

H.E. NO. 2018-12

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN,
Respondent,

-and-

Docket No. CO-2015-101

TEAMSTERS LOCAL 469,
Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the City of Linden violated 5.4a(3) and a(1) derivatively and independently when it filed charges seeking a 3-day suspension against Shop Steward Gerald Bishop for being out of uniform and later sustaining the discipline. Bishop had filed a grievance over mail-duty a few days before the issuance of the PNDA and a day after a council meeting at which a council woman objected to his appointment to a temporary construction code position because he was a blue collar not a white collar worker. The hearing examiner determined that the timing of the issuance of the PNDA as well as the manner in which the Labor Relations Specialist investigated the complaint of the council person supported an inference of hostility. She also found that two City Hall incidents - one involving the councilwoman taking photos of Bishop's footwear with her cell phone and another involving her making a lewd hand gesture to Bishop in front of witnesses - on September 23, 2014 between the councilwoman and Bishop support an independent a(1) violation. Finally, the hearing examiner rejected the charging party's contention that the councilwoman's filing of charges of harassment with the police and against Bishop constituted retaliation for protected activity, because the charges grew out of actions on the part of Bishop that were not protected - e.g. he followed her during election day and on other occasions taking pictures of her car and VIN in order to issue 5 parking tickets. The hostility between Bishop and the councilwoman had become personal.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent
Rogus McCarthy, LLC
(Daniel J. McCarthy, of counsel)

For the Charging Party
Timothy R. Hott, Esq.

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 28, 2014 and December 15, 2016, Teamsters Local 469 (Charging Party or Local 469) filed an unfair practice charge and amended charge against the City of Linden (Respondent or City). The charge and amended charge allege that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4a(1), (2) and (3),^{1/} when the City retaliated against Shop Steward Gerald

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)"

Bishop for exercising protected activities. It is alleged that the City and, in particular, City Councilwoman Rhashonna Cosby-Hurling disciplined Bishop and conducted a campaign of harassment because of Bishop's support of Local 469 generally and, specifically, after Local 469 prevailed in a grievance arbitration initiated by Bishop. Local 469 seeks as a remedy an Order directing the City and Councilwoman Cosby-Hurling to cease its harassment and discrimination against Bishop for his activities on behalf of Local 469.

On January 4, 2017, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing (C-1)^{2/} determining that the 5.4a(1) and (3) allegations in the charge and amended charge, if true, may constitute an unfair practice and dismissing the alleged violations of 5.4a(2) as not meeting the Commission's complaint issuance standards. The Director assigned the matter to me for hearing.

1/ (...continued)
rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

2/ Commission exhibits are marked "C-" while Joint, Charging Party and Respondent exhibits are marked "J-", "CP-" and "R-" respectively.

On September 8, 2017, Respondent submitted its Answer (C-2). Respondent denies all allegations of retaliation against Bishop, namely workplace harassment by the City generally or by Councilwoman Cosby-Hurling specifically, and further denies discriminating against Bishop for exercising protected activities.

A hearing was conducted on September 12 and 14, 2017.^{3/} The parties examined witnesses and introduced exhibits into evidence. After numerous requests by the parties for extensions to file briefs, post hearing briefs were filed by April 30, 2018.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The City of Linden and Teamsters Local 469 are, respectively, public employer and public employee representative within the meaning of the Act (1T9). Gerald Bishop is a public employee within the meaning of the Act (1T10).

2. The City and Local 469 are parties to a collective negotiations agreement (CNA) effective from January 1, 2014 through December 31, 2017 (J-1). Local 469 represents all full-time and permanent part-time employees who work twenty (20) hours or more per week in various non-supervisory titles listed in Schedule A attached to J-1.

^{3/} Transcript cites for the September 12 and 14, 2017 hearing dates are referenced as 1T and 2T respectively.

3. Gerald Bishop has been employed by the City for eighteen (18) years and currently holds the title of senior maintenance repairer, a title included in Local 469's bargaining unit. Bishop has held that title for the time period at issue in this hearing. Bishop was and is a shop steward for Local 469 (J-1; 1T16, 2T64).

4. Rhashonnah Cosby-Hurling was elected to the City of Linden Council in January 2011 (2T80). In 2012 and 2013, she was chair of the Council's negotiations committee, and from 2012-2016, Cosby-Hurling was on the Council's personnel committee, holding the position of committee chair in 2016 (2T80-2T81).

Although Cosby-Hurling had some previous experience with personnel matters and was a corporate coach, she had no prior experience in collective negotiations prior to her election (2T90). Nevertheless, she expressed an interest in being on the personnel and negotiations committees because she felt that some of the public employees were being under-served and under-paid (2T92).^{4/} Also, Cosby-Hurling was especially interested in compliance with the uniform codes and excessive stipends (2T92).

^{4/} Council persons are appointed by the Council president to committees based on their desired committee assignments (2T88, 2T92). Each committee consists of three members with the council president as ex officio chair (2T38, 2T41).

After being appointed to the two Council committees that she requested, Cosby-Hurling received no formal training in labor relations or collective negotiations with the exception of the annual League of Municipalities training (2T89, 2T91).

Basically, committee members were instructed to work together as a team to make sure that the collective negotiations process was fair for both the City and its employees (2T89).

On the negotiations committee, Cosby-Hurling received and reviewed the City's collective negotiations agreements and made her own recommendations for the committee to consider when the collective agreements expired in 2013 (2T89). She attended only one negotiations meeting with Local 469 which took place in 2013 but does not recall who was representing the union at this meeting (2T96).

MAIL DUTY GRIEVANCE (CP-1)

5. At some time in the early Fall of 2013, Bishop was asked by the Linden Mayor and Bishop's Department Head Al McDonald to temporarily fill a vacancy in the City's construction code office. However, at the Council meeting on October 15, 2013, Councilwoman Rhashonnah Cosby-Hurling objected to his appointment because she considered Bishop to hold a blue collar position and the construction code title was white collar (1T22). Nevertheless, she asserted that the temporary position was white-collar, and Bishop was a blue-collar employee (CP-1; 1T22).

Bishop was surprised by Cosby-Hurling's objection because, as far as he was knew, council persons were supposed to be focused on policy and did not interact with employees or make calls about day-to-day activities (1T158). Cosby-Hurling had never been formally introduced to Bishop but saw him occasionally at work in City Hall from the time she became a councilperson in 2011 (2T94).

6. As a result of Cosby-Hurling's opposition to his appointment, on October 16, 2013, Bishop filed a grievance as shop steward on behalf of unit members. He gave a copy to Local 469 President Mike Broderick and to Jessica Sheehy in the Personnel office (1T23-1T24).

The grievance stated:

We have been tasked for years with sorting/ separating all incoming mail, every workday morning, and processing out-going mail from City Hall every workday afternoon.

In light of Council's divisive, disruptive statements during the Linden City Council meeting of October 15th, 2013, we are in 100% agreement that we are not clerks. The aforementioned tasks are by definition "clerical". Furthermore, considering the upcoming collective bargaining unit contract negotiations, we must honor and respect the scope of work of our brother and sister members of the clerical union.

We must always be mindful that elected officials are merely TEMPORARY VISITORS to City business; conversely we the work force and our CAPABLE department heads always [sic] have, and always will work TOGETHER for the

betterment of our fine City for many years to come.

I request a WRITTEN response at your earliest convenience, and according to the guidelines set forth by our binding agreement. [CP-1]

The City did not respond to Bishop's grievance (1T25).

OCTOBER 22, 2013 PRELIMINARY NOTICE OF DISCIPLINARY ACTION (CP-2)

7. Allan Roth was appointed by the Linden City Council in 2006 to what was then a new part-time position as labor relations specialist and personnel officer assisting Supervising Clerk Jessica Sheehy (2T5). He and Sheehy are co-equals in the City's table of organization and both report to Department Head CFO Alexis Zach who in turn reports to the City Council (2T36-2T37).^{5/} Among Roth's responsibilities are contract negotiations and administration, including processing grievances and giving general labor advice (2T5).

8. By ordinance, the City Council designated Roth as the final arbitrator on disciplinary matters (2T7). When Roth receives a complaint from a council person, department head, supervisor, or employee, a written complaint form is filled out and reviewed by him (2T8). He conducts an investigation by

5/ The City Council is the appointing authority and at the top of the City's organizational chart and consists of several council committees. Next in the table of organization are department heads such as CFO Alexis Zach and Al McDonald, who heads the custodial/maintenance department. Finally there are supervisors who head the various divisions (2T39). Tony Coplin supervises the custodial/maintenance employees including Bishop (2T36-2T37).

speaking to the complainant, the employee's supervisor or department head and sometimes by speaking to the employee (2T8). Roth may also speak to Teamster Local 469 President Mike Broderick (2T8). After the investigation, Roth has the authority to determine whether or not to issue charges (2T8).

9. On October 9, 2013, Cosby-Hurling observed Bishop out of uniform, namely wearing white sneakers, which she considered a safety hazard, and not wearing a green uniform shirt, both of which are violations of the City's uniform policy (2T81-2T82). Cosby-Hurling registered a complaint against Bishop based on her observation and submitted it to Roth (CP-2; 2T82).

At the time Cosby-Hurling made the October 9, 2013 complaint against Bishop, it does not appear that she and Bishop had contact with each other or that they even knew each other personally or professionally even though Bishop is assigned to City Hall (2T47-2T48, 2T93-2T94, 2T97, 2T99).

10. When Roth received Cosby-Hurling's complaint, he spoke to her; he viewed the investigation of it as very simple (2T44, 2T51). In the past, Roth had observed Bishop wearing white sneakers and brought it to the attention of to his supervisors, McDonald and Coplin. Cosby-Hurling asked Roth to explain to her why Bishop was in sneakers and not wearing a uniform shirt (2T99-2T100). Roth told her he would look into it (2T100).

11. Article XVIII of the parties' CNA, entitled "Uniforms and Safety Equipment," provides for employees to receive an annual allowance for the purchase of approved work clothes, including long and short sleeve shirts, a winter coat, a sweatshirt, and pants.

The Article also sets an allowance for "approved steel toe boots with non-slip soles" to be worn for any work requiring safety boots. At all other times, employees are permitted to wear "non-slip soled sneakers in navy or black" (J-1).

12. According to Roth, it was generally known that Bishop wore white Pumas (2T44). Indeed, work uniforms were discussed generally many times in the past with both Bishop and others.^{6/} In particular, there was an issue about the uniforms because custodians frequently went in and out of buildings and sometimes had to put on outerwear -- jackets, flannel shirt or sweatshirt -- over the uniform T-shirt with the City logo (2T17-2T18). There was also an issue raised concerning the required steel-toed work boots, because when cleaning involved the use of water, the soles

^{6/} Bishop denies ever speaking to Roth about being out of uniform while on duty. I credit Roth that at least the issue of problems with the uniform policy was discussed between the two because Bishop as shop steward raised the issues. However, I also find that in the specific instance of Cosby-Hurling's complaint and during the investigation prior to the filing of charges, Roth did not raise the out of uniform issue with Bishop.

of the work boots would become slippery (2T18). It was suggested that sneakers would be better footwear for those tasks (2T19).

13. Roth concedes that Bishop was definitely the most vocal of the maintenance crew working in City Hall about these uniform issues (2T18). In fact, Bishop became shop steward at one point for a year and spoke to McDonald directly about the boot issue, independent of Roth (2T20). Afterwards Bishop told Roth that McDonald agreed to allow custodian/maintenance employees in City Hall to wear sneakers based on the nature of the jobs they were performing (2T20). As a result, Roth agreed that black or blue sneakers would be allowed in City Hall but instructed that to move or unload anything heavy, steel-toed work boots were still required (2T21).

14. Although Roth was very concerned with proper safety shoes and had spoken to Bishop and others about adhering to the uniform policy even before Cosby-Hurling's complaint, Roth never disciplined Bishop for a violation of the dress code policy before Cosby-Hurling filed her complaint (2T46).^{7/}

15. On October 22, 2013, approximately two weeks after Cosby-Hurling filed her complaint and six days after Bishop filed his mail duty grievance, Roth wrote to Bishop that he was

^{7/} Cosby-Hurling is not the only Council person to recommend discipline of a City employee - e.g. Council President Robert Bunk recommended discipline regarding a police matter (2T49). The record does not provide a time frame for Bunk's recommendation.

entitled to a hearing pursuant to an attached Preliminary Notice of Disciplinary Action charging him with violations of the uniform and dress code policies as well as conduct unbecoming a public employee and insubordination based on Cosby-Hurling's October 9 complaint. The Notice sought a three-day suspension. A hearing was scheduled for November 8, 2013. Roth instructed Bishop to notify the Personnel Office if he desired a hearing (CP-2).

16. Even though Roth considered the investigation of Cosby-Hurling's complaint to be simple and had concluded the investigation sometime prior to October 16 when the mail duty grievance was filed, he attributes the two-week gap between the October 9, 2013 complaint and the issuance of the preliminary notice of discipline (CP-2) to his part-time position -- e.g. he just did not have enough time to get around to it (2T10-2T12). He also contends that he ordinarily tries to resolve a complaint before filing disciplinary charges, although it does not appear that he did so in this instance, because Roth never interviewed Bishop who credibly testified that he was blind-sided when he received the disciplinary notice, in part because he had never before received a notice of discipline (1T27-1T28). Nor did Roth speak to Local 469 President Broderick before issuing the disciplinary notice (1T27-1T28, 2T10).

17. Roth maintains that the issuance of the notice of discipline had nothing to do with Bishop's mail duty grievance and, that he never advised any council member of Bishop's mail duty grievance before he issued the disciplinary notice to Bishop (CP-1; 2T11). Specifically, Roth insists that once Cosby-Hurling filed her complaint with him on October 9, she was no longer involved in the investigation and issuance of the CP-2 disciplinary notice (2T11). However, Roth responded to a question as to whether to his knowledge council would have been advised of the grievance as follows:

A. The standard practice is that I issue notice to the council if it gets beyond the department head through the contract procedures.

So we have different levels. First you go to your supervisor and then there's steps to the grievance procedure. Once it gets beyond the steps and we cannot resolve it and I get an indication from the union that they will be filing for arbitration or if they file for arbitration and I get an arbitration notice, then I go to the personnel committee, who I'm responsible to, and thereafter at the monthly caucus meeting we go into executive session and I would advise them of that, but not until that point (2T12).

Roth's testimony does not specifically address the question of whether the council would have been advised by someone other than Roth of Bishop's mail duty grievance particularly since Bishop sent a copy of it to Broderick and hand delivered one to Jessica Sheehy in the Personnel Office (1T24). Roth may not

himself have notified Cosby-Hurling or other council members but that does not mean Sheehy or someone else in the personnel office did not inform them of it. Accordingly, I cannot find as a fact that Cosby-Hurling was not notified either directly or indirectly of Bishop's grievance after it was filed on October 16, 2013 and before the issuance of the preliminary notice of discipline to Bishop on October 22, 2013 (CP-2). In particular, I draw a negative inference from Cosby-Hurling's failure to testify as to her knowledge or lack thereof of the Bishop grievance (CP-1).^{8/}

18. On October 24, 2013, Bishop filed a grievance challenging the disciplinary notice (CP-2; CP-3). Specifically, Bishop wrote:

#1) This is harassment & retaliatory, plain & simple

#2) I am in full uniform each and every day while on duty. My co-worker and I wear our personal footwear (sneakers) when arriving and exiting City Hall, be it for work or lunch. Period.

#3) My/our uniform shirt is worn daily. As previously discussed with Al MacDonald, Tony Coplan, and Mike Broderick. We are constantly in & out of this building, going from hot to cold in every season throughout the year. It is perfectly acceptable to wear

8/ State v. Clawans, 38 N.J. 162 (1962):

Generally, failure of a party to produce before a trial tribunal proof which, it appears would serve to elucidate the facts in issue, raises a natural inference that the party so failing fears exposure of those facts would be unfavorable to him. Id. at 170.

an overshirt and or jacket, as these garments are not provided by the City.

#4) Rhashonna Cosby-Hurling is obsessed with power rather than progress. If she really cared about our hard-working taxpayers, she'd eliminate the considerable expense of uniforms and simply provide each employee with a photo I.D. to be worn around the neck at a cost of approximately \$1.46 per employee, fabricated by our L.P.D. I.D. Bureau.

#5) I demand a written apology from this Councilperson, and needless to say, I will not accept one minute of suspension on this matter.

This harassment must end immediately!

#6) (Cosby-Hurling is a City employee, wears Obama political T-shirts, Obama hats, and sneakers) (Sadowski, short-pants, sneakers) (Brown-short pants, sneakers) All contrary to the City employee dress code.

If you require witnesses to the above, I have them. [CP-3]

Bishop then requested that Local 469 conduct a survey to ascertain if any other employee has been the victim or witnessed the targeting or preferential treatment of others (CP-3). He also adds that:

This allegation took place on 10-9-13 - why no action til [sic] I filed my grievance #07835 on 10-16-13 - Do you see a pattern?
[CP-3]

19. A few days before the hearing on the disciplinary charges, Roth spoke to Broderick about urging Bishop to waive the hearing because it was obvious to Roth that Bishop felt he would not get a fair shake in an internal departmental hearing (2T14-2T15). Since Bishop had filed a grievance on October 24, 2013 contesting the discipline (CP-3), Bishop agreed to waive the

hearing and a Final Notice of Disciplinary Action (CP-4) was issued on December 26, 2013, imposing a three-day suspension which was not implemented pending the arbitration of Bishop's grievance (CP-3; 2T60).

20. On August 5, 2014, an arbitration hearing was conducted regarding Bishop's grievance contesting his discipline (CP-3; CP-5). Bishop testified in-person at the hearing and Cosby-Hurling testified by telephone (1T45, 2T82).

The issue in dispute was as follows:

Whether pursuant to Article XXII of the collective agreement, the City of Linden had just cause to impose a three day suspension upon grievant Gerald T. Bishop for violating Article XIX, Uniforms and Safety Equipment, and Articles 12 and 13 of the City's dress code policy on October 9, 2013. If not, what will be the remedy? [CP-5]

An award was issued on September 15, 2014, sustaining the grievance rescinding the three-day suspension imposed on Bishop for not wearing his uniform on October 9, 2013 (CP-5). Specifically, the arbitrator determined that the dress code only requires employees to be in uniform while on duty. Bishop testified that when he met Cosby-Hurling on October 9, he was on his lunch break. Accordingly, the arbitrator determined that while testimony established that Bishop was out of uniform on numerous other occasions, the only issue before the arbitrator was whether on October 9 Bishop was off duty when Cosby-Hurling observed him (CP-5).

21. Roth learned for the first time about Bishop's defense at the arbitration, namely that he was on a lunch break (2T52). However, this was not unexpected since Roth never interviewed Bishop as part of his original investigation before determining to file disciplinary charges or he might have learned about it earlier (1T164, 2T51). Also, in Bishop's grievance contesting the discipline, Bishop wrote that "I am in full uniform each and every day while on duty." [CP-3] Presumably, Roth read the grievance as part of his investigative duties which would have alerted him to the potential defense.

MAY 2014 ON-THE-JOB INJURY AND MULTI-CARE

22. On May 15, 2014, Bishop experienced a lower back injury while at work (CP-16; 1T103). Bishop filed a worker's compensation claim and was directed by the City to visit a doctor employed by Multi-Care, a facility retained by the City to examine and treat employees (CP-16; 1T103).

23. On May 22, 2014, Bishop was examined by Dr. Leopold (CP-16; 1T104). He was diagnosed with lower back pain, and Dr. Leopold recommended that Bishop be assigned limited light duty and that he not to lift anything over five pounds (CP-16; 1T104).

24. Bishop returned to work on light duty (1T105). However, on June 2, 2014, when Bishop returned to Multi-Care, Dr. Leopold ordered him to be off duty until June 9, 2014 (CP-17).

25. Shortly, thereafter, Bishop received a telephone call from Jessica Sheehy who told him to come back to work (1T108). He related to her that Dr. Leopold had ordered him not to work until June 9, 2014 (1T108). His testimony about Sheehy and what occurred with the Multi-Care physicians is confusing and unreliable.

For instance, on direct examination, Bishop testified that Sheehy then told him she would get a note from the doctor, and Bishop replied to her that although he had not been reexamined, if he saw the note, he would come back to work (1T108). However, on cross examination, Bishop admitted that by the time Sheehy spoke to him, she had already contacted Multi-Care (1T120).

His testimony was also unreliable regarding his examinations at Multi-Care. On June 5, 2014, Bishop was examined by another doctor at Multi-Care, Dr. Goldstein, who recommended light duty (CP-18). Bishop denied being reexamined by Goldstein, but I do not credit his testimony in this regard (1T108). The report signed by Dr. Goldstein, on June 5, 2014, indicated that as a result of diagnostics tests, he ordered new medication (CP-18). Bishop admits getting the new medications (1T118-1T119). This supports that he did see Dr. Goldstein.

Based on the inconsistencies in Bishop's testimony as to the timing of Sheehy's call and the June 5 examination by Goldstein, I cannot find that he was ordered back to work before being

reexamined by Goldstein who changed Leopold's June 2 recommendation and ordered Bishop back to light duty.

26. In any event, because Bishop did not feel physically able to return to work when Sheehy ordered him back, he used vacation time (1T114).

27. Bishop concluded that the City's actions in ordering him to return to work despite Leopold's orders was a continuation of the retaliation against him (1T106). He felt generally that there was something wrong (1T123). Specifically, Bishop conjectures that the City persuaded Dr. Goldstein to change the recommendation to light duty (1T121, 1T123). However, there is no evidence to support this speculation. In fact, Bishop admits that Sheehy was not targeting him for any union activity but just "[t]o give me a hard time. Perhaps to endure some pain. Perhaps to show me who's boss" and because Sheehy was under the control of Cosby-Hurling (1T121). I do not find support in this record for Bishop's conjectures as to Sheehy's motivations.

AUGUST 13, 2014 PARKING TICKETS

28. After testifying at the August 5, 2014 arbitration hearing, specifically on August 13, 2014, Cosby-Hurling received five tickets from the City of Linden -- one was a parking ticket and the others were for other offenses, including leaving a vehicle unattended, failure to make repairs, leaving an unoccupied car running and one related to an inspection sticker

(2T83-2T84, 2T119-2T120). Cosby-Hurling was surprised and annoyed after being notified about the tickets (2T84).

29. Bishop signed the parking tickets against Cosby-Hurling. This was the first time in his career in Linden or ever that he has instigated the issuance of parking tickets against anyone (1T124, 1T135).

SEPTEMBER 23, 2014 CITY HALL INCIDENTS

30. Eight days after the arbitration award was issued sustaining Bishop's grievance challenging his discipline, there were two incidents on September 23, 2014 in City Hall between Bishop and Cosby-Hurling. The first took place on the first floor near the Council office and the second occurred on the second floor hallway near the courtroom (1T48).

31. In the first incident, Bishop was working and walking past the council office when he observed Cosby-Hurling in the office. Upon viewing Bishop, she rushed out of the office, made a comment about his being out of uniform and, specifically, about his footwear. Cosby-Hurling then stooped down and took pictures of his feet with a teal-colored telephone (1T49).^{9/} Bishop stood still during the picture taking, but asked her if she had enough pictures and told Cosby-Hurling that if his uniform was at issue,

^{9/} Cosby-Hurling denies taking pictures of Bishop's sneakers. However, I do not credit this testimony because although she denied it at first, she modified her response to not recalling if she took the pictures (2T121).

she would find a doctor's note in the City's personnel office that he had submitted a week or two before (1T50, 1T134).^{10/} Cosby-Hurling did not respond to Bishop but continued to take pictures (1T50). Bishop walked away (1T50).

32. The second incident took place later that morning when Bishop was standing in front of the elevator on the second floor of City Hall (1T50). Bishop observed Cosby-Hurling approaching him from his left (1T51). He turned to her and said "have a nice day" (1T51). According to Bishop, Cosby-Hurling then threw up her left arm and lifted her middle finger to him (1T50-1T51). After the gesture, Bishop responded to Cosby-Hurling "just so you know, you're on camera" (1T133).

Bishop was shocked and was not sure how to respond to Cosby-Hurling's gesture, since as a council person she controlled his destiny -- e.g. hiring and firing (1T51).

33. As a result of this second incident, Bishop put in an OPRA request for the video surveillance tape that would have

^{10/} Sometime towards the end of the 2014 summer, Bishop brought Roth a doctor's note indicating that he had a medical problem and seeking an accommodation allowing him to wear sneakers instead of boots (2T19). Roth called and spoke to the doctor (2T19). As a result it was agreed that he would be allowed to wear street sneakers for his normal duties but if he had to unload anything heavy, Bishop would either have to ask someone else to do it or wear his steel-toed boots (2T20).

captured the incident (CP-6; 1T52).^{11/} He eventually received a copy of the surveillance video which captured the incident on September 23, 2014 at 9:07 a.m. (1T55). The video was played during the hearing. Specifically, the video captured Cosby-Hurling coming up the stairs to the second floor, turning right and walking toward Bishop who was standing in front of the elevators (CP-6; 1T58-1T59). The video depicted Cosby-Hurling raising her left arm in an L-shaped position with her forearm and hand raised straight in the air as she passed Bishop ((1T68). The video, however, was not enhanced enough for me to determine whether her middle finger was raised (1T68). Bishop, however, testified without hesitation that Cosby-Hurling was no more than three feet from him when she passed him and that she definitely raised her middle finger to him (1T70).

34. In addition to requesting the surveillance video, the next day after the incident, Bishop went to the police department to file an incident report on September 24 because he felt threatened by the previous day's encounters with Cosby-Hurling. He also filed an employee complaint with the City's personnel office and handed it to Personnel Officer Sheehy (CP-10; CP-11; 1T51, 1T88). He detailed in both reports (to the police and to

^{11/} Bishop did not request the surveillance video from the first incident because he thought that there were no surveillance cameras outside the council office on the first floor (1T132).

Sheehy) what had transpired on September 24 and named two City employees as witnesses -- Municipal Court Bailiff Dennis Slotter and Municipal Court Clerk Tyrell Small (CP-10; CP-11).

35. When Roth received the employee complaint form from Sheehy on October 2, 2014, he spoke to both Cosby-Hurling and Bishop (CP-11; 2T24). Cosby-Hurling admitted to Roth that she took pictures of Bishop's sneakers but denied making any obscene gesture (2T25). At Bishop's insistence, Roth viewed the surveillance video and observed Cosby-Hurling raising her left arm but could not see her raising her middle finger at Bishop (2T26-2T27). Since he did not observe the middle finger incident, he considered the matter resolved and did nothing further (2T27). I infer that he did not interview the witnesses named by Bishop -- Small and Slotter because if he had, Roth would have had corroboration for Bishop's complaint and not have considered the matter resolved despite Cosby-Hurling's denial which I do not credit. I also infer for the same reason that Roth did not receive, request or review the police Incident Report which contained interview summaries from both witnesses (Slotter and Small) that Bishop named (CP-10).

36. However, as a result of receiving Bishop's Incident Report, Officer James Maroney interviewed both Slotter and Small who confirmed that they observed Cosby-Hurling raising her middle finger to Bishop as she passed im at the elevator (CP-10).

Slotter heard Bishop say "have a nice day" and then after Cosby-Hurling made the gesture heard Bishop tell her that the incident was captured on the hallway security cameras. Small recounted that after the gesture, Cosby-Hurling stated at some point to Bishop that he was the one harassing her (CP-10). Basically, the witnesses corroborated Bishop's testimony as to this second incident.

SEPTEMBER 2014 DESK AUDIT

37. Cosby-Hurling requested that the Civil Service Commission (CSC) conduct a desk audit of 50 to 60 City employees. However, after speaking to CSC Human Resources Consultant Mark Von Bruggen, she received an email from him asking her to prioritize the desk audit so that a smaller audit could be conducted (CP-7). On September 4, 2014, Cosby-Hurling submitted a list of five employees in priority order for the audit, listing Bishop (senior maintenance repairer) in the number one position at the top of the list followed by Joseph Labiak (computer service technician), Brad Creanzo (recreation leader), Charles Crane (computer service technician), Doreen Fritzsche (purchasing agent) and Mindi Kuznaik (principal account clerk) (CP-7). Cosby-Hurling did no investigation concerning the titles or functions of the individuals she was requesting be audited (2T109).

38. Alexis Zack is Linden City Chief Financial Officer (CFO). Zach contacted Roth and advised him that she had received a call from the Civil Service Commission (CSC) regarding a desk audit of 50 to 60 employees requested by Cosby-Hurling (2T28). Zack wanted to know what was going on (2T26). According to Roth, this was the first time that a council person asked for an audit, although there was previously a citywide desk audit requested by Roth when a massive layoff was considered (2T57-2T58).

39. Roth spoke to Cosby-Hurling and then to Mark Van Bruggen from CSC who confirmed that Cosby-Hurling had requested the desk audit. Roth asked Van Bruggen if Cosby-Hurling, as a council person, had the authority to request the audit (2T26, 2T56-2T57). Van Bruggen explained he had just spoken to her about that (2T28). Since then, CSC has determined that only the union, the appointing authority and the employee have the authority to request a desk audit (2T54).

40. On or about September 4, Bishop received a copy of the Van Bruggen email from City Purchasing Agent Doreen Fritsche (1T76). Bishop's position had not previously been audited, and he had not been advised by his supervisors that an audit was being done (1T78). Bishop immediately brought the email to the attention of Local 469 President Broderick and sought advice from him (1T79). Bishop had always received top marks in his yearly performance reviews and was concerned about the audit (1T79).

41. On February 19, 2015, Van Bruggen wrote to CFO Alexis Zach confirming the audit of Bishop and the five other employees (CP-8). However, on February 23, 2015, Linden Municipal Attorney Daniel Antonelli rescinded the City's request for the desk audit (CP-9).

COSBY-HURLING'S HARASSMENT COMPLAINTS AGAINST BISHOP

42. Cosby-Hurling was on the ballot in the November 2014 election (2T86). After the election, she filed complaints of harassment against Bishop, because she was alarmed and concerned by his behavior especially after the November 2014 election (R-1; 2T112). Cosby-Hurling felt that she was being followed by him around City Hall on election day and that his body language and behavior was threatening (2T113). She reported this behavior to his supervisor (2T113).

43. Additionally, this alleged harassment caused Cosby-Hurling to file complaints with the police department (CP-13, CP-14, CP-15).

In the first complaint, Cosby-Hurling stated that Bishop observed her going into an ATM vestibule and immediately took pictures of her car, using those pictures to issue her five parking tickets (CP-13). It was particularly concerning to her that he took a picture of her car's VIN number which was on the front left corner of her windshield in very small letters. Bishop had to lean over the windshield to take the picture

(2T118-2T119). In the complaint, Cosby-Hurling also detailed the confrontation on September 23, 2014, in front of the elevator and Bishop's making an OPRA request for the video of their confrontation and then threatening to file ethics charges against her (CP-13).

44. Another incident of harassment for which Cosby-Hurling filed a harassment complaint with the police occurred on October 17, 2014. She detailed that Bishop snatched the door of the council room open and barreled into her nearly knocking her over and then ten minutes later glared at her when she was in the finance office. Cosby-Hurling characterized the stares, comments, aggressive and threatening body language as annoying and alarming (CP-14).

Bishop denies that he harassed Cosby-Hurling on October 17 as recounted in her complaint by snatching the door open and barreling into her in the council room or glaring at her (1T138). He explained that his job required him to be everywhere in City Hall on any given day and he probably saw her that day (1T138).

45. Finally, on February 4, 2015, Cosby-Hurling filed a third complaint of harassment against Bishop. That complaint stated that Bishop harassed her and made a "communication in a manner causing annoyance or alarm specifically filing a complaint against Rhashonna Cosby-Hurling through the union and physically following her on the day of election" (CP-15). It is unclear

what the complaint against her by the union references in CP-15, but it is not material since I find that at least one basis of Cosby-Hurling's harassment complaint against Bishop is that Bishop filed something against her through Local 469.

46. Bishop admits that he did not support Cosby-Hurling's candidacy and did not want to see her re-elected (1T137). He was overwhelmed when he received the complaints which had never before happened to him in all of his years and certainly not in his 18 years of employment with the City (1T99).

47. Eventually, on December 14, 2015, Bishop and Cosby-Hurling appeared in municipal court and they mutually agreed to dismiss all of the complaints with the exception of one parking ticket that Cosby-Hurling had already paid (R-1; 1T100, 1T128).

48. After the complaints were mutually dismissed, Cosby-Hurling still believed that Bishop posed a threat to her and was uncomfortable with the situation (2T123). At the hearing, the following colloquy ensued:

Q. What sort of threat did Mr. Bishop pose to you at that point?

A. Mr. Bishop could, as he has done in the past, make a complaint against me as a seated official and the threat would be, one, my credibility and also it would be an issue for the city. So in that regard, yes.
[2T123]

For instance, Cosby-Hurling maintains that the unfair practice charge filed October 28, 2014, and amended December 15, 2016, alleging retaliation for the exercise of protected activity, is an attempt by Bishop to intimidate an elected official (C-1; 2T105). She bases her conclusion on Bishop's behavior since she testified against him in the August 5, 2014 arbitration regarding his discipline (2T106-2T107). Nevertheless, Cosby-Hurling maintains that the complaints of harassment she filed against Bishop had nothing to do with his employment or her position as council person because the tickets were issued to her as an individual not in her official capacity (2T123).

ANALYSIS

Charging Party asserts that Gerald Bishop was retaliated against by the City after he filed a grievance and several complaints regarding incidents involving Councilwoman Cosby-Hurling. Specifically, Local 469 contends that three incidents of retaliation occurred after Shop Steward Bishop filed a grievance over mail duty: (1) Councilwoman Cosby-Hurling initiated the filing of a preliminary notice of disciplinary action against Bishop for being out of uniform resulting in a recommendation for a three-day suspension; (2) one week after an arbitration award was issued sustaining the grievance Bishop filed challenging the three-day suspension, Cosby-Hurling took

photographs of Bishop wearing sneakers in City Hall and later that day, also in City Hall, raised her finger in a lewd gesture to him; and (3) Cosby-Hurling requested a desk audit of 50 employees but when she was told to narrow the list she put Bishop's name first to be audited by the State. These actions, it asserts, violated 5.4a(3) and derivatively a(1) of the Act.

Respondent disagrees and states that Cosby-Hurling's out-of-uniform complaint against Bishop pre-dated his filing of the mail-duty grievance and therefore cannot constitute retaliation for that protected activity. It also contends that the desk audit initiated by Cosby-Hurling was for legitimate business reasons, namely to confirm that the targeted employees were in fact performing the job duties associated with their respective titles. Lastly, Respondent asserts that any animus between Cosby-Hurling and Bishop was generated by Bishop and was entirely personal and unrelated to union activities.

N.J.S.A. 34:13A-5.3 guarantees public employees the right to engage in union activities including organizing, making their concerns known to their employer, and negotiating collectively. Section 5.4a(3) prohibits an employer from retaliating against an employee for exercising his or her rights as guaranteed in this section. Under Bridgewater Tp., 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that

protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proven, on the record as a whole, that anti-union animus was a motivating or substantial factor or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

Timing is an important factor in determining motivation and may give rise to an inference that a personnel action was taken in retaliation for protected activity. Tp. of West Orange,

P.E.R.C. No. 99-76, 25 NJPER 128 (¶30057 1999); City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Bor. Of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986).

However, each situation requires a factual analysis to determine whether hostility can be inferred from timing. Timing alone cannot support such an inference. See Camden Bd. of Ed.,

P.E.R.C. No. 2003-77, 29 NJPER 223 (¶68 2003) (timing of transfer within 6 months of grievance filing together with conflicting reasons for transfer support inference of hostility).

The Mail-Duty Grievance

Bishop was engaged in a protected activity when he filed his mail-duty grievance on October 16. It is true that Cosby-Hurling's initial complaint about Bishop being out of uniform was registered with Labor Relations Specialist Roth on October 9, a week before the grievance was filed. This timing, therefore, would suggest that her complaint could not have been motivated by hostility in retaliation for Bishop's protected activity in filing the grievance.

A closer examination of the facts, however, supports an inference of hostility, particularly as it relates to the timing of events. The preliminary notice of disciplinary action was issued on October 22, only days after the grievance was filed. Roth admits that he was responsible for investigating the complaint and that the investigation of Cosby-Hurling's complaint

was a very simple one. Yet it took him approximately two weeks to issue charges which he vaguely explained was because he has a part-time position. More importantly, Roth admitted that the actual investigation into Cosby-Hurling's complaint concluded by October 16 when Bishop's grievance was filed, so there is no plausible explanation for waiting five more days to bring charges.

Additionally, Roth was well aware that in the past Bishop was known to be out of uniform, but Roth had never previously disciplined him. Indeed, he and Bishop, who was a vocal critic of the City's uniform policy, had spoken frequently about it and accommodations had been made, including permitting the wearing of sneakers when working in City Hall.

In conducting this investigation, however, Roth never interviewed Bishop, never proffered a settlement to Local 469 and encouraged Bishop to waive an internal hearing, so that the parties could go straight to arbitration. If Roth had interviewed Bishop, he would have discovered that Bishop had a defense to Cosby-Hurling's complaint, namely that he was not on duty when she encountered him in City Hall. Eventually, an arbitrator agreed with Bishop and sustained his challenge to the discipline. Therefore, the decision to file charges five days after Bishop's grievance as well as the cursory investigation suggests an inference of hostility to that protected activity.

Finally, the fact that Cosby-Hurling could not have known about the October 16 mail-duty grievance when she made her initial complaint about Bishop on October 9 is immaterial. Bishop filed his grievance in response to Cosby-Hurling's opposition at the October 15 council meeting to his temporary appointment as a construction code position, a position Cosby-Hurling considered white collar. The next day Bishop filed the grievance on behalf of unit members asserting that assigning mail duty to them is clerical and therefore inappropriate. In the grievance he referred to elected officials as temporary visitors to City business, arguably a swipe at the Council generally and Cosby-Hurling specifically.

Additionally, Roth testified that he never told Cosby-Hurling about Bishop's grievance, thereby suggesting that she had no knowledge of it or his investigation into her complaint. However, his testimony precluded Cosby-Hurling learning about the Bishop grievance from other sources including from CFO Sheehy or Local 469 President Broderick who were copied on it. I could not find as a fact therefore that Cosby-Hurling did not become aware of the grievance and drew a negative inference from her failure to testify as to what knowledge if any she had of it. Certainly, as a councilwoman, Cosby-Hurling was ostensibly Roth's boss and had influence as to whether the investigation resulted in charges. Even if she did not apply

direct pressure on Roth, her position as a councilperson may well have indirectly influenced Roth's decision.

Based on the foregoing, Roth's actions in issuing the preliminary notice of discipline close in time to Bishop's grievance, support the inference of hostility to the filing of Bishop's mail-duty grievance, a protected activity. These actions violate 5.4a(3) and (1) of the Act.

The September 23, 2014 City Hall Incidents

Next, I consider whether Cosby-Hurling's actions on September 23, 2014 in City Hall independently violated 5.4a(1) of the Act. In the first incident, Cosby-Hurling observed Bishop outside the council office and took out her cell phone to take pictures of his footwear, which she considered out of uniform.^{12/} In the second incident, Cosby-Hurling passed Bishop who was standing by the second floor elevators and lifted her arm raising her middle finger in a lewd gesture to him. I credited Bishop's testimony regarding the two incidents (see fact nos. 30 through 36).

An employer independently violates subsection 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification.

Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146

^{12/} Bishop told her to check with the City's personnel office because he had a doctor's note permitting the wearing of sneakers.

1994). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER (¶17197 1986).

These incidents, Charging Party asserts, were harassing and retaliatory. Both incidents took place eight days after the arbitration award was issued sustaining Bishop's grievance challenging his three-day suspension for being out of uniform. Cosby-Hurling as a councilwoman had power over Bishop's employment. Although no adverse personnel actions resulted from Cosby-Hurling's actions, her actions had a tendency to interfere with Bishop's statutory rights. Certainly, her gesture in the second incident sent a signal to other employees who witnessed the incident as well as to Bishop that she was hostile toward him, and her action lacked any legitimate business justification. In fact, no justification was proffered. Respondent simply denies that the two incidents occurred. I rejected those denials based on the record before me. These incidents, therefore, support an independent violation of 5.4a(1).

The September 2014 Desk Audit

By September 2014, Cosby-Hurling's hostility toward Bishop was well established. At that time, she requested an audit of 50 to 60 employees to determine whether they were acting within title. However, after she was instructed to narrow the list,

Cosby-Hurling submitted a list of five employees in priority order with Bishop listed as number one to be audited.

Cosby-Hurling did no investigation concerning the titles she requested be audited. Her request was highly unusual being the first ever submitted by a council person. Eventually, the City decided not to pursue the audit request and withdrew it.

Cosby-Hurling provided no plausible legitimate business justification for her audit request or for singling out Bishop in the audit. This appears to be an extension of her hostility toward Bishop, especially coming weeks after the arbitration award.

Based on the foregoing, I find that Cosby-Hurling's request for a desk audit, singling out Bishop, independently violated 5.4a(1) of the Act.

The Parking Tickets and Harassment Complaints

The tensions between Cosby-Hurling and Bishop escalated after the August 2014 arbitration award was issued. In August, Bishop went to the police station and filed a complaint causing the issuance of five parking tickets against Cosby-Hurling. He even took pictures of her automobile's VIN number on her windshield. As a result of this and other occurrences, Cosby-Hurling filed harassment complaints against Bishop with the police department specifically regarding three incidents: one concerning the five parking tickets, another about Bishop

barreling into her nearly knocking her over in City Hall and finally one regarding Bishop filing a complaint against her through the union^{13/} as well as his following her on election day.

Based on these charges and counter-charges, it is clear that by August 2014, both Bishop and Cosby-Hurling had developed personal animus towards each other which manifested behavior that, in Bishop's case, is unprotected by the Act, namely photographing Cosby-Hurling's car and issuing parking tickets as well as following her on election day at the polls.^{14/} See generally, State of New Jersey (Dept. of Treasury), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001) (conduct of employee who confronted supervisor threatening her and causing disruption in work place not protected activity); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 2001-52, 27 NJPER 117 (¶32057 2001) (employee not engaged in protected activity in yelling at supervisor in front of staff and patients).

Frankly, each needed to reevaluate their actions against the other. The claims were eventually settled on December 14, 2015

^{13/} The testimony was unclear as to what union complaint Cosby-Hurling is referencing. What is apparent is that Cosby-Hurling lacks an understanding as to what constitutes a protected activity, such as the filing of an unfair practice charge. Her testimony supports that she considered it an attempt to intimidate an elected official, suggesting that filing a charge is a personal attack and not a right under our Act (see fact no. 48).

^{14/} Bishop denies that he barreled into Cosby-Hurling nearly knocking her down.

in Municipal Court by having Bishop and Cosby-Hurling mutually withdraw charges against the other.^{15/} I do not find that these incidents amount to violations of our Act.^{16/}

CONCLUSIONS OF LAW

I recommend that the Commission find that the City of Linden violated 5.4a(3) and derivatively 5.4a(1) of the Act when it issued a preliminary notice of disciplinary action seeking a three-day suspension and subsequently issued discipline against Shop Steward Gerald Bishop for being out of uniform.

I recommend that the Commission find that the City of Linden independently violated 5.4a(1) of the Act when on September 23, 2014 in City Hall Councilwoman Cosby-Hurling photographed Bishop's footwear and later that day made a lewd gesture to Bishop in front of witnesses and when in September 2014 Cosby-Hurling requested a desk audit naming Bishop first in priority order to be audited.

^{15/} One parking ticket had already been paid and therefore was not part of the settlement.

^{16/} There was testimony regarding Bishop's on-the-job injury and light duty assignments (see fact nos. 22 through 27). However, Bishop admitted, and I found, that there was no evidence of retaliation in the City's treatment of Bishop as to Multi-Care and Sheehy's request that he return to work.

RECOMMENDATION

I recommend that the Commission **ORDER**:

A. That the City of Linden cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly: (1) when it issued a preliminary notice of disciplinary action seeking a three-day suspension and subsequently issued discipline against Shop Steward Gerald Bishop for being out of uniform; (2) when on September 23, 2014 in City Hall Councilwoman Cosby-Hurling photographed Bishop's footwear and later that day made a lewd gesture to Bishop in front of witnesses; and (3) when in September 2014 Cosby-Hurling requested a desk audit of 5 employees naming Bishop first in priority order to be audited.

2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, particularly when the City issued a preliminary notice of disciplinary action seeking a three-day suspension and subsequently issued discipline against Shop Steward Gerald Bishop for being out of uniform.

B. That the City take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Within twenty (20) days of receipt of this decision, the City notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

/s/Wendy L. Young

Wendy L. Young
Hearing Examiner

DATED: May 17, 2018
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by May 29, 2018.



NOTICE TO EMPLOYEES

**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly: (1) when it issued a preliminary notice of disciplinary action seeking a three-day suspension and subsequently issued discipline against Shop Steward Gerald Bishop for being out of uniform; (2) when on September 23, 2014 in City Hall Councilwoman Cosby-Hurling photographed Bishop's footwear and later that day made a lewd gesture to Bishop in front of witnesses; and (3) when in September 2014 Cosby-Hurling requested a desk audit of 5 employees naming Bishop first in priority order to be audited.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, particularly when the City issued a preliminary notice of disciplinary action seeking a three-day suspension and subsequently issued discipline against Shop Steward Gerald Bishop for being out of uniform.

Docket No. CO-2015-101

City of Linden
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830