

Rule DDC Went Too Far in Response To Possible Grievance

By DAVID SIMS | Posted: Monday, October 21, 2013 5:00 pm

The Department of Design and Construction sent an improper e-mail to employees telling them to disregard the advice of the Organization of Staff Analysts' chapter chair, the Board of Collective Bargaining ruled.

Assistant DDC Commissioner John Doran rebuffed an e-mail sent by the OSA's chapter chair, Cecilia McCarthy, over absences relating to Hurricane Sandy last October.

The DDC had already sent out e-mails to staff saying that absences on Oct. 28, 29 and 30, during the storm and in its immediate aftermath when all city transit was shut down, would be charged to employees' annual leave time.

Spoke of Filing Grievance

Ms. McCarthy then sent an e-mail to 18 DDC employees who are active in her union, saying she was looking into a possible grievance on the issue.

Mr. Doran replied with an e-mail to those same 18 employees telling them to "please disregard the e-mail" they had received from Ms. McCarthy. "DDC's executive decision is, if you missed a complete day of work as a result of Hurricane Sandy...your time should be charged to annual leave, or lacking sufficient annual leave time you will be advanced annual leave by the agency," he said.

"If the union wishes to grieve this decision the proper course of action is to obey the executive order and grieve later," he added.

OSA's chief negotiator and grievance officer Tim Collins responded by saying Ms. McCarthy was doing her job. "The union always has the right to communicate and advise its members," he said. DDC did not retract Mr. Doran's e-mail or apologize, so the union filed an improper practice petition.

Managerial Prerogative?

The city argued that DDC acted within its managerial rights. "The city contends that Doran's e-mail simply sought to correct a mistake of fact offered by McCarthy and to make clear the city's position on leave," the BCB decision read. It added that the e-mail was not threatening or coercive.

But the Board found that the e-mail had a chilling effect on union activity.

"By instructing employees to 'disregard' the union's e-mail and the advice within and by labeling such advice 'inappropriate,' DDC's e-mail discour

aged employees from following the union's advice and participating in a grievance," the Board's decision stated. "Although Doran's e-mail may have acknowledged employees' rights to file grievances, we find that the entire e-mail taken in context discourages employees from engaging in protected activity," it

continued. “Essentially, DDC’s statement was akin to instructing the employees to ‘let it go.’”