, and we find none, for its proposition that
19 a union's right to access to conduct environmental testing that is relevant and

levels at Doherty H.S. and Burncoat H.S. in concentrations greater than 50 ppm. On April 15, 2015, Sireci wrote to the Employer's Director of Human Resources stating that he intended to take caulking samples the following week. Thereafter, on April 29, 2009, after receiving no response to his letter, Sireci, accompanied by Weymouth, took caulking samples at four schools. The results showed PCBs levels of 85,600 ppm and 8,320 ppm at Doherty H.S. and Burncoat H.S., respectively. Sireci shared certificates of results from those samples with the Employer and the EPA.

1 reasonably necessary to the issue of whether the employer is required to remove a
2 potentially harmful substance from a workplace is limited to situations where the
3 employer itself is required to test. This is not surprising because such a limitation would
4 significantly undermine the Union's ability to obtain relevant and reasonably necessary
5 information about its members' working conditions, particularly in situations where as
6 here, testing is not required but remediation could be, depending on the results of
7 testing. To deny a union access under these circumstances would force it to rely solely
8 on the employer's good intentions regarding the health and safety of represented
9 employees. As the First Circuit stated in Holyoke, such a proposition is "patently
10 fallacious." 778 F.2d at 52 (quoting Chemical & Atomic Workers Local Union no. 6-418
11 v. NLRB, 711 F.2d 348, 361 (D.C. Cir. 1983)).

12 **Balancing Interests**

13 The Employer next argues that the Hearing Officer should have found in its favor
14 because the denial of access did not prevent the EAW from effectively representing its
15 members over the issue of PCBs by, e.g., engaging in picketing and speaking out at
16 School Committee meetings.¹² The Employer contends that if the matter were really

¹² In the proceedings below, the Employer raised two other interests it contended outweighed the Union's: 1) that the Massachusetts Department of Public Health Publications indicated that intact caulking should not be disturbed; and 2) that allowing access could disrupt the Employer's comprehensive remediation plan at all schools and would require it to focus on two schools only. The Hearing Officer rejected the first argument on grounds that the parties disputed the state of the caulking at the two schools and, thus, "[a]t minimum, the EAW's environmental expert needs access to assess the condition of the caulking" at the two schools. She rejected the second argument on grounds that the School Committee's speculative concerns that the EAW expert's findings could alter the timeline of the Employer's remediation efforts did not override the EAW's right to access the Employer's schools. The Employer does not reiterate these arguments or challenge these aspects of the Hearing Officer's decision in this appeal.

1 about access to test, then the Union has already accomplished this by obtaining
2 samples and providing them to the EPA. Rather, it claims the Union's real interest is to
3 "force the Employer to essentially co-sponsor test results," thereby forcing the Employer
4 to removal the material pursuant to the EPA regulations. The Employer again argues
5 that this is a "misuse" of the information function. Again, we disagree.

6 The Employer made similar arguments to the Hearing Officer in the context of
7 arguing that the Union's interests in obtaining the samples did not outweigh the
8 Employer's interests in controlling its property and operations.¹³ The Hearing Officer
9 rejected this argument on grounds that, despite the Union having engaged in picketing
10 and speaking at School Committee meetings about the PCB issue, it still had an
11 obligation to its members to determine whether caulking at Burncoat H.S. and Doherty
12 H.S. contained PCBs at concentrations greater than 50 ppm, which would necessitate
13 removal under EPA regulations. The Hearing Officer held that there was no alternative
14 to testing that would provide the EAW with the type of information it needed to
15 effectively represent its members in this regard. We agree. The suggestion that the
16 Union is somehow abusing the DLR's processes by seeking to access to these school
17 buildings to test for PCBs is wholly without merit. Rather, by repeatedly refusing to

¹³ In its post-hearing brief, the Employer urged the Hearing Officer to apply the balancing test used by the NLRB in Holyoke Water and Power. That test weighed a union's interest in obtaining access to the employer's property to obtain health and safety information against an employer's interest in controlling its property and operations. Holyoke Water Power Co., 273 NLRB 1369, 1370 (1985). The EAW, on the other hand, argued that the Hearing Officer should apply the CERB's traditional balancing test for information cases, which, as set forth above, weighs a union's interest in obtaining information against the employer's legitimate and serious concerns. Consistent with the First Circuit decision in Holyoke, the Hearing Officer declined to select either test, concluding that the result would be same either way. 778 F. 2d at 53. We similarly do not reach this issue as it is not crucial to the outcome of the case.

1 recognize the legitimacy of the test results the Union already had in its possession, the
2 Employer left the Union with few options but to seek access to conduct additional
3 testing and to resort to the DLR's processes when its request was denied.

4 **Unclean Hands**

5 Finally, the Employer argues that it should prevail because the Union has
6 "unclean hands." The Employer claims the Union's bad faith is evident from its refusal
7 or efforts to avoid providing information that the Employer had requested regarding
8 Herrick's study. It also claims that the Union acted in bad faith when Weymouth and
9 Sireci engaged in self-help by taking caulking samples. Finally, it claims that Sireci's
10 alleged concerns over bargaining unit members' health and safety was just a pretext for
11 his own educational endeavors and personal interests.

12 The Hearing Officer rejected these arguments. As a preliminary matter, she
13 disagreed that the Union acted in bad faith when Weymouth and Sireci took caulking
14 samples because: a) there was no evidence that Weymouth was connected to the EAW
15 and b) Sireci believed, "probably mistaken[ly], but not irrational[ly]," that he had tacit
16 approval to access school property. Earlier in her decision, she rejected similar
17 arguments that the EAW requested access to test due to Sireci's own attention to
18 environmental health issues, including his interest in participating in Herrick's study and
19 not in response to bargaining unit members' health and safety concerns. The Hearing
20 Officer pointed out that certain Burncoat H.S. teachers had come to the Union in June
21 2009 with concerns about the cancer rate at that school. She thus found that the EAW
22 was acting on those concerns when it made the access request in February 2010.

1 The Employer challenges these findings on review arguing that it is “not a leap of
2 logic” that Herrick and Weymouth were acting as agents of the EAW or that Sireci’s
3 claims regarding employee health and safety were a pretext for his studies. However,
4 the Employer points to no substantial evidence in the record that would require a
5 contrary conclusion from that reached by the Hearing Officer with respect to
6 Weymouth’s or even Herrick’s connections to the EAW. Nor will we disturb the Hearing
7 Officer’s determination about Sireci’s or the EAW’s motives for seeking access. The
8 CERB will not disturb a hearing officer’s credibility determinations absent a clear
9 preponderance of all relevant evidence that the resolutions are incorrect. Town of
10 Hudson, 29 MLC 52, 53, n. 7, MUP-2425 (September 19, 2002). There is no such
11 evidence here, nor is there any basis to infer bad faith or pretext on the Union’s part
12 merely because Sireci may also have had an academic interest in the relevant and
13 reasonably necessary information the Union was requesting.¹⁴

14 Further, as the Hearing Officer correctly stated, when considering whether a
15 charging party has standing bring a charge alleging that an employer has failed to
16 bargain in good faith, the CERB examines whether the charging party’s actions were
17 *solely* responsible of the respondents failure to bargain in good faith, or prevented the
18 respondent from, from bargaining in good faith. Town of Hudson, 25 MLC 143, 146, n.
19 21, MUP-1714 (April 1, 1999)(emphasis in original) (citing Clinton Teachers Association,
20 16 MLC 1058, 1064, n. 14, MUPL-3263 (June 27, 1989)). Utilizing this analysis, the
21 Hearing Officer found no record evidence that would support a finding that the *sole*

¹⁴ In this regard, we note that Sireci was a member of the MTA’s Statewide Health and Safety Committee and that he first learned about Herrick’s studies while attending a Committee meeting.

1 reason that the Employer denied the EAW's access request was because the EAW had
2 previously acted in bad faith. She thus rejected the Employer's unclean hands
3 argument on these alternative grounds.

4 The Employer argues that this was error because, in Hudson, although the
5 CERB denied the town's motion to dismiss based on the unclean hands doctrine, the
6 CERB noted that it would still be appropriate to consider the town's arguments as a
7 potential affirmative defense to its refusal to bargain. Id. at 146, n. 21. The Employer
8 claims that the Hearing Officer failed to conduct this additional analysis. A careful
9 reading of Hudson, however, shows that when the CERB considered the respondent's
10 bad faith arguments as an affirmative defense, it rejected them based on essentially the
11 same criteria it had used to analyze the motion to dismiss, i.e., whether the union's
12 purported bad faith either precipitated the Town's unlawful conduct or otherwise
13 prevented the Town from bargaining in good faith. Id. at 147.

14 Applying that analysis here, we note that Hearing Officer found, and the
15 Employer does not contest, that the School Superintendent denied the Union's February
16 25, 2010 access request because she believed: 1) the caulking at Doherty H.S.,
17 Burncoat H.S. and the former North H.S. was intact and intact caulking should not be
18 disturbed; 2) the science linking PCBs and adverse health effects in humans was
19 questionable; and 3) testing caulking for the presence of PCBs was not mandatory
20 under either state or federal regulations. The uncontested facts also show that on
21 March 15, 2010, the Employer, through its counsel, denied the Union's request for
22 access based on a Massachusetts Department of Public Health Publication stating that
23 intact caulking should not be disturbed. Nor is there evidence that the complained-of

1 conduct prevented the Employer from complying with the Union's request. Accordingly,
2 whether couched in terms of standing or as an affirmative defense, we agree with the
3 Hearing Officer that the record evidence does not support the Employer's unclean
4 hands argument.¹⁵

5 The Employer makes no other arguments on appeal that require further
6 discussion beyond that already contained in the Hearing Officer's decision.
7 Accordingly, we affirm the decision for the reasons set forth above and in the Hearing
8 Officer's decision.

9 Remedy

10 The Hearing Officer ordered the Employer to, upon the EAW's request, provide
11 the EAW's environmental expert with access to Burncoat H.S. and Doherty H.S. to
12 conduct sampling for PCBs in exterior caulking at "reasonable times, with reasonable
13 notice, and in a reasonable manner." The Employer does not specifically challenge this
14 remedy and thus we adopt this Order. We write only to clarify that due to the passage
15 of time since the Union made its February 2010 access request, our Order that the
16 sampling be conducted in a "reasonable manner," includes allowing the Union's
17 environmental expert access to Burncoat H.S. and Doherty H.S. in order to assess the
18 current condition of exterior caulking and to conduct the sampling in a manner that gives
19 due consideration to current guidance from federal and state safety agencies regarding
20 PCB testing, including whether it is recommended to test caulking that is intact or not
21 and what health risks are associated with either.

¹⁵ Given our conclusion, there is no need to remand this matter to the Hearing Officer for further findings, as the Employer alternatively requests.

Conclusion

For the reasons stated above, the CERB concludes that the Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by denying the EAW's access request.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Employer shall:

1. Cease and desist from:

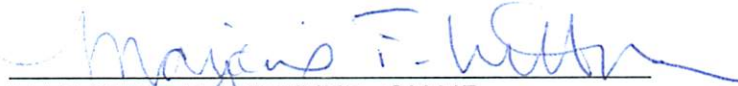
- a) Failing and refusing to bargain collectively in good faith with the EAW by denying access to the EAW's environmental expert in order to conduct sampling for PCBs in exterior caulking at Burncoat H.S. and Doherty H.S.
- b) In any like or related manner, interfering with, restraining and coercing its employees in the exercise of their rights guaranteed under the Law.

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

- a) Upon the EAW's request, provide the EAW's environmental expert access to conduct sampling for PCBs in exterior caulking at Burncoat H.S. and Doherty H.S. at reasonable times, with reasonable notice, and in a reasonable manner;
- b) Post immediately in all conspicuous places where members of the EAW's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Employer customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
- c) Notify the DLR in writing of steps taken to comply with this decision within ten (10) days of receipt of this decision.

1 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KATHERINE G. LEV, CERB MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT
RELATIONS BOARD
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

The Commonwealth Employment Relations Board has held that the Worcester School Committee (Employer) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by denying the Educational Association of Worcester, Inc's (EAW) environmental expert access to conduct sampling for PCBs in exterior caulking at certain of the Employer's schools.

Section 2 Chapter 150E 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.

The Employer assures its employees that:

WE WILL NOT fail and refuse to bargain collectively in good faith with the EAW by denying access to the EAW's environmental expert to conduct PCB sampling of exterior caulking at Burncoat High School (Burncoat H.S.) and Doherty High School (Doherty H.S.)

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

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

Upon the EAW's request, provide access to the EAW's environmental expert to conduct PCB sampling of exterior caulking at Burncoat H.S. and Doherty H.S. at reasonable times, with reasonable notice, and in a reasonable manner.

For the Worcester School Committee

Date

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

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).