

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

WORCESTER SCHOOL COMMITTEE

and

EDUCATIONAL ASSOCIATION OF
WORCESTER, INC.

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Case No. MUP-10-6005

Date Issued: June 8, 2016

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Sean P. Sweeney, Esq. - Representing the Worcester School Committee

Richard A. Mullane, Esq. - Representing the Educational Association
of Worcester, Inc.

HEARING OFFICER DECISION

Summary

1 The issue in this case is whether the Worcester School Committee (Employer)
2 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General
3 Laws, Chapter 150E (the Law) by failing to give the Educational Association of
4 Worcester, Inc.'s (EAW) environmental expert access to certain schools in the
5 Worcester Public School system. I find that the Employer violated the Law in the
6 manner alleged.

Statement of the Case

1 On September 14, 2010, the EAW filed a charge of prohibited practice with the
2 Department of Labor Relations (DLR), alleging that the Employer had engaged in
3 prohibited practices within the meaning of Sections 10(a)(5) and (1) of the Law. A DLR
4 hearing officer conducted an investigation on December 2, 2010. On December 14,
5 2010, the investigator issued a complaint of prohibited practice alleging that the
6 Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by
7 failing to: a) provide access to certain schools for an industrial hygienist to conduct
8 polychlorinated biphenyl (PCB) testing (Count 1); and 2) provide certain requested
9 information that was relevant and reasonably necessary for the EAW to execute its
10 duties as the exclusive bargaining representative (Count 2).¹

11 The hearing commenced on August 30, 2012 and continued on August 31, and
12 November 19, 2012. On November 19, 2012, the Employer announced that it intended
13 to call James Okun (Okun) as an expert witness on the next day of hearing on
14 December 7, 2012. At the hearing on December 7, 2012, the EAW made an oral
15 motion to exclude Okun's testimony, which the Employer opposed. I denied the EAW's
16 motion, but instructed the Employer to provide the EAW with a copy of Okun's
17 curriculum vitae and an outline of his proposed testimony by December 14, 2012, which
18 the Employer did.² The Employer then proceeded to call other witnesses for the
19 remainder of the fourth day of hearing. The hearing was then suspended in order to

¹ On December 8, 2014, the EAW withdrew the allegations that form the basis of Count 2 of the Complaint.

² The Employer supplemented its outline of Okun's proposed testimony on December 20, 2012.

1 allow the EAW to file a written motion seeking to exclude Okun's testimony. On July 13,
2 2013, the EAW filed its written motion to exclude. The Employer filed its opposition to
3 the EAW's motion on January 29, 2014.³ On September 4, 2014, I issued a ruling
4 denying the EAW's motion to exclude Okin's testimony. A fifth day of hearing took
5 place on December 5, 2014, and I closed the hearing record on January 2, 2015. The
6 parties submitted their post-hearing briefs on May 22, 2015. Upon review of the entire
7 record, including my observation of the demeanor of the witnesses, I make the following
8 findings of fact and render the following opinion.

9 Stipulated Facts

- 10 1. The City of Worcester is a public employer within the meaning of Section 1 of
11 G.L.c.150E ("the Law").
12
13 2. The Worcester School Committee ("Committee") is the representative of the City
14 for the purpose of dealing with school employees.
15
16 3. The Educational Association of Worcester, Inc. ("Association"), is an employee
17 organization within the meaning of Section 1 of the Law.
18
19 4. By letter from Association President Cheryl A. DelSignore to Dr. Melinda Boone,
20 Superintendent of Worcester Public Schools, dated February 25, 2010, the
21 Association requested permission to enter upon school grounds at Burncoat High
22 School, North High School, and Doherty High School during unoccupied times to
23 conduct polychlorinated biphenyl ("PCB") sampling of the buildings' exterior
24 caulking because of concern about the potential health effects of PCBs.
25
26 5. By letter from Sean P. Sweeney, Esq., to Association President DelSignore and
27 Association Executive Secretary Michael P. Sireci dated March 15, 2010, the
28 Committee denied the Association's request for permission to enter upon school
29 grounds to conduct PCB sampling.
30
31 6. By letter to Mr. Sweeney dated May 19, 2010, Sarah Gibson, Esq., requested
32 certain documents and information on behalf of the Association.
33

³ Because of the specialized and technical nature of Okun's proposed testimony, both parties made assented-to requests for additional time to file the motion to exclude and the opposition.

1 Findings of Fact⁴

2 Background

3 The Employer has an enrollment of approximately twenty-five thousand students
4 in pre-kindergarten through twelfth grade. The EAW represents a bargaining unit of
5 teachers and other professional employees. From 2005 through 2012, the
6 Massachusetts Teacher's Association assigned Michael Sireci (Sireci), a field services
7 representative, to serve as the EAW's Executive Secretary. Sireci,⁵ who had worked for
8 the MTA since 1997, also was a member of the MTA's statewide Environmental Health
9 and Safety Committee (Health and Safety Committee) and served as staff liaison to that
10 committee.⁶

11 2008

12 In June of 2008, the Health and Safety Committee held a meeting at which
13 Robert Herrick (Herrick), Sc.D., CIH, a senior lecturer at the Harvard School of Public
14 Health, made a presentation about the presence in school buildings of polychlorinated
15 biphenyl, an organic compound commonly referred to as PCBs. Chuck Levenstein, a

⁴ The DLR's jurisdiction in this matter is uncontested.

⁵ Sireci held a Master's of Science Degree in work environment policy and previously worked for seven years as the director of safety for the Service Employees International Union (SEIU), a union for which he worked for a total of seventeen years. As SEIU's director of safety, he would investigate members' concerns about contagious diseases, exposure to chemicals and radiation, and mold as well as conduct trainings about necessary precautions to avoid infections in the workplace and the employees' health and safety rights in the workplace.

⁶ As a member of the health and safety committee, Sireci conducted health effects surveys using a specialized computer program to compare the responses of union members, who worked in particular school buildings, with a control group from the general population. He also evaluated buildings for indoor air quality, the presence of mold, inadequate or excess temperatures and excess noise using assorted instruments.

1 Health and Safety Committee member, a professor at the University of Massachusetts,
2 and Sireci's former academic adviser, had invited Herrick to make the presentation.
3 During the two to three hour meeting, Herrick discussed a study that he was conducting
4 concerning whether the presence of PCBs in the exterior caulking and light ballasts of
5 buildings would lead to elevated levels of PCBs in the blood levels of the building
6 occupants. He also suggested a number of materials for the Health and Safety
7 Committee members to read concerning the possible health effects of PCBs and the
8 prevalence of PCBs in the caulking and light fixtures of buildings that were built or
9 renovated from the period from 1950 through 1979.

10 Thereafter, Herrick, Levenstein and Sireci spoke about the possibility of testing
11 for the presence of PCBs in Massachusetts schools. After speaking with Levenstein
12 several more times, Sireci decided that he was interested in participating in Herrick's
13 study. Sireci then asked seven local union presidents, including the EAW president
14 Cheryl DelSignore (DelSignore), whether their locals might be interested in participating
15 in the study. Based upon those conversations, he sent letters to four locals inquiring
16 about possibly joining Herrick's study. The EAW and the Newton Schools local
17 expressed the most interest in participating in the study.

18 On or about July 2008, Sireci met with DelSignore, who agreed to put the issue
19 before the EAW's Executive Board when they resumed meeting in September 2008.⁷
20 On or about that time, Sireci had conversations with Herrick about whether any of the
21 Employer's schools were built or renovated from 1950 to 1979, and Herrick agreed to

⁷ The EAW's Executive Board subsequently approved the request to join Herrick's program.

1 look into the matter. Herrick subsequently sent Sireci an email message with a list of
2 the Employer's schools that Herrick had concluded were built or renovated from 1950 to
3 1979. During the summer of 2008, Sireci also met approximately three times with the
4 academic adviser for Sireci's doctoral program,⁸ who suggested that Sireci should apply
5 for academic credit for work that he would perform as part of Herrick's study.

6 On or about the fall of 2008, Sireci reviewed a document from the United States
7 Environmental Protection Agency (EPA) entitled "Health Effects of PCBs".⁹ The EPA in
8 that document described PCBs as "probable human carcinogens." The EPA also noted,
9 in part, that:

10 PCBs have been shown to cause cancer in animals. [Emphasis in
11 original]. PCBs have also been shown to cause a number of serious non-
12 cancer health effects in animals, including effects on the immune system,
13 reproductive system, nervous system, endocrine system and other health
14 effects. Studies in humans provide supportive evidence for potential
15 carcinogenic and non-carcinogenic effects of PCBs.

16
17 On or about that time, Sireci also reviewed two other EPA publications that were
18 entitled: "Current Best Practices for PCBs in Caulk Fact Sheet-Removal and Clean-Up
19 of PCBs in Caulk and Contaminated Soil and Building Material" and "PCBs in Caulk in
20 Older Buildings".¹⁰

⁸ At that time, Sireci was enrolled in a doctoral program, a program from which Sireci had withdrawn as of the first day of hearing on August 31, 2012.

⁹ The version that Sireci reviewed was updated on or about August 8, 2006.

¹⁰ At hearing, the EAW introduced updated versions of those two publications that bore August 2012 revision dates. However, Sireci recalled reviewing earlier versions of those two publications.

1 On November 20, 2008, Sireci sent a letter to the Employer's Interim
2 Superintendent of Schools Deirdre Loughlin, Ed.D. (Superintendent Loughlin) stating in
3 pertinent part:¹¹

4 The Environmental Health and Safety Committee at the Massachusetts
5 Teachers Association is undertaking a project to determine the safety of
6 the caulking used around windows and doors in school buildings
7 constructed between 1950 through 1978. It has been brought to our
8 attention that some school buildings used caulking that contained PCB's.
9 PCB's cause cancer in test animals with high exposures. Studies of
10 workers with years of high exposure show it may cause cancer in humans
11 too. There is little known about the effects of human exposure to PCB's in
12 caulking. We will be working with Robert Herrick, Sc.D., CIH from the
13 Harvard School of Public Health. He will determine if employees have
14 been affected by collecting samples and comparing the blood levels of
15 employees with those in the general population.

16
17 Disruption of students will be minimal. Sample of the caulking will be
18 taken from outside the building. This work can be done after school or
19 during the weekends. Windows will not be damaged. A sample of
20 approximately an inch or two will be removed by a trained technician from
21 around a window and thereafter replaced.

22
23 The MTA has a right to test under MGL Chapter 150E and federal law. ...

24
25 We will keep you informed of the results of testing conducted on the
26 caulking and/or individual building occupants. If you have any questions
27 feel free to call me at ____.

28
29 On December 2, 2008, Sean Sweeney, Esq. (Sweeney), the Employer's labor counsel,
30 responded by stating:

31
32 Your letter of November 20, 2008 has been referred to my office for
33 handling. As you are undoubtedly aware, the applicable case law on this
34 issue indicates that the interests of the union must be balanced with those
35 of the employer. Merely notifying the District of your intent to have testing
36 performed does not satisfy your obligations with respect to the District.
37 Your letter refers to "minimal" disruption of students during the testing. To
38 be clear, any disruption of students is unacceptable to the District. Where,
39 as here, you have requested testing on Employer property, the property
40 rights of the Employer must be both recognized and respected.

¹¹ Sireci's wrote his November 20, 2008 letter on MTA letterhead and used his title as MTA consultant below his signature.

1 Accordingly, in order to balance the competing rights of the Union and the
2 Employer in this case, I am writing in order to identify the conditions under
3 which the District would allow the access and testing. First, the testing
4 must occur when students are not in school. Second, the testing must be
5 accomplished in the presence of a representative of the District's School
6 Plant Office. Third, the testing must not result in any property damage.
7 To the extent that the testing were to result in the removal or
8 compromising of the existing window caulking, mutually agreeable repairs
9 must be made at the Union's expense.

10
11 I trust that you will find these requirements both reasonable and consistent
12 with the applicable case law. Please contact me so that we may arrange
13 for mutually acceptable testing dates and so that we may identify the
14 schools to be tested; the School Plant Office representative to be present;
15 and the manner in which any necessary repairs will be made. The District
16 further requests that you ensure that no testing is performed until we have
17 resolved these issues.

18 Thereafter, Sireci verbally notified Stacey DeBoise Luster (Luster), the Employer's
19 Director of Human Resources, and Gene Olearczyk (Olearczyk), then the Employer's
20 Plant Manager, that the EAW had agreed to the three conditions under which the
21 Employer would allow the EAW access to test, as described in Sweeney's December 2,
22 2008 letter. Luster then directed Sireci to contact Sweeney to agree upon a date for
23 testing. About one month later, Sireci spoke with Sweeney and informed Sweeney that
24 the EAW wanted to test window caulking at eleven of the Employer's schools that the
25 Massachusetts School Building Association had identified as having been constructed
26 or renovated in the period from 1950 through 1979 and that the testing would take place
27 on weekends when students were not present.¹²

28 2009

¹² Sireci also informed Sweeney that the EAW would conduct the testing in Olearczyk's presence and would not damage the window caulking.

1 On or about early March 2009, Sireci informed Luster at a labor/management
2 meeting¹³ that the EAW wanted to conduct testing on the following weekend. Sireci
3 also left Sweeney a similar voice mail message on March 10, 2009. In a March 11,
4 2009 letter, Sweeney replied by stating:

5 Please allow this letter to serve as a follow-up to my correspondence to
6 you, dated December 2, 2008. I received your voice mail of yesterday
7 afternoon wherein you indicated a desire to conduct sampling of the
8 window caulking of certain of the Worcester public school buildings as
9 soon as this weekend. To be clear, when we last spoke, you indicated
10 that there were approximately eleven (11) school buildings at which you
11 wished to conduct testing and you stated that you would provide me with a
12 list. As of this date, I have not been provided with that list. In any event,
13 please be advised that the District has revisited this issue and now
14 declines to authorize access to its school buildings and property for such
15 testing and sampling.

16
17 Your correspondence indicates that the requested testing is part of “a
18 project to determine the safety of the caulking used around windows and
19 doors in school buildings constructed between 1950 through 1978” and
20 that [t]his project is being undertaken by the “Environmental Health and
21 Safety Committee of the Massachusetts Teachers Association”. While it is
22 true that the Educational Association of Worcester is affiliated with the
23 MTA, there is no requirement under Mass.G.L.c.150E that the District
24 cooperate with the MTA in its efforts to conduct widespread environmental
25 studies with no particular connection to Worcester, and at this point the
26 District does not intend to authorize the MTA or its representatives to
27 conduct the testing. I can only assume that the fact that the request was
28 made in the name of the MTA and that you signed the letter as
29 “Consultant” rather than as EAW Executive Secretary was intentional and
30 signifies a more global effort on the part of the MTA than a specific interest
31 of the EAW.

32
33 I do not concur with your general statement that the “MTA has a right to
34 test under MGL Chapter 150E and federal law.” As you are aware, labor
35 decisions have treated requests for access for information gathering
36 purposes as falling within the ambit of information requests. As such,
37 unless the request (from the recognized bargaining agent) is relevant and
38 reasonably necessary for the union to carry out its duties as exclusive
39 bargaining agent, the employer need not provide the requested
40 information, or access. Your own correspondence acknowledges that

¹³ The EAW and the Employer held weekly labor/management meetings.

1 "there is little known about the health effects of human exposure to PCB's
2 in caulking". In fact, the only alleged definitive health connection that you
3 have identified (without citation or reference to any particular scientific
4 study) relates to test animals with "high exposures" to PCB's. Given that
5 you have not identified any specific information to suggest that PCB
6 containing caulking was used in any of the Worcester public school
7 buildings or that you have any evidence that any particular employee
8 represented by the EAW is alleging PCB exposure and causally related
9 health problems, the request for access to conduct testing would not
10 appear to be reasonably necessary to the EAW's performance of its
11 responsibilities as exclusive bargaining representative. As noted, the
12 request also was not made in the name of the EAW and appears to be a
13 part of a more universal initiative on the part of the MTA.
14

15 In summary, the current request for access by the MTA to Worcester
16 public school buildings to conduct testing of window caulking is denied at
17 this time. The request is not made in the name of the exclusive bargaining
18 agent; it is not based upon any specific health and safety concern; it is not
19 relevant; and it is not reasonably necessary for the EAW to carry out its
20 responsibilities as exclusive bargaining agent. To the extent that you have
21 specific information regarding the existence of PCB containing caulking
22 and tangible health and safety concerns as opposed to generalized
23 theories which you believe might have a bearing on the District's decision,
24 I would ask that you provide me with such information so that I may review
25 it and discuss this matter further with my client. Otherwise, I will assume
26 no such information exists. Please do not hesitate to contact me with any
27 relevant information or should you have any questions relating to this
28 correspondence.

29 On or about April 8, 2009, Sireci received a telephone call from an individual
30 named George Weymouth (Weymouth), who was not associated with either the EAW or
31 the Employer, but had previously had worked with Herrick on two research studies, and
32 whom Herrick had introduced to Sireci in the summer or fall of 2008.¹⁴ Weymouth
33 informed Sireci¹⁵ that on March 21, 2009, he had taken samples of caulking from five of

¹⁴ Weymouth had a particular interest in the possible health effects of PCB-containing building materials because of his prior experience using the materials when he worked in the construction industry.

¹⁵ Sireci had no advance notice that Weymouth was going to take the samples.

1 the Employer's schools, Mill Swan Head Start School, Worcester Arts Magnet, Francis
2 McGrath Elementary School, the former North High School (North H.S.), South High
3 Community School, Doherty Memorial High School (Doherty H.S.) and Burncoat High
4 School (Burncoat H.S.) and sent the samples to Northeast Analytical, Inc. for testing.¹⁶
5 On April 4, 2009, Northeast Analytical, Inc. reported (April 4, 2009 Northeast Analytical
6 Reports) that the caulking samples from four of the schools, Doherty H.S., Mill Swan
7 Head Start School, Burncoat H.S. and the former North H.S., tested significantly higher
8 for the presence of PCB's than was permissible under federal law.

9 On April 15, 2009, Sireci sent a letter to Sweeney stating in pertinent part:

10 This letter is in response to your letter, dated March 11, 2009, regarding
11 PCB testing. You raised several representational and legal issues that
12 you felt entitled the Worcester Public Schools not to authorize us to test
13 for PCB's in the caulking around windows and doors in selected school
14 buildings. I will try to address each issue one at a time.

15
16 First of all you state that, "while it is true that the Educational Association
17 of Worcester is affiliated with the MTA, there is no requirement under the
18 Massachusetts General Laws G.L.c.150E that the district cooperate with
19 the MTA in its efforts to conduct widespread environmental studies with no
20 particular connection to Worcester and, at this point, the District does not
21 intend to authorize MTA or its representatives to conduct the testing."

22
23 In order to simplify this, you can be assured that the request is being
24 made on behalf of the EAW. You addressed your letter to me as the
25 Executive Secretary of the EAW. You have dealt with me over the last
26 several years in my capacity as the recognized bargaining agent
27 representative of the EAW. I am assigned to the EAW by the MTA. As a
28 further demonstration that the request is on behalf of the EAW, the letter I
29 sent to the superintendent was copied to the President of the EAW, Cheryl
30 DelSignore.
31

¹⁶ Northeast Analytical' s Chain of Custody record for the samples listed the client as Herrick at the Harvard School of Public Health, although Sireci indicated at hearing that he did not know whether Weymouth took the samples on behalf of Herrick.

1 You also stated. "the only alleged definitive health connection that you
2 have identified (without citation or reference to any particular scientific
3 study) relates to test animals with high exposures to PCB's" as evidence
4 that the employer need not provide requested information or access to the
5 information. You state that the request to take samples is not relevant and
6 reasonably necessary for the union to carry out its duties as exclusive
7 bargaining agent."
8

9 Attached is a letter to me from Robert F. Herrick, Sc.D., CH. He is from
10 the Harvard School of Public Health. He has identified and cited specific
11 scientific studies that relate PCB exposure to health effects in humans.
12 For the record, the use of PCB's has been banned by the CDC. Herrick
13 cites the following studies as compelling evidence that relate PCB
14 exposure to health effects. He states: "To cite a few specific studies that
15 relate PCB exposures to health effects in humans, just in 2008,
16 researchers linked PCBs with the development of the human immune
17 system (Hertz-Picotto, et al., 2008); PCBs and thyroid function (Schnell, et
18 al., 2008, attached); PCBs and time to pregnancy among women trying to
19 conceive (Buck Lewis et al., 2008); PCBs and thyroid volume in children
20 (Langer, et al., 2008); and PCBs and IQ among children (Stewart, et al.,
21 2008)". I believe the studies cited satisfy your request for evidence that
22 human exposure to PCB's has profound negative health effects. These
23 negative health effects are especially pronounced in children.
24

25 You also state that I have not identified specific information to suggest that
26 PCB containing caulking was used in any of the Worcester Public
27 Schools. If you look at Herrick's second response he specifically provides
28 evidence that the caulking in the buildings constructed or renovated in the
29 1960's and 1970's in Worcester probably contain[s] PCB's. Specifically,
30 he cites the study he conducted in Greater Boston, and he provides data.
31 He goes on to cite two other studies; one conducted at the University of
32 Massachusetts and the other at the New Bedford High School. These
33 three studies substantiate the claim that it is probable that PCB's are likely
34 to be found in school buildings in Worcester.
35

36 In the final paragraph of his second response, Herrick cites several
37 studies in Germany, Sweden, Finland and the United States that
38 demonstrate that relationships between PCB's in sealants (caulking) and
39 levels in indoor air and settled dust, as well in soil around the foundation of
40 the building containing PCB's. In other words, the indoor air and the soil
41 around these buildings contain higher levels of PCB's than found in other
42 environments.
43

44 Finally, in Herrick's third response he cites several studies including, but
45 not limited to, a study conducted in a school that demonstrates that in

1 buildings that contain PCB's in the sealants, it's likely that PCB's will be
2 found in the occupants' blood.

3
4 I hope this information satisfies all the inquiries in your March 11, 2009
5 letter. I believe that the attached letter, as well as the information in this
6 letter goes beyond your request for evidence that the request to take
7 samples is relevant and reasonably necessary for the union to carry out its
8 duties as the exclusive bargaining agent. These documents identify this
9 request as coming from the E.A.W., the legal bargaining agent. I have
10 identified and cited specific studies that relate PCB exposures to health
11 effects in humans. I have provided evidence that the caulking in school
12 buildings built or renovated in the 1960's and 1970's probably contain
13 PCB's. I have provided studies that show that if the sealant in a building
14 contains PCB's the indoor air, the dust, and the soil around the building
15 contains higher levels of PCB's too. I have provided evidence and cited
16 studies that show that buildings similar to the ones built or renovated in
17 the 1960's and 1970's contain PCB's in the caulking and that the building
18 occupants had PCB's in their blood.

19
20 As a result of your first request, we agree that in order not to be disruptive,
21 we will take samples during non-school periods. Next week school is not
22 in session. It is our belief that we have satisfied your request and intend
23 to proceed with taking samples next week. If WPS staff is interested in
24 joining us, we welcome their company. If you have any questions, feel
25 free to contact me at my office. Thank you for your consideration in this
26 matter.

27
28 On or about April 15, 2009, Sireci¹⁷ received copies of the April 4, 2009 Northeast
29 Analytical Reports from Weymouth showing a concentration of PCB's in the caulk
30 samples from Doherty H.S., Mill Swan Head Start School, Burncoat H.S. and the former
31 North H.S. of 78,300 parts per million, 4,606 parts per million, 3,180 parts per million
32 and 54,200 parts per million respectively.¹⁸

¹⁷ Sireci was uncertain whether he had received the copies of the April 4, 2009 Northeast Analytical Reports before or after he sent his April 15, 2009 letter to Sweeney.

¹⁸ As I informed the parties at hearing, the issue of whether the data in the Northeast Analytical Reports is correct is not before me. The mere existence of the data, whether correct or not, potentially sheds light on the EAW's reasons for seeking access to the Employer's premises for testing.

1 At a subsequent labor management meeting, Sireci informed Luster that on the
2 upcoming weekend he was going to take samples at certain of the Employer's schools.
3 Luster made no response to Sireci's announcement.¹⁹

4 On April 29, 2009, Sireci, who was accompanied by Weymouth, traveled to four of
5 the Employer's schools, Doherty, H.S., Burncoat H.S., the former North H.S. and Mill
6 Swan Head Start School,²⁰ to take caulk samples for testing.²¹ Weymouth procured the
7 samples at three of the schools, while Sireci procured the sample at the fourth school.
8 While wearing neoprene gloves, Weymouth and Sireci used a special knife to cut
9 samples of caulking that were two to two and one-half inches in length. They replaced
10 the caulking that they removed with latex caulking. They obtained all of the samples
11 from outside of the buildings at ground level.²² Weymouth and Sireci placed the samples
12 in separate, covered jars that bore Northeast Analytical, Inc.'s labels. When Sireci filled
13 out Northeast Analytical's chain of custody records for the samples, he listed the

¹⁹ Sireci opined that the Employer had consented to his obtaining caulk samples in April 2009 because it had not responded when he announced his intent to do so. Conversely, the Employer, including Superintendent Loughlin in a May 4, 2009 letter, asserted that Sireci had taken the samples without authorization. However, I need not determine whether Sireci had tacit permission to take the samples because the fact is not material to the outcome of the case.

²⁰ Although no EAW unit members worked at the Mill Swan Head Start School, Sireci decided to take caulk samples at the school because he was concerned about the possible health effects of PCBs on the very young children who attended the Head Start Program there.

²¹ Sireci believed that he needed to submit new caulk samples for testing rather than rely on the results from Weymouth's earlier samples, because Sireci had not been present when Weymouth took those samples.

²² Three of the caulking samples came from the following locations: Doherty H.S.-a window in the front, Burncoat H.S.-a window on the left side, the former North H.S.-an expansion joint on the left side. Sireci characterized the caulking at all three schools as deteriorating, especially at Burncoat H.S.

1 Harvard School of Public Health as the client and Herrick as the project manager, which
2 meant that Northeast Analytical billed the Harvard School of Public Health for the testing.
3 Sireci indicated that he listed Herrick and the Harvard School of Public Health on the
4 chain of custody records because he wanted to facilitate testing of the samples as
5 quickly as possible. On April 29, 2008, Sireci sent Superintendent Loughlin an email
6 message informing her that he had taken caulking samples at the four schools and that
7 he had sent the samples to a laboratory to test for the presence of PCBs. In a May 4,
8 2009 letter, Superintendent Loughlin replied that:

9 On Thursday, April 30th, you sent me an email in which you stated that you
10 removed caulking samples from Burncoat High, Doherty High, North High
11 and Mill Swan schools. You did this removal by yourself without
12 permission from the Principals. Therefore, you trespassed on and
13 defaced property on the outside of these buildings. You then sent
14 samples to the Harvard School of Public Health for PCB analysis. Since
15 these samples were taken by you, by yourself, without permission we
16 demand that you return these samples at once as there is no one to
17 witness the chain of evidence. We, therefore, cannot verify that you took
18 these samples from our buildings.

19
20 At this point, you are not allowed to make any appointment with any
21 principal regarding this issue until we meet on Friday, May 6th, 2009.

22 Also, on May 4, 2009, the EAW and the Employer met for successor contract
23 negotiations. During that bargaining session, the EAW submitted a proposal to amend
24 Article 32 of the parties' then collective bargaining agreement to add the statement:
25 "The employer shall provide a safe and healthy work environment." The EAW also
26 proposed moving the following language from Side Letter #2 of the contract to Article
27 32:

28 The School Committee will require a policy that each building will have a
29 health and safety committee. The composition of this committee will be
30 determined at the building level. Representatives from each union will be
31 invited to serve on this committee. The committee will monitor health and

1 safety conditions in their buildings and make recommendations to the
2 Principal. Union representatives shall be selected by the Union. A safety
3 incident form shall be provided in the Principal's office of each building
4 and forwarded to the appropriate department and the facilities manager.
5 The form will include a section describing the issue and a resolution
6 section. Copies of these forms will be made available to building
7 occupants and the safety committee.

8 The EAW and the Employer subsequently met on May 6, 2009. Superintendent
9 Loughlin, Luster and Olearczyk attended the meeting on behalf of the Employer, while
10 Sireci and DelSignore attended on behalf of the EAW.²³ The parties had a heated
11 discussion about Sireci procuring the caulking samples for testing. The Employer also
12 refused to recognize the legitimacy of any results that derived from the samples.
13 Ultimately, the parties agreed that the Employer would allow an industrial hygienist,
14 whom the parties mutually selected, access to the four schools to take caulk samples
15 and to submit those samples for testing. The parties agreed to start the process by
16 exchanging the names of two or three industrial hygienists.

17 On May 8, 2009, Sireci sent an email message to Olearczyk²⁴ stating in pertinent
18 part:

19 I can recommend a firm that is very experienced at the analysis we are
20 looking for, they are right here in Needham, _____.

21
22 In reference to the Lab work, the thing to establish for any lab is that they
23 certify that they follow the EPA good laboratory practice standards, for
24 example check out _____.

25
26 I would recommend Northeast Analytics; they are experienced in testing
27 PCB in caulks. They are at ____.

28

²³ The record does not reveal whether any other individuals attended the meeting on behalf of the EAW or the Employer.

²⁴ Because Olearczyk's email address was incorrect, he did not receive Sireci's message until on or about May 14, 2009 when Luster forwarded a copy to him.

1 Another one is ____.

2
3 I will keep looking for some other suggestions. What is important [is] that
4 they have some experience in testing caulk for PCBs.

5
6 Thanks, and have a great weekend.

7
8 On May 12, 2009, Sireci sent an email message to Luster stating:

9
10 I sent this to Eugene [Olearczyk] and have yet to hear back from him. I
11 will send you a copy of the results of the sampling I did when they arrive. I
12 understand that you have some custody issues with those samples.
13 That's your prerogative. I would like to get the process of retaking
14 samples started asap. Once the results come back I took, we will want to
15 test teachers' blood in the building. We want to accomplish this prior to
16 the end of the school year. Thanks for your attention to this matter.

17
18 Luster replied the next day with an email message stating in pertinent part:

19
20 At our meeting ... we agreed that we would identify the industrial
21 [h]ygienist over the next two weeks. I am hopeful that Gene will work with
22 you to keep things on track. We also agreed to meeting to develop a
23 protocol for next steps after the results are available, including, but not
24 limited to, interaction with staff. Please let me know when you and [Gene]
25 have identified the Hygienist, so that we may ascertain when the results
26 will be available and schedule the meeting to discuss next steps. Thank
27 you.

28
29 Sireci in a May 14, 2009 email message then responded that:

30
31 We considered these voluntary discussions as productive. We are happy
32 to continue them and hope that they will benefit the health and safety of
33 the students and staff in the Worcester Public Schools. We agreed to
34 identify an industrial hygienist who could draw samples of caulking at the
35 designated buildings.²⁵ We also agreed that I would provide Gene with
36 names of suggested Industrial Hygienists. Thereafter, he and I will
37 attempt to mutually agree on the selection of IA. We also agreed that
38 Gene and I would discuss appropriate labs to send the samples to. Now
39 that Gene has our suggestions, we would like to move the process
40 forward. We did not agree to any other protocols. If some samples show

²⁵ On May 21, 2009, in response to the EAW's request, Lord Associates, Inc. sent a proposal to the EAW offering its services to collect samples of caulking at up to four school buildings and submit to an independent, state-certified laboratory for PCB analyses for a cost of \$1200. Lord Associates, Inc. was prepared to start work immediately.

1 elevated levels of PCB's in the caulking of the building, we are willing to
2 discuss the selection protocol of staff to draw blood samples. I was clear
3 in our meeting that if the levels of PCB's are elevated from the samples I
4 took, or from the samples we jointly take, the EAW will want volunteers to
5 provide blood samples prior to the end of this school year. I also agreed
6 to provide you with the readings from the lab samples I took as soon as
7 they arrive.

8
9 On May 13, 2009, Superintendent Loughlin sent a letter to the Harvard
10 Institutional Research Board that stated in pertinent part:

11 I have recently been engaged in discussions with Michael Sireci of the
12 Massachusetts Teachers Association (hereinafter, the "MTA"), who also
13 serves as the Executive Secretary of the Educational Association of
14 Worcester (hereinafter, the "EAW"), regarding the interest of the MTA and
15 EAW in pursuing testing of the window caulking at various public school
16 buildings in the City of Worcester. Mr. Sireci has previously indicated in
17 correspondence with me that the MTA is working with Robert Herrick,
18 Sc.D., CIH from the Harvard School of Public Health (hereinafter, the
19 "HSPH") in connection with a project undertaken to "determine the safety
20 of the caulking used around windows and doors in school buildings
21 constructed between 1950 through 1978". In discussions with Mr. Sireci, I
22 have been told by him that the Worcester Public Schools has been
23 "invited" to participate in a study being overseen by the HSPH. I have not
24 received any invitation directed to the Worcester Public Schools to
25 participate in such a study. Would be kind enough to forward the invitation
26 to my attention so that I may explore possible participation in such a study.

27
28 I have also been advised by Mr. Sireci that he recently took samples of
29 window caulking from various Worcester Public Schools buildings and
30 turned them over to the HSPH. Please be advised that Mr. Sireci was not
31 authorized by the City of Worcester to remove caulking from any of the
32 school buildings which it owns. As a preliminary matter, there exist
33 serious concerns on the part of the Worcester Public Schools and the City
34 of Worcester as to whether any samples alleged to have been taken from
35 its buildings can actually be definitively tied to such buildings. It would
36 seem that unmonitored sampling of the sort engaged in by Mr. Sireci
37 would call into question the validity of any testing protocol or study
38 involving such samples. Mr. Sireci has indicated that the samples he
39 provided to HSPH are now regarded by HSPH as its property.²⁶

40

²⁶ Sireci was not copied on Superintendent Loughlin's May 13, 2009 letter and, at the time, was unaware of it.

1 On May 15, 2009, the parties meet again for successor contract negotiations. The EAW
2 continued to pursue the proposals that it made at the May 4, 2009 bargaining session,
3 which are referenced above, concerning amendments to Article 32. The EAW also
4 proposed that the Employer:

5 Provide a plan to renovate the caulking that contains PCB's around the
6 windows, doors and expansion joints at North High School, Burncoat High
7 School and Doherty High School. The plan should be within the federal
8 guidelines and approved by the Center for Disease Control.

9 On May 21, 2009, Northeast Analytical issued certificates of analysis that
10 showed a concentration of PCBs in the April 29, 2009 caulk samples from Doherty,
11 Burncoat and North at 85,600 ppm, 8,320 ppm, and 94,900 ppm respectively.²⁷ Sireci
12 provided Luster with copies of those three certificates of analysis at the next
13 labor/management meeting and a copy of Herrick's study design. Luster announced
14 that because Sireci needed to provide the certificates of analysis and Herrick's study
15 design directly to Superintendent Loughlin, Luster would not comment about the
16 documents. On May 27, 2009, Northeast Analytical issued a certificate of analysis for
17 the April 29, 2009 caulk sample from Mill Swan that showed the presence of PCBs
18 measuring 14,380 parts per million. In May or June 2009, Sireci sent the Northeast
19 Analytical certificates for the April 29, 2009 caulk samples from Doherty H.S., Burncoat
20 H.S., the former North H.S. and the Mill Swan Head Start School to the Federal

²⁷ As noted in footnote 15, the issue of whether the data in the Northeast Analytical Reports is correct is not before me. The mere existence of the data, whether correct or not, potentially sheds light on the EAW's reasons for seeking access to the Employer's premises for testing.

1 Environmental Protection Agency (EPA).²⁸ Sireci sent the letter because he was
2 concerned about the health of EAW unit members and students and that he believed
3 that the EPA would become involved if it saw the elevated numbers.²⁹

4 On June 1, 2009, Sireci sent a letter to Luster stating in pertinent part:

5 At our last labor management meeting I provided you with a copy of the
6 study design being conducted by Bob Herrick from the Harvard School of
7 Public Health. You asked me to convert the ug/g to equal parts per
8 million. Please see two sources below for that information. As you can
9 see, concentrated units of one microgram equals one parts per million.

10
11 Also, please see the lab report from Mill Swan Elementary for your
12 information. This is the last in the series of buildings I recently extracted
13 samples from. At our last labor management meeting I provided you with
14 the quote from Lord Associates to conduct further sampling from the four
15 buildings we tested. They are: Mill Swan, Burncoat High, North High and
16 Doherty High. As I understand it, the WPS is not ready to agree to
17 sampling until they have a working agreement with Harvard School of
18 Public Health. Since this testing demonstrated significant levels of PCB's,
19 we intend to continue investigating potential health effects on our
20 members. As you know, Bob Herrick can be reached at ___.

21
22 We will keep you informed of any new information as we receive it.

23
24 Thereafter, the EAW solicited unit members at Burncoat H.S. and Doherty H.S. to
25 submit blood samples to test for the presence of PCBs. In response, several Burncoat
26 H.S. teachers came to the EAW with concerns about the number of teachers there who
27 had been diagnosed with cancer, including five teachers who worked on a particular

²⁸ The EPA never sent a response to Sireci or the EAW regarding his submission of the Northeast Analytical certificates.

²⁹ Pursuant to the federal Toxic Substance Control Act (TSCA) and EPA regulations, building materials, including caulking, which contain a concentration of PCBs greater than fifty parts per million (ppm), are an impermissible use and must be removed.

1 wing of the school and another two deceased teachers who had worked on another
2 wing.³⁰ In a June 8, 2009 letter, Sweeney stated in pertinent part:

3 I have been advised that you provided to Stacey DeBoise Luster three
4 separate one page documents bearing the title "Certificate of Analysis"
5 and dated May 21, 2009. The Customer ID's listed are Doherty High;
6 Burncoat High; and North High. Also provided to you was a five page
7 document which you have identified as the so-called "study design" being
8 conducted by Robert Herrick of the Harvard School of Public Health. Be
9 advised that the Worcester Public Schools does not regard the information
10 provided by you as credible evidence of the presence of PCB containing
11 caulking at any of the schools allegedly tested. As we have indicated to
12 you and to the Harvard Institutional Research Board, we have serious
13 concern as to whether any samples alleged to have been taken at any of
14 these buildings can be definitively tied to such buildings. Moreover,
15 despite your indication that the District was invited to participate in Mr.
16 Herrick's study, no formal correspondence or invitation from the Harvard
17 School of Public Health has been produced.

18
19 As of this date, correspondence from the District to the Harvard
20 Institutional Research Board dated May 13, 2009 has gone unanswered. I
21 have been advised that the correspondence has been forwarded to
22 Harvard's General Counsel for review. As a result, the District continues
23 to wait for confirmation of the fact that the District was in fact invited to
24 participate in the study. So too does the District continue to wait for the
25 return of samples alleged to have been taken from Worcester Public
26 School buildings. As you know, any such samples were taken without
27 permission.

28
29 In addition, in correspondence to Ms. Luster dated June 1, 2009 you
30 stated that "[S]ince this testing demonstrated significant levels of PCB's,
31 we intend to continue investigating potential health effects on our
32 members." To be clear, the District does not acknowledge the existence
33 of "significant levels of PCB's" as you have stated and continues to reject
34 your proffered test results. You are also reminded that neither the City nor
35 the District has authorized you to take any samples from any of the
36 Worcester Public School buildings and you are prohibited from doing so.
37

³⁰ As of 2008, Sireci had general knowledge that certain unit members who worked at Burncoat H.S. had been diagnosed with cancer but he did not learn the identities of those members until they contacted the EAW in June 2009.

1 On June 22, 2009, EAW building representatives who worked at Doherty³¹ sent a
2 message to the faculty and staff that stated in pertinent part:

3 Recently the EAW oversaw an environmental assessment of this school
4 for the purpose of determining the presence of PCB material in caulking
5 used at the time the school was built. Historically, this material was a
6 common additive during the 60's and 70's. However, since then it has
7 been banned. The test determined that it was present. In fact, the
8 Doherty level was 85,600/mil, whereas the EPA acceptable level is
9 50/mil. PCB is a known cancer causing agent in animals and is
10 suspected of affecting humans in the same way. The EAW is currently
11 seeking 6-8 volunteers from Doherty to participate in a study measuring
12 the presence of PCB's in their blood. This will take place on Monday,
13 June 21 at the EAW beginning at 2:00. If you have taught in this building
14 for a minimum of five years and would like to participate please see Mary
15 True, Catherine Whalen, John Staley or Kerry Mulcahy.

16 Ultimately, eighteen of the Employer's teachers and instructional assistants (IA's)
17 provided blood samples at the EAW's offices as well as completed questionnaires and
18 executed consent agreements.³² On that same date, Superintendent Loughlin was sent
19 a copy of the June 22, 2009 message by Diane Capen (Capen).³³

20 On July 1, 2009, Melinda Boone, Ph.D. (Superintendent Boone)³⁴ succeeded
21 Superintendent Loughlin as head of the Employer's schools. In advance of taking over

³¹ Sireci indicated that although the EAW was seeking volunteers at Doherty H.S. to submit blood samples, the EAW leadership had not authorized the building representatives to send the June 22, 2009 message to faculty and staff.

³² The consent agreement authorized Herrick to use the results of the blood samples in his study but did not authorize Sireci to receive the results. However, some but not all of the teachers and IA's who gave blood samples voluntarily notified Sireci about the results.

³³ The record does not identify what position that Capen held in the Employer's schools.

³⁴ Superintendent Boone had earned a doctorate in educational planning, policy and leadership and for more than twenty-eight years, held various leadership positions in the Norfolk, Virginia public schools, including chief academic officer. While working in Norfolk, she was aware of much publicity about the presence of PCBs from the

1 as superintendent, Superintendent Boone had attended meetings and briefings at the
2 Employer's schools one week per month starting in February 2009. During those visits,
3 Superintendent Loughlin notified her about Herrick's study and Sireci's requests to
4 access the Employer's premises to take caulk samples in order to test for the presence
5 of PCBs. Superintendent Boone expressed concern about whether the Employer
6 actually had been invited to participate in Herrick's study, because the Employer had no
7 agreement consenting to its participation in the study. She encouraged Superintendent
8 Loughlin to seek more information about Herrick's study from the Harvard School of
9 Public Health. Superintendent Boone also challenged the validity of the test results that
10 were obtained from the caulking samples that Weymouth and Sireci had taken, because
11 she questioned whether those samples were even taken from the Employer's schools.

12 On July 8, 2009, Herrick sent a letter to Superintendent Loughlin³⁵ that stated in
13 pertinent part:

14 I am writing in response to the letter you sent to Harvard on May 13, 2009.
15 I am a Senior Lecturer on Industrial Hygiene at the Harvard School of
16 Public Health, and my primary research focus is on the nature and
17 properties of occupational exposures to various chemicals and other
18 environmental agents. As I believe you know from discussions with
19 Michael Sireci of the Massachusetts Teachers Association ("MTA"), I am
20 interested in learning more about the possible effects of PCB-containing
21 caulk. I would be very happy to meet with you to discuss this ... and we
22 can set up a convenient time.

In the summer of 2009, Herrick also provided Sireci with a copy of the study

shipbuilding industry in the waters of Chesapeake Bay and the possible impacts on the reproductive systems of humans who consumed seafood harvested from Chesapeake Bay.

³⁵ Herrick seemingly was unaware that Superintendent Boone was now the successor superintendent.

1 description (Herrick's study description)³⁶ that he submitted to the Harvard School of
2 Public Health, Institutional Research Bureau, which bore the title: "Investigation of PCB
3 Exposures and Biomarkers from PCB-Contaminated Buildings". Herrick's study
4 description stated in pertinent part:

5 **INTRODUCTION** [Emphasis in Original]: The goal of this pilot project is to
6 develop preliminary data to demonstrate the feasibility of studying
7 environmental PCB levels and PCB serum levels among occupants of
8 PCB-contaminated buildings. The data we propose to collect in this pilot
9 project will address the possibility that there may be PCB exposure to
10 occupants of PCB-containing buildings. ...

11
12 **3. SPECIFIC AIMS:** This pilot study will be focused on a set of specific
13 aims:

14
15 Aim 1: To demonstrate the feasibility of recruiting and assessing exposure
16 in a population-based sample of adults with variable risk of building-
17 associated PCB exposure.

18
19 Aim 2: To determine whether working in a building known to have PCB-
20 containing materials is associated with higher serum PCB levels (after
21 accounting for other sources of PCB exposure) than working in similar
22 structures built without PCB containing components.

23
24 Aim 3: To estimate the relative contribution of building-associated PCB
25 exposure to serum PCB levels in a population-based sample of adults at
26 risk for building-associated exposures.

27 28 **4. METHODS AND MATERIALS**

29
30 Specific Aim 1: We will recruit 40 subjects who are workers in PCB-
31 containing buildings, and comparison subjects in buildings that are free of
32 PCB-containing building materials.

33
34 All aspects of the environmental and biological sampling will be approved
35 by the HSPH Human Subjects Committee, and will include procedures for
36 reporting study results to the participants. We will recruit the study
37 population in collaboration with the MTA, representing 100,000 educators,
38 administrators and education support professionals in public education.
39 PCB contamination has been identified and detained environmental
40 monitoring has been conducted in several Massachusetts schools

³⁶ Herrick's study description is not dated.

1 (including schools in Pittsfield and Amherst), where PCB remediation
2 activities are underway. Other schools ... have been documented to
3 contain PCB caulking, but no action has been taken to remove this
4 material from the schools and no indoor PCB monitoring conducted. We
5 will recruit, therefore, MTA members who work in buildings where the
6 caulk is being removed, others where the caulk is still in place, and a
7 comparison group that has never worked in a PCB-containing school (i.e.,
8 a school constructed after 1980, as PCB caulking was banned in 1977). ...

9 On July 23, 2009, Marc Richards, P.E., LSP, Project Manager for Tighe and
10 Bond, a design and environmental engineering consulting firm, sent Paul Moosey, the
11 Assistant Commissioner for the City of Worcester's Department of Public Works and its
12 Director of Engineering and Architectural Services, an evaluation (July 23, 2009
13 evaluation) that identified asbestos and other hazardous materials, including PCBs at
14 the former North H.S.³⁷ in advance of its future demolition.³⁸ In the portion of the July
15 23, 2009 evaluation that discussed PCBs, Richard described the process of collecting
16 samples as follows:

17 Tighe & Bond collected samples of accessible caulking materials located
18 between exterior construction joints, exterior window units, exterior HVAC
19 vents located beneath many windows and interior caulking that was
20 located along interior hidden steel columns (not accessible to building
21 occupants). These caulking materials were selected for PCB sampling
22 based on the condition of the caulking (in good repair, which can be
23 typical of caulking that contains PCBs), were suspected or confirmed to
24 contain asbestos, and represented the greatest quantity of suspect
25 building materials that would be disturbed during demolition.
26

27 This preliminary evaluation was not intended to sample every building
28 material that could contain PCBs at a variety of concentrations. Other

³⁷ The former North H.S. was scheduled to close after the 2010-2011 school year and to be demolished and replaced with a new North High School. Various state and federal regulations require that prior to demolition, a survey be conducted to identify and quantify asbestos and other hazardous materials, including PCBs, which may be present in building materials.

³⁸ The EAW did not receive a copy of the July 23, 2009 evaluation until the spring or summer of 2011.

1 materials that could be suspected of contain[ing] PBCs include paints,
2 varnishes, glues and mastics. For the purposes of this preliminary
3 evaluation, sampling of other potential PCB containing building materials
4 was not performed. Prior to building demolition, additional sampling may
5 be recommended or warranted.

6 He reported that a laboratory analysis of the samples showed that:

7 The initial exterior sample of caulking that was collected from an exterior
8 expansion joint was reported by the laboratory to contain a PCB
9 concentration of 33,900 ppm. Due to this finding, an additional four
10 samples of interior (one sample) and exterior (3 samples) caulking
11 materials were sampled to further evaluate the presence of PCBs. The
12 samples were collected from construction and expansion joints,³⁹ from
13 frame caulking located around the window systems⁴⁰ and HVAC vents and
14 alongside hidden interior steel columns.⁴¹

15
16 Richards also described the following observation about the exterior caulking samples:

17 All exterior caulking materials that were observed visually appeared to be
18 of the same material, were light gray in color, and were in very good
19 condition (no signs of deterioration).

20 He further noted that:

21 Due to the elevated levels of PCBs that were confirmed to be greater than
22 50 ppm, it will [be] necessary to comply with TSCA [Toxic Substance
23 Control Act] requirements as it relates to further characterization, removal
24 and disposal.

25
26 The presence of a PCB Bulk Product Waste is not an authorized use of
27 PCB's per TSCA and therefore must be removed. TSCA is vague on
28 certain aspects, including reporting and timing of certain activities.
29 Although the current presence of PCB caulking is an un-authorized use,
30 the EPA [Environmental Protection Agency] would likely allow for the
31 continued presence of the caulking until building demolition is performed.
32

³⁹ The two samples from exterior construction/expansion joints showed PCB concentrations of 1,830 and 4,810 ppm.

⁴⁰ The sample from the exterior caulking around the window frame, HVAC vents and masonry joints showed a concentration of 3,960 parts per million.

⁴¹ The samples from alongside the hidden interior steel columns showed a PCB concentration of 0.145 parts per million.

1 Based on our initial evaluation, other potential suspect accessible
2 materials were not identified (interior window glazing, interior window
3 caulking, or other areas that could present a potential exposure scenario
4 to students). ...

5
6 Abatement of all identified PCB Bulk Product waste (i.e. the caulking)
7 must be performed prior to demolition. Removal of the caulking and
8 portions of the brick/concrete substrate will be required due to leaching of
9 PCBs into these substrate materials. Verification sampling will be
10 necessary per TSCA to demonstrate that building materials were
11 remediated to concentrations less than applicable cleanup criteria.

12 On August 21, 2009, Superintendent Boone sent a letter to Herrick stating in

13 pertinent part:

14 I am in receipt of your correspondence dated July 8, 2009, and addressed
15 to the former Interim Superintendent of Schools Deirdre J. Loughlin.
16 Please be advised that all future correspondence on this subject should be
17 sent directly to me as Superintendent of Schools. While I appreciate the
18 fact that you have responded to Dr. Loughlin's letter, which was directed
19 to the Harvard Institutional Research Board, I am curious to know on
20 whose behalf your response is sent. I note that you have signed the letter
21 as Senior Lecturer, Department of Environmental Health, Harvard School
22 of Public Health. It is my understanding that Dr. Loughlin's letter was sent
23 to the Harvard Institutional Research Board since it related to a so-called
24 "study" being undertaken under the auspices of Harvard University and/or
25 its School of Public Health. I suspect that there is a significant difference
26 between the institutional oversight of a study undertaken in the name of
27 the University or one of its Schools as opposed to the activities of a
28 professor or lecturer in order to advance a more generic area of interest.
29 Would you please confirm specifically on whose behalf your response is
30 made. Furthermore, irrespective of the entity on whose behalf you have
31 responded, I find your letter unresponsive to the specific issues and
32 requests made in Dr. Loughlin's letter of May 13, 2009.

33
34 First, Dr. Loughlin's letter indicated that she had been advised by Michael
35 Sireci of the Massachusetts Teachers Association that the Worcester
36 Public Schools had been "invited" to participate in a study being overseen
37 by the Harvard School of Public Health. In her letter, Dr. Loughlin
38 requested a copy of the invitation. Although your response indicated your
39 interest "in learning more about the possible effects of PCB-containing
40 caulk", it did not identify the specific study involved, nor was any
41 documentation or invitation provided. Once again, on behalf of the
42 Worcester Public Schools, I am requesting a copy of the invitation to
43 participate and specific identifying information regarding the study

1 involved. Absent receipt of same, I will assume that no such formal study
2 exists.

3
4 Second, I have been advised that Michael Sireci has provided to Stacey
5 DeBoise Luster, the Human Resources Manager for the Worcester Public
6 Schools, three separate one page documents bearing the title "Certificate
7 of Analysis" and dated May 21, 2009. The Customer ID's listed on those
8 documents are Doherty High, Burncoat High, and North High. Notably,
9 you are listed as the contact person on each of those documents. I have
10 attached copies of these documents for your information. Please advise
11 me what role you played in connection with the preparation of these
12 certificates of analysis; what role you had in securing the source materials
13 to which these certificates of analysis relate; what your intended use is
14 with regard to these certificates of analysis; and what the present status is
15 of the samples alleged to have been taken from the Worcester Public
16 Schools buildings (hereinafter, "WPS buildings").

17
18 Lastly, I am renewing the request included in Dr. Loughlin's May 13, 2009
19 correspondence that you arrange for the return of any and all "samples"
20 alleged to have come from WPS buildings.⁴² While the District has
21 serious concerns about whether any samples alleged to have been taken
22 from WPS buildings can be definitively tied to such buildings, to the extent
23 that they exist and have been represented as coming from WPS buildings,
24 they remain property of the City of Worcester. Mr. Sireci would have no
25 authority to transfer ownership of any samples alleged to have come from
26 WPS buildings. Moreover, you are not authorized to include such
27 samples or any related tests results in any formal study of the University
28 or its School of Public Health or any informal research project you are
29 undertaking.

30
31 I look forward to your response to this correspondence. If you have any
32 questions, please do not hesitate to contact me.

33
34 On August 27, 2009, Luster, Sweeney, and James Bedard (Bedard), the
35 Employer's facilities manager⁴³ along with Dr. Leonard Morse, the City's Public Health
36 Commissioner, met with six representatives from the Massachusetts Department of
37 Public Health (MDPH), including Suzanne Condon, who was in charge of the meeting,

⁴² The caulking samples that Weymouth and Sires took from the Employer's buildings ultimately were not returned to it.

⁴³ Bedard's areas of responsibility included PCBs.

1 at the MDPH's Boston offices.⁴⁴ The purpose of the meeting was for the MDPH to
2 provide technical assistance to the Employer regarding its obligations concerning
3 caulking in schools that were constructed or renovated from 1950 through 1979. The
4 MDPH informed the Employer that it was not required to test for PCBs in the caulking
5 and that testing that involved the cutting of intact caulking samples was to be avoided.
6 The MDPH suggested that the Employer go about its normal practices of facilities
7 management. The MDPH and the Employer did not discuss any specific details about
8 the caulking in the Employer's schools, including whether that caulking was broken or
9 deteriorating. Finally, the MDPH noted that it soon was going to issue a written
10 document giving guidance to school districts about caulking in schools that were built or
11 renovated from 1950 through 1979.

12 On or about September 9, 2009, Sireci submitted an abstract (September 9,
13 2009 Abstract) for an independent study course for his doctoral program, which bore the
14 title "Investigation of PCB Exposures and Biomarkers from PCB Contaminated School
15 Buildings." The September 9, 2009 Abstract states in pertinent part:

16 **INTRODUCTION** [Emphasis in original]: The MTA and the Harvard School
17 of Public Health have collaborated in a pilot study designed to investigate
18 building sealants and caulking materials as sources of human PCB
19 exposure. I will be working with the lead investigator, Robert F. Herrick,
20 Sc. D., CIH. The goal of this pilot project is to develop preliminary data to
21 demonstrate the feasibility of studying environmental PCB levels and PCB
22 serum levels among occupants of PCB contaminated buildings. The study
23 will provide an understanding of the associations between sources of PCB
24 exposure and serum PCB levels in populations specifically exposed to
25 PCB's from construction materials (caulking) in building environments.
26 The purpose of this research study is to find out if working in buildings that
27 contain PCB's can [a]ffect the amount of PCB's in building occupants
28 blood. The study will also evaluate other factors that are known to

⁴⁴ The Employer did not invite the EAW to send a representative to the August 27, 2009 meeting with MDPH.

1 influence the levels of PCB's in blood, including age and diet. All aspects
2 of environmental and biological sampling will be approved by the Harvard
3 School of Public Health, Human Subjects Committee. ...

4
5 **METHODOLOGY:** We will identify school buildings that were built or
6 renovated between 1960 and 1980. This information can be found at the
7 Massachusetts School Building Authorities web site. I will send a letter to
8 the Superintendent of the district and notify them of our intent to take a
9 sample of the caulking material in the school buildings we identified.
10 Caulking samples will be sent to Northeast Analytical, Inc. in Schenectady,
11 New York for laboratory analysis. If a school building has been identified
12 as one with elevate[d] levels of PCB's in the caulking material (over 50
13 PPM) we will attempt to seek volunteer subjects to draw their blood. We
14 will also seek comparison subjects in buildings that are free of PCB-
15 contaminating building materials. Subjects will be asked to sign a
16 permission form approved by the IRB. All volunteers must be at least 21
17 and under 65 years old. They must have worked in the building for at
18 least 5 years. They should also be healthy and not pregnant. They will be
19 asked a series of other questions about their diet and health. They will be
20 provided with the results of the samples.

21
22 Schools in Pittsfield and Amherst have been identified to have schools
23 with building materials containing PCB's and remediation is underway.
24 Burlington, Medford, Billerica, Newton and Worcester have been identified
25 as districts with schools that have PCB's in the caulking. The EPA permits
26 up to 50 ppm prior to ordering a renovation. We have recently taken
27 caulking samples in 4 Worcester Public Schools and in one elementary
28 school in Newton. 18 Worcester building occupants blood was sampled
29 and sent to the lab in late July of 2009. The PCB levels in the caulking
30 measured in the 4 Worcester buildings was 85,600 micrograms/gram,
31 94,900 micrograms/gram, 8,320 micrograms/gram and 14,380
32 micrograms/gram. ...

33
34 The comparison of serum PCB levels between study subjects in PCB
35 contaminated buildings and subjects from non-contaminated buildings will
36 allow us to test the hypothesis that PCB's in the building environment
37 causes significant elevations in serum levels. Previous studies show
38 elevations in serum PCB levels congeners 28, 52, 138 and 153 ranging
39 from 1.5 to 8 fold in these comparisons. If we sample 25 subjects from
40 PCB contaminated buildings and 25 from buildings known to be free of
41 PCB, we estimate that we will have approximately 80% power to see a 3-
42 fold elevation in specific PCB congeners between the two groups of
43 subjects. ...

1 Sireci subsequently earned three credits for the independent study course, which is
2 referenced in the September 9, 2009 Abstract.⁴⁵

3 On October 1, 2009, Karen Emmons, Associate Dean for Research at the
4 Harvard School of Public Health, sent a letter to Superintendent Boone stating in
5 pertinent part:

6 I am writing in further response to your letter dated August 21, 2009.

7
8 We understand that there is some confusion between the Worcester
9 Public Schools and the teachers' union concerning the union's ability to
10 secure samples of caulking. It is important for the school system and the
11 union to work out these issues.

12
13 In the interim, Harvard agrees that Dr. Herrick will not conduct any further
14 research on the samples or publish any findings in connection with his
15 research until we have been apprised that the parties have worked
16 through their differences.

17 On November 3, 2009, Sireci sent Superintendent Boone a letter stating in
18 relevant part:

19 Last year the EAW, in collaboration with the Harvard School of Public
20 Health, examined the caulking of several Worcester Public School
21 buildings for the presence of polychlorinated biphenyls (PCB's). Those
22 schools included: North High School, Doherty High School, Mill Swan
23 Elementary School and Burncoat High School.

24
25 The acceptable levels of PCB's in building materials is 50 parts per million.
26 The readings we took were as follows:

27
28 Doherty High School=85600 ug/g Conversion:
29 Burncoat High Schoo=8320 ug/g 1 ppm=1ug/g (solid)
30 North High School=94900 ug/g
31 Mill Swan Elementary=14380 ug/g

32
33 As background, please consider the following explanation. On November
34 20, 2008, I sent a letter informing [the] administration of the association's
35 participation in the study and of our right to test and take samples. In that
36 letter I provided case law information setting out those rights. The

⁴⁵ As of mid-2010, Sireci was no longer enrolled in the independent study course.

1 Administration's attorney, Sean Sweeney, sent me correspondence on
2 December 2, 2008 indicating that if samples were to be taken, students
3 should be out of session; samples should be taken in the presence of the
4 District's School Plant office personnel, and there must be no property
5 damage. On March 10, 2009 I followed up with a phone call to Attorney
6 Sean Sweeney stating that we hoped to take samples on the following
7 weekend, March 14 and 15, 2009. On March 11, 2009, Attorney Sweeney
8 sent another letter. In it he raised several legal issues he wanted
9 answered by the association prior to taking samples. I responded on April
10 15, 2009 answering all his questions. In my response, I provided several
11 scientific studies as evidence.

12
13 Prior to the April vacation I informed Stacey Luster at our labor
14 management meeting that I intended to take samples during the April
15 vacation period, and they were welcome to accompany me. I did not
16 receive a response to that announcement or invitation, and I took samples
17 and mailed them to a lab. I am qualified to take samples. I am a doctoral
18 candidate at the University of Massachusetts Lowell in the Work
19 Environment Department where I received a Master's Degree. I have
20 taken sampling courses in Cincinnati at the ACGIH where, as a graduate
21 student, I am a member.

22
23 On April 30, 2009, I sent Dr. Deirdre Loughlin, the Interim Superintendent,
24 a letter telling her that we had taken samples at four schools. The
25 samples were sent to a lab for analysis. On May 4, 2009, I received
26 correspondence from Dr. Loughlin informing me that I had trespassed and
27 defaced property. The following week I met with several Worcester Public
28 School management people to discuss the issue. At that time, the parties
29 indicated that the EAW and the WPS would move forward toward
30 resolving issues regarding participation in the study. We also agreed to
31 address the issue of the legitimacy of the samples taken. As part of the
32 discussions I agreed to provide Eugene Olearczyk with the names of two
33 industrial hygienists. The Association agreed to pay for the work. It was
34 agreed that from the names submitted we would choose one to take
35 samples. Eugene suggested Lord Associates, of Norwood Massachusetts,
36 and we agreed. I thereafter got a quote from Lord Associates. I gave that
37 quote to Stacey Luster and told her we would agree to move forward
38 subject to the District's go ahead. We never heard back. As you know,
39 subsequent to then, the Harvard School of Public Health has suspended
40 moving forward on the pilot study.⁴⁶ I have forwarded the PCB readings to
41 the EPA. I felt I had an ethical obligation to also notify the state since the
42 health and welfare of children is at stake. There is incontrovertible
43 evidence that PCB's are toxic. The EPA has classified PCB's as a

⁴⁶ At some point in the fall of 2009, Sireci and Herrick ceased to communicate about the pilot study.

1 probable human carcinogen. Young children are particularly susceptible
2 to the adverse toxic effects. ...

3
4 At this point we once again ask the Worcester Public Schools if they will
5 agree to allow Lord Associates to take samples. Please let us know. We
6 will coordinate with Eugene Olearczyk to get the work done. Specifically,
7 the samples need to be sent to Labs that are equipped to analyze the
8 material correctly. The EPA offered new guidelines to schools last month
9 and they are available for technical assistance. We are interested in
10 continuing a dialogue with the WPS regarding procedures and policies
11 that can be put into place. If further sampling or reports have been issued
12 regarding this issue, we are requesting a copy of the results or the records
13 under the Public Records law Mass. Gen. Laws Ch. 66 s. 10 and Ch. 4 s.
14 7, part 26, 950 Code of Mass. Regulations s. 32.01-32.09.

15
16 Thank you for your attention to this matter. I will wait to hear back from
17 you.

18 On or about the time that Sireci sent his letter to Dr. Boone, he reviewed an EPA
19 publication entitled "Current Best Practices in Caulk Fact Sheet-Interim Measures for
20 Assessing Risk and Taking Action to Reduce Exposures'. In that document, the EPA
21 describes PCBs as "potentially cancer-causing" in humans. The EPA in the document
22 recommended that: "if [caulk] is deteriorating or flaking, the caulk should be tested and
23 removed if PCBs are present at significant levels." The EPA also noted there that:

24 Although ...not required to remove caulk containing PCBs at levels below
25 50 ppm, you may wish to because the caulk may present health risks
26 depending on the location, condition, etc."

27 On December 8, 2009, the City and the Commonwealth, acting through the
28 Office of the Attorney General, executed a settlement (December 8, 2009 settlement)
29 that was a final judgment of civil allegations that in April 2007, the Employer's staff
30 improperly removed floor tiles, consisting of asbestos, from the auditorium at the Vernon
31 Hill School in violation of the Massachusetts Clean Air Act, M.G.L. c.111, §§142A-142M

1 and its regulations, 310 C.M.R. 7.00 et seq. The December 8, 2009 settlement
2 provided, in part, that:

3 8. The Worcester Public Schools shall develop and implement an
4 environmental management system (“EMS”) for its public schools. The
5 purpose of the EMS is to address environmental issues comprehensively
6 in order to achieve and maintain environmental compliance throughout the
7 Worcester public school system and to integrate commitment to
8 environmental compliance and sound environmental management
9 practices into the daily mission of the public schools. As used herein
10 “environmental compliance” shall mean compliance with those laws and
11 regulations set forth herein and any other applicable environmental laws
12 and regulations. ...

13
14 10. Within one-hundred twenty (120) days of the date of entry of
15 Judgment, the Worcester Public Schools shall retain a qualified
16 environmental management system consultant (“consultant”) with
17 expertise in state and federal environmental laws and regulations of the
18 types applicable to assist in developing the EMS.

19
20 11. The EMS shall be developed and operational on or before July 1.
21 2010. ...

22
23 14. The consultant shall perform two reviews of the EMS (“reviews”) in
24 order to evaluate its effectiveness as follows:

- 25
26 a) first review commencing January 15, 2011; and
27
28 b) second review commencing January 15, 2012. ...

29
30 Also, in December 2009, the Commonwealth DPH’s Bureau of Environmental Health
31 issued a publication entitled “An Information Booklet Addressing PCB-Containing
32 Materials in the Outdoor Environment of Schools and Other Public Buildings”.

33 INTRODUCTION

34
35 The purpose of this information booklet is to provide assistance to school
36 and public building officials and the general public in assessing potential
37 health concerns associated with polychlorinated biphenyl (PCB)
38 compounds in building materials used in Massachusetts and elsewhere.
39 Recently, the U.S. Environmental Protection Agency (EPA) provided
40 broad guidance relative to the presence of PCBs in building materials.
41 The most common building materials that may contain PCBs in facilities

1 constructed or significantly renovated during the 1950's through the
2 1970's are fluorescent light ballasts, caulking, and mastic used in
3 tile/carpet as well as other adhesives and paints.
4

5 This information booklet, developed by the Massachusetts Department of
6 Public Health's Bureau of Environmental Health (MDH/BEH), is designed
7 to supplement guidance offered by EPA relative to potential health
8 impacts and environmental testing. It also addresses managing building
9 materials, such as light ballasts and caulking, containing PCBs that are
10 likely to be present in many schools and buildings across the
11 Commonwealth. This information booklet contains important questions
12 and answers relative to PCBs in the indoor environment and is based on
13 the available scientific literature and MDPH/BEH's experience evaluating
14 the indoor environment of schools and public buildings for a range of
15 variables, including for PCBs as well as environmental data reviewed from
16 a variety of sources.
17

- 18 1. What are PCBs? Polychlorinated biphenyl (PCB) compounds are
19 stable organic chemicals used in products from the 1930s through
20 the late 1970s.
21
- 22 2. When were PCBs banned from production? Pursuant to the Toxic
23 Substance Control Act (TSCA) of 1976 (effective in 1979),
24 manufacturing, processing and distribution of PCBs was banned.
25 While the ban prevented production of PCB-containing materials, it
26 did not prohibit the use of products already manufactured that
27 contained PCBs, such as building materials or electrical
28 transformers.
29
- 30 3. Are PCBs still found in building materials today? Yes. Products
31 made with PCBs prior to the ban may still be present today in older
32 buildings. In buildings constructed during the 1950s through 1970s,
33 PCBs may be present in caulking, floor mastic, and in fluorescent
34 light ballasts. Available data reviewed by MDPH suggests caulking
35 manufactured in the 1950s through 1970s will likely contain some
36 level of PCBs. Without testing it is unclear whether caulking in a
37 given building may exceed EPA's definition of PCB bulk product
38 waste of 50 parts per million (ppm) or greater. If it does, removal
39 and disposal of the caulk is required in accordance with EPA's
40 TSCA regulations (40 CFR §761).
41
- 42 4. Are health concerns associated with PCB exposure opportunities?
43

44 Although the epidemiological evidence is sometimes conflicting,
45 most health agencies have concluded that PCB's may be
46 reasonably be anticipated to be a carcinogen, i.e., to cause cancer.

1 PCBs can have a number of non-cancer effects, including those on
2 the immune, reproductive, neurological and endocrine systems.
3 Exposure to high levels of PCBs can have effects on the liver,
4 which may result in damage to the liver. Acne and rashes are
5 symptoms typical in those that are exposed to high PCB levels for a
6 short period of time (e.g., in industry /occupational settings).
7

- 8 5. If PCBs are present in caulking material, does that mean exposure
9 and health impacts are likely? No. MDPH/BEH's review of available
10 data suggests that if caulking is intact, no appreciable exposures to
11 PCBs are likely and hence health effects would not be expected.
12 MDPH has conducted indoor tests and reviewed available data
13 generated through the efforts of many others in forming this
14 opinion. ...
15

- 16 11. Does MDPH recommend testing of caulking in buildings built during
17 the 1950s-1980?
18

19 Caulking that is intact should not be disturbed. If caulking is
20 deteriorating or damaged, conducting air and surface wipe testing
21 in close proximity to the deteriorating caulking will help to determine
22 if indoor air levels of PCBs are a concern as well as determining the
23 need for more aggressive cleaning. Results should be compared
24 with similar testing done in an area without deteriorating caulking.
25 In this way, a determination can be made regarding the relative
26 contribution of caulking materials to PCBs in the general indoor
27 environment.
28

- 29 12. What if we determine that caulking in our building is intact and not
30 deteriorating?
31

32 Based on a review of available data collected by MDPH and others,
33 the MDPH does not believe that intact caulking presents
34 appreciable exposure opportunities and hence should not be
35 disturbed for testing. As with any building, regular operations and
36 maintenance should include a routine evaluation of the integrity of
37 caulking material. If its condition deteriorates then the steps noted
38 above should be followed. Consistent with EPA advice, if buildings
39 may have materials that contain PCBs, facility operators should
40 ensure thorough cleaning is routinely conducted.
41

- 42 13. Should building facilities managers include information about PCB-
43 containing building materials in their Operations and Maintenance
44 (O&M) plans?
45

1 Yes. All buildings should have an O&M plan that includes regular
2 inspection and maintenance of PCB building materials, as well as
3 thorough cleaning of surfaces not routinely used. Other measures
4 to prevent potential exposure to PCBs include increasing
5 ventilation, use of HEPA filter vacuums, and wet wiping. These
6 O&M plans should be available to interested parties.
7

8 14. Are there other sources of PCBs in the environment?
9

10 Yes. The most common exposure source of PCBs is through
11 consumption of foods, particularly contaminated fish. Because
12 PCBs are persistent in the environment, most residents of the U.S.
13 have some level of PCBs in their bodies. ...
14

15 In the period between September 9, 2009 and before January 27, 2010, the
16 Employer entered into a contract with Universal Environmental Consultants (UEC), an
17 environmental management firm, to conduct visual inspections assessing the condition
18 of exterior window caulking at various schools. Thereafter, UEC carried out the visual
19 inspections.

20 2010

21 On January 27, 2010, Anmar M. Dieb (Dieb), UEC's president, sent a letter to
22 James Bedard (Bedard), the Employer's Facilities Manager, reporting the results of
23 those visual inspections. The results were as follows: a) no caulking was found at
24 Foley Stadium; b) the caulking was new and was found to be in good condition at the
25 Forest Grove School; c) the caulking was found to be in good condition at Burncoat
26 Middle School, the Belmont Street Community School, the Elm Park School, the former
27 North H.S., Flagg Street School Addition and the Mill Swan Head Start School; d)
28 caulking was found to be in good condition with minor cracking throughout at the
29 Francis McGrath Elementary School and Doherty H.S., e) caulking was found to be in
30 fair condition with minor cracking throughout at the Chandler Elementary School and

1 South High Community School; f) caulking was found to be damaged or was missing at
2 the Clark Street School; g) most caulking is missing at the Flagg Street School Original
3 Building, h) caulking was found to be damaged, had fallen off or was missing
4 throughout at the Caradonio New Citizens Center and at the Chandler Magnet School;
5 and i) caulking was found to be damaged, fallen or missing at various locations with
6 floor plans attached to show those locations at the West Tatnuck School, the
7 Worcester Arts Magnet, the Wawecus Elementary School and Burncoat H.S. Dieb
8 also recommended in his letter that, "the caulking be tested for Polychlorinated
9 Biphenyls (PCB's) in buildings where the material was found to be damaged."

10 On January 28, 2010, the Employer and the Union met again for successor
11 contract negotiations. The EAW again submitted the contract proposal that it
12 previously submitted on May 15, 2009 and that is described above.⁴⁷

13 On February 25, 2010, DelSignore sent a letter to Superintendent Boone stating
14 in pertinent part:

15 As you know, the EAW is concerned about the potential presence of
16 PCB's in window caulking and other building materials in Worcester
17 schools built or renovated between 1950 and 1978. The EPA has
18 identified caulk and other materials routinely used in buildings built or
19 renovated between 1950 and 1978 as potential sources of PCB's. See
20 "Fact Sheet for Schools and Teachers About PCB-Contaminated Caulk",
21 at [EPA website]. Because of their potential health effects, the use and
22 manufacture of PCBs have been outlawed in the United States since
23 1979. See the EPA's "Health Effects of PCBs", [EPA website].for
24 information about PCBs and their impact on health. Federal environmental
25 law requires building materials with PCB levels greater than 50 ppm be

⁴⁷ On or about June 11, 2011, the Employer and the EAW agreed upon a successor contract that, by its terms, was in effect from September 1, 2010 through August 31, 2013 (2010-2013 Agreement). Because the Employer rejected the EAW's May 4 and May 15, 2009 and January 28, 2010 proposals to amend Article 32 and to provide a plan to renovate caulking at Burncoat H.S., Doherty H.S. and the former North H.S., the 2010-2013 Agreement contained no language concerning those proposals.

1 treated as PCB waste, an environmental hazard which requires
2 remediation. 50 Code of Federal Regulations, part 761.

3
4 The EAW proposes, initially, to conduct PCB sampling at three schools:
5 Burncoat High, North High and Doherty High. The EAW intends to retain
6 Lord Associates to conduct the sampling. Eugene Olearczyk had identified
7 Lord Associates in May 2009 as a firm that could perform PCB testing.
8 The EAW will arrange with Lord Associates to conduct PCB sampling in
9 exterior caulking at a time when schools are not occupied. The EAW will
10 also arrange with Lord Associates to repair any sampling-related damage
11 to the caulk immediately following the sampling.

12
13 The EAW would welcome the attendance by Worcester Public schools
14 personnel at the sampling, if you would like to be in attendance. The EAW
15 hopes to conduct the sampling for PCBs in exterior caulking no later than
16 March 31, 2010. We reserve the right to conduct additional testing for
17 PCBs in these schools or other Worcester schools at some point in the
18 future.

19
20 We are asking for permission to enter upon school grounds during
21 unoccupied times to conduct this sampling. We wish to conduct the
22 sampling to gather information in accordance with MA General Laws,
23 c.150E 10(a)(5) (public employee collective bargaining). ...

24
25 If we do not receive a response from you by March 15, 2010, we will
26 assume that you are denying permission to us to conduct the PCB
27 sampling at the four schools listed in this letter.

28
29 Sireci sent the February 25, 2010 letter because he wanted to protect the well-being of
30 unit members by identifying a potential health concern and addressing that health
31 concern with the various regulatory agencies.

32 Superintendent Boone opposed allowing the EAW's request because she
33 believed that: 1) the caulking at Doherty H.S., Burncoat H.S. and the former North H.S.
34 was intact and intact caulking should not be disturbed, 2) the science linking PCBs and
35 adverse health effects in humans was questionable, and 3) testing caulking for the
36 presence of PCBs was not mandatory under either state or federal regulations. In a
37 March 15, 2010 letter to DeSignore and Sireci, Sweeney replied that:

1 Your letter of February 25, 2010 has been referred to me for a response.
2 Your letter indicates that you are requesting permission to "enter upon
3 school grounds" to conduct "PCB sampling" at Burncoat High School,
4 North High School and Doherty High School. I understand that your plan
5 would be to have the sampling performed by a company by the name of
6 Lord Associates.

7
8 As I am sure that you are aware, the Bureau of Environmental Health of
9 the Massachusetts Department of Public Health has produced "An
10 Information Booklet Addressing PCB-Containing Materials in the Indoor
11 Environment of Schools and Other Public Buildings" dated December
12 2009. I would refer you to Page 5 of the booklet, which states
13 that "[C]aulking that is intact should not be disturbed." In addition at Page
14 6 the booklet states, "[B]ased on a review of available data collected by
15 MDPH and others, the MDPH does not believe that intact caulking
16 represents appreciable exposure opportunities and hence should not be
17 disturbed for testing." Given this guidance from the Department of Public
18 Health, it would seem that your proposed sampling is contrary to current
19 DPH recommendations. Accordingly, your request for permission to enter
20 upon school grounds to conduct PCB sampling is denied.

21
22 On May 19, 2010, Sarah Gibson, Esq. (Gibson), an attorney for the EAW, sent a
23 letter to Sweeney stating:

24 Your letter of March 15, 2010 to Cheryl DelSignore, President and Michael
25 Sireci, Executive Secretary, of the Educational Association of Worcester
26 (the EAW) has been referred to me for response. Please be advised that
27 our office represents the EAW concerning in matters related to health and
28 safety issues in Worcester school buildings.

29
30 The EAW disagrees with your analysis regarding its request to conduct
31 sampling of the caulking in the four school buildings mentioned and with
32 your reliance in your analysis on the Department of Public Health's Bureau
33 of Environmental Health's (BEH) "An Information Booklet Addressing PCB-
34 Containing Materials in the Indoor Environment of Schools and Other
35 Public Buildings." The EAW reserves its rights to all claims it may have
36 regard with this matter including, but not limited to, potential claims at the
37 Division of Labor Relations. Nonetheless, your reliance on BEH's
38 Information Booklet as a basis for refusing the EAW permission to take
39 caulk samples raises a number of issues:

40
41 You cite the BEH Information Booklet for the assertion that "caulking that is
42 intact should not be disturbed." Assuming without conceding that this
43 guidance is correct, your reliance on this guidance presumes that the caulk
44 in each of the four schools has been inspected and confirmed to be intact.

1 Please provide us with documentation of the inspection of the caulking and
2 window glazing in each of the four schools, including the dates of the
3 inspections and personnel who conducted the inspections, and
4 substantiate the claim that the caulking throughout all four schools is intact.
5

6 BEH's Information Booklet (paragraph 13) advises all facilities managers
7 for buildings constructed during the period when PCB's were commonly
8 used in construction to have an Operations & Maintenance (O&M) plan that
9 includes "regular inspection and maintenance of PCB building materials, as
10 well as thorough cleaning of surfaces not routinely used." It also advises
11 increasing ventilation, the use of HEPA filter vacuuming and wet wiping,
12 and instructs managers to make these O&M plans available to interested
13 parties. Please provide us with copies O&M plan for each of the schools in
14 question. ...
15

16 Please consider all requests for information in this letter as formal requests
17 for information made pursuant to G.L.c.150E and the case law interpreting
18 that statute. ...

19 On April 29, 2010, the EMS Team made a power point presentation to the School
20 Committee. The EMS Team included several members of the EAW's various
21 bargaining units, as well as Luster, Olearczyk, Bedard, and Brian Allen (Allen), the
22 Employer's Chief Financial and Operations Officer (CFOO). However, the EAW did not
23 have a designated representative on the EMS Team.

24 On separate dates in June 2010, Sireci took photographs at various locations of
25 Burncoat H.S., Doherty H.S. and the former North H.S. He was accompanied by some
26 of the EAW's building representatives for those schools. Sireci's photographs show
27 missing pieces of caulk and cracked and frayed caulk at all three buildings.

28 On July 16, 2010, the Employer submitted a report (July 18, 2010 report) to the
29 Commonwealth DEP and the State Office of the Attorney General concerning the EMS.
30 In the introduction to the report, the Employer described, in part, its plan for the EMS as:

31 Our strategy for the first 6 months was to focus on District-wide policies,
32 procedures, roles and responsibilities to make the EMS operational, and
33 then to address school-specific issues while also providing additional

1 training and refining our District-wide management system. We have
2 followed this strategy, but have also completed a safety pre-screen and
3 chemical cleanout at one school whose chemistry lab was scheduled for
4 replacement.

5
6 The Worcester Public Schools remains committed to using the EMS to (1)
7 comprehensively address environmental issues to achieve and maintain
8 environmental compliance throughout the school system, and (2) integrate
9 the District's commitment to environmental compliance and good
10 management practices into daily operations.

11 The Employer also noted in the report that:

12 The EMS Team met 8 times⁴⁸ with agendas that combined training,
13 hands-on exercises, assignments and interactive discussion on EMS as
14 well as administrative level training on asbestos, hazardous products,
15 hazardous waste, Right-to-Know and Emergency Response.

16
17 An additional 5 meetings were held with individuals from the Team to
18 develop portions of the EMS.

19
20 The Employer in the report also listed the following priorities for the EMS
21 in the next six months:

22
23 Safety pre-screen of high school and middle school science classrooms
24 for imminent hazards and removal of high hazardous, unneeded, or
25 excess chemicals in potential collaboration with EPA Region 1.

26
27 Training:

28
29 Right-to-Know

30
31 Lab Safety

32
33 Emergency Response

34
35 Blood Borne Pathogens

36
37 Asbestos Awareness

38
39 Final improvements in system to track training and
40 professional development

⁴⁸ Meetings took place on March 2, 2010, March 19, 2010, April 16, 2010, May 7, 2010, May 21, 2010, June 4, 2010, June 18, 2010 and June 25, 2010.

- 1 Update *Emergency Guide* flipchart and *Crisis Response*
- 2 *Plan Manual*
- 3
- 4 Develop additional Environmental Management Programs
- 5 on topics such as Indoor Air Quality, Integrated Pest
- 6 Management, etc.
- 7
- 8 Implement additional operational controls and protocols to
- 9 support Environmental Management Program for asbestos,
- 10 hazardous products and hazardous waste.⁴⁹
- 11
- 12 Implement annual expanded annual safety audits to include
- 13 environmental health issues, including operational controls
- 14 (e.g. logs, checklists) and refined corrective action process
- 15 to follow up on issues identified.
- 16
- 17 Finalize *EMS Manual*
- 18
- 19 Implement new purchasing policy and evaluate its effect.
- 20
- 21 Engage unions in further development of the EMS.
- 22
- 23 Continue review of existing product purchases and
- 24 opportunities to reduce, eliminate or substitute products
- 25 used. Will expand current efforts to evaluate products used
- 26 in Career and Technical Education and in preschool settings.
- 27
- 28 Select and implement web-based chemical inventory
- 29 software and provide training on new system (Science
- 30 Department).
- 31
- 32 Continue to improve the management of hazardous products
- 33 and waste (e.g., Science Department will (a) evaluate and
- 34 consolidate storage of hazardous materials; (b) purchase
- 35 and disseminate necessary supplies and equipment
- 36 (chemical spill kits, signage, label systems and secondary
- 37 containment) to improve storage areas for hazardous
- 38 products and waste; (c) review completed surveys to help
- 39 identify needs for program development and training; (d) and
- 40 review the generator status and licenses of all the school
- 41 buildings to ensure accuracy and compliance.

⁴⁹ The Employer also attached appendices to the July 18, 2010 report concerning overviews of the Asbestos Management Program, the Hazardous Product Management Program, and the Hazardous Waste Management Program.

1 In the summer of 2010, Sireci and DelSignore acting on behalf of the EAW met
2 with representatives of the City, including City Manager Michael O'Brien, to discuss the
3 possible presence of PCBs in the Employer's schools. At that meeting, the City
4 contended that there was no definitive proof that PCBs caused negative health effects
5 in humans.

6 On September 4, 2010, the EAW filed the prohibited practice charge in Case No.
7 MUP-10-6005. In the fall of 2010, the Employer used an environmental consulting firm
8 Triumvirate to oversee the cleanups of its school science labs.

9 2011

10 On January 24, 2011, Superintendent Boone sent a letter (January 24, 2011
11 letter) to the parents of students who attended Burncoat H.S., Doherty H.S., the former
12 North H.S. and the Mill Swan Head Start School, as well as to staff members who
13 worked at those schools, stating in pertinent part:

14 The Administration of the Worcester Public Schools takes the concerns of
15 parents about the well-being of students, as well as the concerns from the
16 staff that work in our buildings, very seriously. The purpose of this letter is
17 to address the steps that the Administration is taking with regards to all
18 environmental issues that exist in our schools. An article in the Worcester
19 Telegram and Gazette on Friday, January 21, 2011, reported that the
20 Education Association of Worcester alleges that four schools have PCBs
21 that exist in window caulking at levels higher than actionable limits.

22
23 PCBs are man-made chemicals that persist in the environment and were
24 widely used in construction materials and electrical products prior to 1978.
25 PCBs can affect the immune, reproductive, nervous and endocrine
26 systems and are potentially cancer-causing if they build up in the body
27 over long periods of time. The greatest risks from PCB's involve
28 sustained long-term exposure to high levels of PCBs. Most peoples'
29 exposure to PCBs is through eating, particularly through fish, meat and
30 dairy products that contain PCBs.

31
32 Although Congress banned the manufacture and most uses of PCBs in
33 1976 and they were phased out in 1978, there is evidence that many

1 buildings across the country constructed or renovated from 1970 to 1978
2 may have PCBs at higher levels in the caulk around windows and door
3 frames, between masonry columns and in other masonry building
4 materials. Exposure to these PCBs may occur as a result of their release
5 from the caulk when disturbed into the air, dust, surrounding surfaces
6 and soil, and through direct contact. Just because PCBs exist in caulking
7 material does not mean that exposure and health impacts are likely. If the
8 caulking is intact, no appreciable exposure to PCBs is likely and hence
9 health effects would not be expected.

10
11 In January 2010, in conjunction with consultants with expertise in
12 environmental issues, the Worcester Public Schools began a
13 comprehensive Environmental Management System. The purpose of this
14 Environmental Management System is to proactively, effectively and
15 properly identify and manage all environmental issues that may exist
16 within our school buildings. One of several issues being addressed
17 through the Environmental Management System is window caulking.
18 Currently, there are no federal or state regulations that deal with the
19 handling of PCBs in window caulking. However, as part of the proactive
20 environmental management system, the Worcester Public Schools is
21 following the guidelines issued by the Environmental Protection Agency in
22 2009 regarding the management of materials potentially causing PCBs.
23 The current work of the district includes designing plans for the
24 containment, management or removal of environmentally dangerous
25 materials in our buildings.

26
27 As part of the recent five-year capital improvement plan, the School
28 Committee has approved the replacement of windows at various schools
29 within the district, including Burncoat High and Doherty High. At all of our
30 schools, the district will monitor the caulking condition as part of the
31 environmental management system.

32
33 The EPA is currently conducting research to better understand the
34 relationship between PCBs in caulk and PCB concentrations in caulk, air
35 and dust. The EPA is doing research to determine the sources and levels
36 of PCB's in buildings in the U.S. and to evaluate different strategies to
37 reduce exposures. To learn more about PCBs in caulk go to __. In
38 addition, attached is a brochure prepared by the EPA aimed for school
39 districts regarding PCBs.

40
41 Again, we take these and all other issues that might affect our students
42 and staff very seriously. The Administration of the Worcester Public

1 Schools will work with all parties necessary to ensure that all steps are
2 taken to make our schools buildings safe and healthy learning settings.⁵⁰

3 The EPA document that Superintendent Boone attached to her January 28, 2011 letter
4 was entitled: "Fact Sheet for Schools: Caulk containing PCBs may be present in older
5 schools and building" (EPA Fact Sheet for Schools). The EPA Fact Sheet for Schools
6 noted that children can be exposed to PCBs by:

7 Breathing in dust contaminated with PCBs
8 Touching caulk and contaminated soil directly
9 Putting their hands into their mouths after touching the caulk, soil and
10 surrounding building materials.

11 The EPA Fact Sheet for Schools also posed certain questions and answers, including:

12

13 **How are people exposed to PCBs? [Emphasis in original]**

14

15 People whose workplaces and jobs involve working with PCB-laden
16 objects or in PCB cleanup are at the highest risk for elevated exposure.
17 Most people have some accumulation of PCBs in their bodies. Fish, meat
18 and dairy contain small amounts of PCBs. In fact, most peoples' exposure
19 to PCBs is via the food chain. When products containing PCBs are
20 disposed of improperly, PCBs can enter waterways and contaminate fish
21 and other animals. Indoor air has been found to contain PCBs from some
22 types of caulk in building materials. People can also be exposed to PCBs
23 when handling PCB-containing products such as caulk.

24

25 **What can I do about PCBs in schools?**

26

27 If caulk containing PCBs is discovered, you should avoid direct contact
28 with caulk and nearby porous materials, if possible. If caulk containing
29 PCBs are discovered, be sure to limit exposure to the caulk until it has
30 been safely removed. Here are some ways for decreasing exposure:

31

32 Keep children from touching caulk or surfaces near caulk.

33

Clean frequently to reduce dust

34

Use wet cloths to clean surfaces

35

Use vacuums with HEPA filters

36

Wash children's hands with soap and water before eating

37

Wash children's toys often

⁵⁰ On January 28, 2011, Superintendent Boone provided a copy of her January 24, 2011 letter to the members of the School Committee.

1 Wash surfaces, window sills, walls, and objects often in rooms known to
2 have PCB-containing caulk
3 Consider testing the air for PCBs or test caulk if it is peeling or visibly
4 deteriorating
5 Follow safe work practices when renovating
6 Improve ventilation by opening windows or adding exhaust fans
7

8 **Are children in direct danger if their school has caulk containing**
9 **PCBs?**

10 PCBs accumulate in the body in high levels only after prolonged exposure
11 to the chemical. Follow the recommended procedures to reduce
12 exposure. Restricting children from areas where PCB-containing caulk is
13 located, promoting safe work practices during renovation activities in
14 schools, and removing caulk safely as part of a PCB removal or
15 renovation project reduces the potential for exposure.

16 In February 2011, the EAW organized picketing by its unit members at Doherty
17 H.S. and Burncoat H.S. to protest the possible presence of PCBs in caulking at those
18 schools. Some of the unit members wore dust masks or surgical masks. The local
19 media reported on the picketing.

20 Also, in February 2011, the Employer hired Triumvirate to provide environmental
21 consulting services regarding PCBs. The Employer's representatives Allen and Bedard
22 had many meetings and telephone conversations with Triumvirate's representatives,
23 including Ross Hartman (Hartman), a company vice-president, and Paul Connors, an
24 engineer. The Employer and Triumvirate agreed that Triumvirate first would assess the
25 condition of and inventory select building materials in the Employer's schools that had
26 been constructed or significantly renovated in the period from 1950 to 1979.
27 Triumvirate also provided the Employer with copies of certain EPA advisory bulletins
28 regarding PCBs. On two or three occasions, the Employer and Triumvirate discussed
29 the EAW's request to conduct PCB sampling at Burncoat H.S., Doherty H.S. and the
30 former North H.S.

1 On February 23, 2011, representatives from the Employer and Triumvirate met
2 with representatives from the EPA. Superintendent Boone, Bedard and Allen attended
3 on behalf of the Employer, Hartman on behalf of Triumvirate and James Chow (Chow),
4 Chief of the RCRA Corrective Action Section of the Office of Site Restoration and
5 Remediation, and Kim Tisa, the PCB Coordinator, attended on behalf of the EPA. On
6 February 25, 2011, Chow sent a letter to Superintendent Boone stating in pertinent part:

7 Thank you for the invitation to meet with you and your staff to discuss
8 concerns about PCBs in your schools. Kim Tisa and I appreciated the
9 opportunity on February 23, 2011 to discuss your upcoming plans to
10 assess public schools in Worcester for the presence of PCB-containing
11 building materials. Also present at the meeting were Brian Allen and
12 James Bedard of your staff, and Triumvirate Environmental.
13

14 PCBs are persistent chemicals that were widely used in construction
15 materials and electrical products before 1978. In 1976, Congress banned
16 the manufacture and use of PCBs because of concerns about their health
17 and environmental effects, and they were phased out except for certain
18 limited uses in 1978. Despite the federal ban, they remain present today
19 in certain building materials including older fluorescent light ballasts, caulk,
20 paints and other products used in the construction or renovation of
21 buildings primarily from the 1950s through the mid-1970's. There are a
22 number of resources available on EPA's website () and I encourage you
23 to review this information and share it with others.
24

25 Based on our discussion, it is my understanding that you plan to conduct
26 the following activities in the near future:
27

- 28 1. Work with your staff to identify those public schools that were either
29 constructed or underwent significant renovation activities from the
30 1950's through the 1970's. Based on our discussions, your staff
31 has identified approximately 20 schools that may fall in this
32 category. This list will then be prioritized for evaluation based on a
33 number of factors including if the school is an elementary or
34 secondary school, if lighting upgrades have been undertaken, and if
35 the school has been further renovated since the 1970's.
36
- 37 2. Retain an environmental consultant to conduct a visual inspection
38 of the schools identified in the previous step to assess the presence
39 and condition of potential PCB-containing building materials,
40 including fluorescent light ballasts. The inspections will also assess

1 the conditions of ventilation systems to ensure their proper working
2 condition. The environmental consultant will work with maintenance
3 staff to implement simple housekeeping steps in accordance with
4 EPA guidance to reduce any potential exposures.

5
6 You expect that your environmental consultant will complete many
7 of its initial inspections within 30 days. As these initial inspections
8 are completed, interim findings will be communicated to EPA. You
9 expect that your consultant will complete a survey of all of the
10 identified schools within approximately 90 days along with a final
11 report for each school inspected. However, as EPA expects interim
12 reporting to occur on a rolling basis, follow-up actions at respective
13 schools will be discussed and planned well before all of the
14 inspection reports are finalized.

15
16 3. Specific plans to conduct follow up activities including indoor air
17 sampling will be developed based on your consultant's interim
18 findings. For those schools identified with the highest priority, EPA
19 recommends that indoor air sampling be conducted as soon as
20 possible.

21
22 4. Throughout this effort, effective community outreach will be critical.
23 EPA strongly recommends that you develop a communication
24 strategy to keep the school community within each school (i.e.,
25 teacher, parents, workers) informed of the results and progress of
26 your work.

27
28 As I discussed during the meeting, EPA has received a number of
29 inquiries from Worcester Public School parents and news media⁵¹
30 regarding PCBs.⁵² We have a strong track record working in partnership
31 with school districts throughout New England to address PCBs in building
32 materials, and we look forward to working with you and your staff on your
33 efforts to asses this issue in your schools.

34 In a March 9, 2011 letter, Superintendent Boone responded by stating in pertinent part:

35 The Worcester Public Schools is pleased to provide this update of school
36 inspection activities and wishes to thank you for preparing the February

⁵¹ Allen indicated that a reporter at the Worcester Telegram and Gazette had provided him with copies of the certificates of analysis for the four caulking samples that Sireci had obtained on April 29, 2009.

⁵² At the February 23, 2011, the EPA informed the Employer about the results from the April 4, 2009 Analytical Reports concerning the caulking samples that Weymouth had taken on March 21, 2009.

1 23, 2011 letter summarizing our meeting. Worcester Public Schools is
2 committed to properly completing inspection activities.

3
4 We have identified approximately 20 schools that were either constructed
5 or underwent significant renovations between 1950 and 1979 (we continue
6 to search our records for major reconstruction during this period).
7 Enclosed is a list of that includes each school identified to date, the date of
8 construction or significant renovation, grades served, location and a
9 tentative date of inspection. The schedule reflects a prioritization of
10 schools with the youngest students serving as a primary focus.

11
12 The inspection process will include interior and exterior areas, a
13 description of the school building, condition of building materials observed,
14 including fluorescent light ballasts, observations of building ventilation
15 system and photographs. Weekly summary of the inspection schools
16 shall be provided.

17
18 Preparation of a report summarizing the observations for each school is
19 underway. The reports shall include information on the removal and
20 disposal and leaking of unlabeled ballast. The reports will guide planning
21 to conduct follow-up activities. It is our intention to remove any leaking
22 PCB light ballasts encountered in accordance with 40 CMR Part 761
23 Subpart G.

24
25 We look forward to your assistance in this matter. If you have any
26 questions or comments contact me at your convenience.

27 Triumvirate's Investigation and Findings

28 In the period between March 4, 2011 and April 22, 2011, Triumvirate inspected
29 twenty-seven of the Employer's schools as part of its assessment of PCB-containing
30 building materials at twenty-nine of the Employer's facilities. The purpose of the
31 inspections was to evaluate the condition of and to inventory the schools' readily
32 observable interior and exterior building materials, equipment and surfaces. The
33 materials that Triumvirate observed included: caulking, window glazing, paint, dust
34 accumulation, heating and ventilation systems, and types and conditions of florescent

1 light ballasts.⁵³ During Triumvirate's initial assessments, it determined that twenty-four
2 light ballasts were unlabeled and leaking

3 On July 7, 2011, Triumvirate issued the results of its investigation at each school
4 in individual reports entitled "Building Materials Inventory Reports". Triumvirate gave
5 each of the schools a score to assist and guide activities associated with building
6 materials management. Triumvirate used the score to rank each school in comparison
7 with the other twenty-six schools that it inspected. Each score was on a scale from zero
8 to ten, with increasing management expected with an increased score. Each score was
9 composed of an exterior score and two interior scores, one score for caulking-glazing
10 equipment and the other score for ballasts. Triumvirate also included elements such as
11 the potential magnitude of exposure, likely probability and frequency of exposure, and
12 the sensitivity of students based on their ages to calculate the scores. The summaries
13 of Triumvirate's findings and the scores for each school are listed below.

14 **Belmont Street Community School**-The March 4, 2011 investigation identified:
15 an unlabeled light ballast, the presence of interior window glazing in fair to poor
16 condition, dusty interior univents and vents, the storage of materials in close proximity to
17 window glazing and dust, the presence of exterior caulking and glazing in fair to poor
18 condition, and small fragments of caulking and glazing on exterior ground surfaces.
19 The total score for its interior caulking was 6.6 out of 10. The score for the ballasts was
20 0.4 out of 10. The total score for the exterior was 3.9 out of 10. Relative to other
21 schools assessed during this project, the Belmont Street School scored 6th highest in
22 interior and 18th on the exterior categories and 11th overall. The elevated interior score

⁵³ The EAW had never requested access to the Employer's schools in order to test light ballasts for the presence of PCBs.

1 was mainly attributed to the quantity of glazing observed, the poor condition of those
2 materials, as well as the accumulated dust on the interior of the building.

3 **Burncoat H.S.**-The March 17 and March 30, 2011 investigation identified: a
4 leaking suspected PCB ballast (subsequently removed), four intact unlabeled ballasts,
5 the presence of interior window glazing in poor condition, and fragments of caulking and
6 glazing on exterior ground surfaces. The total score for the interior caulking was 2.8 out
7 of 10. The score for the ballast was 0.2 out of 10. The total score for the exterior was
8 3.6 out of 10. Relative to the other schools assessed during this project, it scored 21st in
9 the interior category, 20th in the exterior category and 19th overall. The elevated interior
10 and exterior scores were mainly attributed to the quantity of glazing and caulking
11 observed, the poor condition of those materials, as well as the accumulated dust on the
12 interior of the building.

13 **Burncoat Middle School**-The March 21, 2011 investigation identified: a leaking
14 suspected PCB ballast, numerous unlabeled suspected PCB ballasts, multiple
15 historically stained fixtures, the presence of exterior caulking and glazing in poor
16 condition, and fragments of caulking and glazing on exterior ground surfaces. The total
17 score for the interior caulking at the Burncoat Middle School was 1.6 out of 10. The
18 score for the ballasts was 1.7 out of 10. The total score for the exterior at the Burncoat
19 Middle School was 3.7 out of 10. Relative to the other schools assessed during this
20 project, the school scored 20th in the interior category, 19th in the exterior category, and
21 18th overall. The elevated exterior score was mainly attributed to the quantity of glazing
22 and caulking observed and the poor condition of those materials. The score for the
23 interior of the building was mainly attributed to the presence of the unlabeled ballasts.

1 **Chandler Elementary School**-The March 7, 2011 investigation identified: a
2 leaking, unlabeled ballast and stained fixture, nineteen unlabeled ballasts throughout
3 the school, dusty interior surfaces, univents and vents, areas of interior window glazing
4 in poor condition, the storage of materials in close proximity to ventilation openings,
5 and areas of exterior caulking and glazing in poor condition. The total score for the
6 interior caulking was 2.7 out of 10. The score for the ballasts was 1.6 out of 10. The
7 total score for the exterior was 2.0 out of 10. Relative to the other schools assessed
8 during this project, the school scored 15th in the interior category, 27th in the exterior
9 category and 20th overall. The interior and exterior scores were mainly attributed to the
10 quantity of glazing and caulking observed, the poor conditions of those materials, as
11 well as the accumulated dust on the interior of the building.

12 **Chandler Magnet School**-The March 11, 2011 investigation identified: a
13 leaking, unlabeled ballast, the presence of interior window glazing in poor condition,
14 dusty interior surfaces, uninvent and vents, the storage of materials in close proximity
15 to windows and ventilation openings, the presence of exterior caulking and glazing in
16 poor condition, and fragments of caulking and glazing on exterior ground surfaces.
17 The total score for the interior caulking was 8.4 out of 10. The score for the ballast was
18 0.9 out of 10. The total score for the exterior was 6.6 out 10. Relative to the other
19 schools assessed during this project, the Chandler Magnet School scored second in
20 both interior and exterior categories overall. The elevated interior and exterior scores
21 were attributed to the quantity of glazing and caulking observed, the poor condition of
22 those materials, as well as the accumulated dust on the interior of the building and the
23 removal of a leaking unlabeled ballast.

1 **Clark Street School**-The March 12 and 31, 2011 investigation identified: an
2 unlabeled ballast potentially containing PCBs, a fixture with staining on the internal
3 components, the presence of interior window glazing in poor condition, dusty interior
4 surfaces in close proximity to deteriorated window glazing, the presence of exterior
5 caulking and glazing in poor condition, and fragments of caulking and glazing on the
6 ground. The total score for the interior caulking was 7.7 out of 10. The score for the
7 ballast was 0.3 out of 10. The total score for the exterior of the school was 6.3 out of
8 10. Relative to the other schools assessed during this project, the school scored 4th
9 highest in the interior category, 5th highest in the exterior category, and 4th overall. The
10 elevated interior and exterior scores were mainly attributed to the quantity of glazing
11 and caulking observed, the poor condition of those materials, as well as the
12 accumulated dust on the interior of the building.

13 **Columbus Park Elementary School**-The April 20, 2011 investigation identified:
14 the presence of interior window glazing, dusty interior surfaces, uninvent, and vents, the
15 presence of exterior caulking and glazing observed, the poor condition of those
16 materials, as well as the pieces of glazing and caulking on the ground outside the
17 building. The total score for the interior caulking was 0.8 out of 10. The score for the
18 ballasts was 0.0 out of 10. The total score for the exterior at the school was 0.8 out of
19 10. Relative to the other schools assessed in the project, the school scored 26th for the
20 interior category, 16th for the exterior category and 26th overall. The elevated interior
21 and exterior scores were mainly attributed to the quantity and quality of the glazing and
22 caulking observed, the poor condition of these materials, as well as the pieces of
23 caulking or glazing on the ground outside of the building.

1 **Doherty H.S.**-The March 18 and 31, 2011 investigation identified: the presence
2 of window glazing in poor condition, dusty interior surfaces, uninvent and vents, the
3 storage of materials in close proximity to window glazing and dust, the presence of
4 exterior caulking and glazing in poor condition; and fragments of caulking and glazing
5 on exterior ground surfaces. The total score for the interior caulking was 3.7 out of 10.
6 The score for the ballasts was 0.3 out of 10. The total score for the exterior was 1.6 out
7 of 10. Relative to the other schools assessed during this project, the school scored 17th
8 in the interior category, 28th in the exterior category and 23rd overall. The elevated
9 interior and exterior scores were mainly attributed to the quantity of glazing and caulking
10 observed, the poor condition of those materials, as well as the accumulated dust on the
11 interior of building.

12 **Elm Park School**-The March 5 and 30, 2011 investigation identified: a leaking,
13 unlabeled ballast, stained fixtures from previously installed ballasts, the presence of
14 interior window glazing in poor condition; dusty interior surfaces and the presence of
15 exterior caulking and glazing in poor condition. The total score for interior caulking was
16 2.6 out of 10. The score for the ballast was 0.9 out of 10. The total score for the
17 exterior was 3.6 out of 10. Relative to the other schools assessed during this project,
18 the school scored 19th in the interior category and 21st in the exterior category, and 17th
19 overall. The interior and exterior scores were mainly attributed to the quantity of glazing
20 and caulking observed, the condition of those materials, as well as the accumulated
21 dust on the interior of the building.

22 **Flagg Street School**-The March 15, 2011 investigation identified: fragments of
23 caulking and glazing on exterior ground surfaces, the presence of interior window

1 glazing in poor condition, dusty interior surfaces near windows and in the uninvent and
2 the vents, unlabeled ballasts, the presence of exterior caulking and glazing in poor
3 condition, and historic staining on light fixtures. The total score for interior caulking was
4 5.5 out of 10. The score for ballast was 1.5 out of 10. The total score for the exterior at
5 the school was 5.7 out of 10. Relative to the other schools assessed during this project,
6 the school scored 5th highest in the interior category, 8th highest in the exterior category,
7 and 5th overall. The elevated interior and exterior scores were mainly attributed to
8 quantity of glazing and caulking observed the poor condition of these materials, as well
9 as the accumulated dust on the interior of the building near the windows.

10 **Greendale School**-The April 19, 2011 investigation identified: a possible historic
11 stained fixture, dusty interior surfaces, uninvent and vents, the storage of materials in
12 close proximity to windows, and the presence of exterior caulking in fair condition. The
13 total score for the interior caulking was 0.6 out of 10. The score for the ballasts was 0.7
14 out of 10. The total score for the exterior was 4.9 out of 10. Relative to the other
15 schools assessed during this project, the school scored 23th in the interior category,
16 12th in the exterior category and 21st overall. The interior and exterior scores were
17 mainly attributed to the quantity of the glazing and caulking observed.

18 **Harlow Street School**-The April 19, 2011 investigation identified: small
19 quantities of caulking present in the interior, the presence of exterior caulking and
20 glazing in poor condition, and fragments of caulking and glazing on exterior ground
21 surfaces. The total score for the interior caulking was 0.1 out of 10. The score for the
22 ballasts was 0.2 out of 10. The total score for the exterior was 0.3 out of 10. Relative to
23 the other schools assessed, the school scored 28th in interior category, 1st in exterior

1 category and 16th overall. The elevated exterior score was mainly attributed to the poor
2 quality and quantity of glazing and caulking observed, as well as the pieces of these
3 materials identified on the ground.

4 **May Street School**-The April 20, 2011 investigation identified: the presence of
5 interior window glazing in poor condition, dusty interior surfaces, uninvent, and vents,
6 and the presence of exterior caulking and glazing in poor condition. The total score for
7 the interior caulking at the school was 1.4 out of 10. The score for the ballasts was 0.0
8 out of 10. The total score for the exterior was 3.4 out of 10. Relative to the other
9 schools assessed in the project, the school scored 22th in interior and 22th in exterior
10 categories and overall rank of 25th. The elevated interior and exterior scores were
11 mainly attributed to the quantity and quality of the glazing and caulking observed, as
12 well as the accumulated dust on the interior of the building.

13 **Francis McGrath Elementary School**-The March 8, 2011 investigation
14 identified: two leaking unlabeled ballasts that were removed on March 19, 2011, 21
15 unlabeled ballasts, more than 20 light fixtures with stains, the presence of interior
16 window glazing in moderate to poor condition, dusty interior surfaces, uninvent and
17 vents, the storage of materials in close proximity to ventilation system openings, the
18 presence of exterior caulking and glazing in poor condition, and fragments of caulking
19 and glazing on exterior ground surfaces. The total score for interior caulking at the
20 school was 2.5 out of 10. The score for the ballasts was 3.3 out of 10. The total score
21 for the exterior was 5.3 out of 10. Relative to the other schools assessed during this
22 project, the school scored 11th on the interior category, 10th on the exterior category,
23 and 10th overall. The elevated interior and exterior scores were attributed to the

1 quantity of glazing and caulking observed, the poor condition of those materials, the
2 unlabeled ballasts, the stained light fixtures as well as the accumulated dust and ballast
3 issues on the interior of the building.

4 **Mill Swan Head Start School**-The March 2, 2011 investigation identified: seven
5 suspected PCB ballasts, of which, two were leaking, the presence of interior window
6 glazing was found in fair to poor condition, dusty interior surfaces, uninvent; and vents,
7 the storage of materials in close proximity to ventilation openings, the presence of
8 exterior caulking; and glazing in fair to poor condition, and fragments of caulking and
9 glazing on exterior ground surfaces. The total score for interior caulking was 4.4 out of
10 10. The score for the ballasts was 0.9 out of 10. The total score for the exterior was 4.0
11 out of 10. Relative to the other schools assessed during this project, the school scored
12 13th in the interior category and 17th in the exterior category and 15th overall. The
13 interior and exterior scores were attributed to the poor condition of caulking materials in
14 some interior and exterior areas, accumulated dust on the interior of the building.

15 **Nelson Place Elementary School**-The April 22, 2011 investigation identified: a
16 stained light fixture from a previous ballast leak; the presence of interior window glazing
17 in poor condition; moderately dusty interior surfaces, uninvent and vents; the presence
18 of exterior caulking and glazing in poor condition; and fragments of caulking and glazing
19 on exterior ground surfaces. The total score for interior caulking was 4.1 out of 10. The
20 score for the ballasts was 0.1 out of 10. The total score for the exterior at the school
21 was 6.2 out of 10. Relative to the other schools assessed during this project, the school
22 scored 16th in the interior category, 6th in the exterior category and 12th overall. The
23 elevated interior and exterior scores were attributed to the quantity of glazing and

1 caulking observed, the poor condition of these materials, the accumulated dust on the
2 interior of the building, and the pieces of caulking and glazing identified on the grounds
3 outside of the building.

4 **[Caradonio] New Citizens Center**-The March 16, 2011 investigation Identified:
5 the presence of interior window glazing in poor condition, dusty interior surfaces,
6 uninvent; and vents, and the presence of exterior caulking and glazing in poor condition.
7 The total score for the interior caulking was 5 out of 10. The score for the ballasts was
8 1.8 out of 10. The total score for the exterior was 3.1 out of 10. Relative to the other
9 schools assessed during this project, the school scored 7th in the interior category, 23th
10 in the exterior category and 13th overall. The elevated interior and exterior scores were
11 attributed to the quantity of glazing and caulking observed, the poor condition of those
12 materials, as well as the quantity of stained florescent light fixtures.

13 **Rice Square Elementary School**-The April 20, 2011 investigation identified: the
14 presence of interior window gaskets in fair condition, exterior caulking around the
15 windows in fair condition; dusty interior surfaces and vents, the storage of materials,
16 and the presence of stained florescent light fixtures. The elevated interior score was
17 attributed to the presence of stained florescent light fixtures. The total score for interior
18 caulking was 2.7 out of 10. The score for the ballasts was 3.6 out of 10. The total score
19 for the exterior was 4.5 out of 10. Relative to the other schools assessed, the school
20 scored 8th in interior and 12th in exterior category while scoring 8th overall. The elevated
21 interior score were attributed due to the presence of stained florescent light fixtures.

22 **South High Community School**-The March 23, 2011 investigation identified: a
23 leaking, suspected PCB ballast, fixtures with historic stains, unlabeled ballasts, dusty

1 interior surfaces, univent and vents, the storage of materials in close proximity to
2 window glazing and dust, and the presence of exterior caulking and glazing in poor
3 condition. The total score for interior caulking was 2.8 out of 10. The score for the
4 ballasts was 0.9 out of 10. The total score for the exterior was 2.1 out of 10. Relative
5 to the other schools assessed during this project, the school scored 18th in the interior
6 category, 26th in the exterior category and 22nd overall. The elevated interior and
7 exterior scores were attributed to the quantity of glazing and caulking observed, the
8 poor condition of those materials, as well as the presence of unlabeled ballasts, stained
9 fixtures and accumulated dust on the interior of the building.

10 **Tatnuck Magnet School**-The April 20, 2011 investigation identified: the
11 presence of interior window glazing in poor condition, dusty interior surfaces, univent
12 and vents, the storage of materials in close proximity to window glazing and dust, and
13 the presence of exterior caulking and glazing in poor condition. The total score for the
14 interior caulking was 5.2 out of 10. The score for the ballasts was 0.0 out of 10. The
15 total score for the exterior was 6.5 out of 10. Relative to the other schools assessed,
16 the school scored 14th in the interior category, 4th in the exterior category and 7th overall.
17 The elevated interior and exterior scores were attributed to the quantity of glazing and
18 caulking observed, the poor condition of those materials, as well as the accumulated
19 dust on the interior of the building.

20 **Thorndyke Road School**-The April 20 and 22, 2011 investigation identified:
21 historic stains on numerous fixtures, the presence of interior window glazing in poor
22 condition, dusty interior surfaces, univent and vents, the presence of exterior caulking
23 and glazing in poor condition, and fragments of caulking and glazing on exterior ground

1 surfaces. The total score for the interior caulking was 7.5 out of 10. The score for the
2 ballasts was 3.9 out of 10. The total score for the exterior was 6.6 out of 10. Relative to
3 the other schools assessed during the project, the school scored 1st in the interior
4 category, 3rd in the exterior category and 1st overall. The elevated interior and exterior
5 scores were mainly attributed to the quantity of glazing and caulking observed
6 throughout the school, the poor condition of those materials, the presence of caulking or
7 glazing on the ground, as well as the accumulated dust, and historic stains on fixtures in
8 the interior of the building.

9 **Union Hill School**-The March 3, 2011 investigation identified: a leaking
10 unlabeled ballast, the presence of stains on fixtures attributed to past ballasts, the
11 presence of interior window glazing in poor condition, dusty interior surfaces and vents,
12 the storage of materials in close proximity to window glazing and dust, the presence of
13 exterior caulking and glazing in poor condition, and fragments of caulking and glazing
14 on interior surfaces and exterior ground surfaces, The total score for the interior
15 caulking was 5.3 out of 10. The score for the ballast was 1.1 out of 10. The total score
16 for the exterior was 5.6 out of 10. Relative to the other schools assessed during this
17 project, the Union Hill School scored 9th highest in interior categories, 9th highest in the
18 exterior category, and 6th overall. The elevated interior and exterior scores were mainly
19 attributed to the quantity of glazing and caulking observed, the poor condition of those
20 materials, as well as the accumulated dust on the interior of the building.

21 **Wawecus Elementary School**-The March 14, 2011 investigation identified: the
22 presence of interior window glazing in poor condition, dusty interior surfaces, uninvent
23 and vents, the storage of materials in close proximity to window glazing and dust, the

1 presence of exterior caulking and glazing in poor condition, and fragments of caulking
2 and glazing missing from exterior surfaces. The total score for interior caulking was 0.5
3 out of 10. The score for ballasts was 0.2 out of 10. The total score for the exterior was
4 4.7 out of 10. Relative to the other schools assessed during this project, the school
5 scored 27th highest in the interior category, 14th highest in the exterior category and 24th
6 overall. The exterior score was attributed to the quantity of glazing and caulking
7 observed and the poor condition of those materials.

8 **West Tatnuck School**-The March 9, 2011 investigation identified: unlabeled
9 ballasts potential[ly] containing PCBs, numerous fixtures with stains on the internal
10 components, the presence of interior window glazing in poor condition, dusty interior
11 surfaces in close proximity to deteriorated window glazing and dust, the presence of
12 exterior caulking and glazing in poor condition, and fragments of caulking and glazing
13 on the ground. The total score for the interior caulking was 5.4 out of 10. The score for
14 the ballasts was 3.5 out of 10. The total score for the exterior was 6.0 out of 10.
15 Relative to the other schools assessed during this project, the West Tatnuck School
16 scored 3rd highest in the interior categories and 7th highest in the exterior category, and
17 3rd highest overall. The elevated interior and exterior scores were attributed to the
18 quantity of glazing and caulking observed, the poor condition of those materials, as well
19 as the accumulated dust on the interior of the building; and the stained light fixtures
20 observed throughout the school.

21 **Worcester Arts Magnet**-The March 10, 2011 investigation identified: a leaking
22 suspected PCB ballast, the presence of interior window glazing in poor condition, dusty
23 interior surfaces, uninvent and vents, the storage of materials in close proximity to

1 window glazing and dust, the presence of exterior caulking and glazing in poor
2 condition, and fragments of caulking and glazing on exterior ground surfaces. The total
3 score for the interior caulking was 4.6 out of 10. The score for ballast was 1.3 out of 10.
4 The total score for the exterior was 5.2 out of 10. Relative to the other schools
5 assessed, the school ranked 10th for the total interior score, 11th for the exterior score
6 and 9th overall. The elevated interior and exterior scores were attributed to the quantity
7 of glazing and caulking observed, the poor condition of those materials, the number of
8 stained ballasts, as well as the accumulated dust on the interior of the building.

9 **Worcester East Middle School**-The April 21 and 22, 2011 investigation
10 identified: the presence of unlabeled ballasts, the presence of fixtures containing historic
11 stains, the presence of interior window glazing in poor condition, dusty interior surfaces
12 and vents, blocked ventilation openings, the presence of exterior caulking and glazing in
13 poor condition, and fragments of caulking and glazing on exterior ground surfaces. The
14 total score for interior caulking was 5.1 out of 10. The score for ballast was 0.4 out of
15 10. The total score for the exterior was 4.5 out of 10. Relative to the other schools
16 assessed during this project, the school scored 12th in the interior category, 15th in the
17 exterior category, and 14th overall. The elevated interior and exterior scores were
18 mainly attributed to the quantity of glazing and caulking observed, the poor condition of
19 those materials, the accumulated dust on the interior of the building and the presence of
20 unlabeled ballasts and stained fixtures.

21 As part of the July 7, 2011 Building Materials Inventory Reports, Triumvirate also
22 made the following recommendations to mitigate the possible exposure of students and
23 staff to potential PCB containing building materials:

- 1 a) Pieces of caulking and glazing on the ground around school buildings
2 should be picked up; impervious surfaces (concrete and asphalt) should
3 be cleaned with a HEPA filter equipped vacuum, and all waste generated
4 should be managed in accordance with EPA regulations.
5
- 6 b) Unlabeled ballasts should be replaced with new ballasts. Licensed
7 electricians should be hired to replace the ballasts and containerize the
8 unlabeled ballasts for disposal.
9
- 10 c) If dust was observed throughout a building adjacent to windows with
11 glazing in poor condition, a HEPA filter equipped vacuum should be used
12 to remove dust from horizontal surfaces. Areas such as the tops and
13 troughs of operating window frames, under radiators, window shades and
14 blinds, etc. should be cleaned. The interior of univents, radiators and
15 accessible portions of vents should also be cleaned. The work should be
16 conducted by trained personnel using appropriate personnel protective
17 equipment.
18
- 19 d) Materials and furniture obstructing air vent grates and the top and base of
20 univents should be removed to a minimum distance of approximately six
21 inches.
22
- 23 e) Where degraded window glazing and caulking were observed on the
24 exterior of the building, replacement of the degraded materials should be
25 prioritized in areas of frequent use by school occupants including above
26 and within ten feet of entrances and playground areas.
27
- 28 f) Alternatively, restricting contact and access to these materials would
29 reduce the potential for exposures and minimize further weathering or
30 migration of degraded material. Caulking and glazing below six feet
31 should have any loose material removed and cleaned. Firmly attached
32 glazing will remain in place for containment with a barrier coating. Temco
33 600 Silicone Sealant or equivalent of an epoxy barrier coat could be
34 applied to glazing, caulking and adjacent porous surfaces within two feet
35 of caulking.
36
- 37 g) Conduct annual interior building inspections of: seals applied to windows,
38 dust accumulation on horizontal surfaces, caulking for deterioration and
39 signs of exposure, HVAC and vent grates for dust accumulation in vents
40 and filters and to maintain clearance of obstructions.
41
- 42 h) Conduct annual exterior building inspections of: windows, which include
43 noting the condition of applied sealant covering window glazing, and
44 caulking for deterioration and signs of exposure.
45

- 1 i) Inspect the ground within ten feet of the buildings two times per year,
2 which includes prior to the commencement of classes and prior to spring,
3 for caulking and glazing fragments and inspect the condition of caulking
4 and grazing and note the need for any repairs.

5 Triumvirate also commented that:

6 Subsequent to implementation and completion of the... recommendations,
7 an evaluation for the need to conduct surface and or indoor air sampling
8 and analysis will be conducted. If sampling is appropriate, a plan should
9 be prepared detailing the collection of representative samples for
10 laboratory analysis of PCBs. The sampling procedures and evaluation of
11 results should be conducted in accordance with EPA guidance and
12 industry best management practices.

13 Finally, Triumvirate attached the following appendixes for each school to its reports: A)
14 An aerial photograph and a floor plan, b) City assessor's information, c) site
15 photographs, d) summary table of interior observations, e) summary table of exterior
16 observations, f) EPA guidance documents and fact sheets, and g) a statement of
17 limitations and exceptions.

18 On or about July 7, 2011, Triumvirate drafted a Task by School List that ranked
19 the twenty-seven schools based upon their overall scores in the Building Materials
20 Reports with the Thorndyke School designated as number one. In its Task by School
21 List, Triumvirate also broke down into various tasks the recommendations that it had
22 made for each school to mitigate the possible exposure of students and staff to potential
23 PCB containing building materials.

24 Also, on or about July 7, 2011, the Employer drafted a Plan by Priority and
25 Funding Year (Priority Plan) that incorporated Triumvirate's Task by School List into a
26 five year plan, which assigned the recommendations numbers from one to five that
27 represented the years in which the Employer planned to complete a particular task at
28 each school. The Planned Prioritization List also estimated the proposed cost to

1 complete each task with a total cost of approximately \$1.3 million. The Employer
2 proposed first to remove all leaking, unlabeled ballasts and stained fixtures during the
3 summer of 2011. The Employer then planned to remove all to remove all unlabeled
4 ballasts from the various schools. Finally, the Employer intended to complete all tasks
5 that were designated as ones or twos on the Priority Plan by the close of summer 2012.
6 The Employer also planned to complete by the end of summer 2012, those tasks on its
7 Priority Plan that it had designated for its school staff to perform without the need to hire
8 outside vendors, which included the clearing of vent grates and the removal of interior
9 dust. The Employer would complete the remaining tasks, so many per year, in the
10 ensuing four years.

11 On August 4, 2011, the Employer's representatives, Allen and Bedard, the EPA
12 representatives Chow and Tisa and the Triumvirate representative Hartman participated
13 in a conference regarding the July 7, 2011 Building Materials Inventory Reports, the
14 recommendations therein, and the Employer's plans to adhere to those
15 recommendations.

16 Later on August 4, 2011 at 2:49 PM, Allen sent an email to Chow entitled "EPA
17 Conference Call Follow-Up" that stated in pertinent part:

18 Thank you for today's conference call and continued partnership with the
19 Worcester Public Schools.

20
21 As Ross Hartman, from Triumvirate, stated, all of the reports are complete
22 to include an executive summary, description of the school, methodology
23 of assessment, summary of findings, a building score assessment, and
24 corrective actions and recommendations by each school. Ross will
25 provide these reports to you in electronic form next week along with a
26 hardcopy of one of the 29 school reports.

27
28 The district will work to establish a phased approach to address the
29 recommendations provided to us by Triumvirate. Given the scale and

1 scope of these recommendations, we proposed a 5-year timetable around
2 this phased approach. We acknowledge that you were not in a position to
3 agree or disagree with this specific timeframe, but we appreciate your
4 understanding of the work that is involved for the district. However, we all
5 agreed that from the priority list, we will address the unlabeled ballasts first
6 and quickly. We will work on both the removal and replacement end of
7 this project; that is removing the ballasts and replacing them through an
8 energy-savings program or other method.

9
10 We sincerely appreciate your statement of support for the approach and
11 actions taken by the district thus far. We look forward to our continued
12 partnership moving forward.

13 A little more than one hour later, Chow replied via email stating in pertinent part:

14 As I mentioned today, we will do our best to give you quick feedback as
15 we review the reports. You noted that addressing unlabeled ballasts are a
16 top priority, and I agree. Because of their age, the potential for these
17 ballasts to fail and release PCBs is significant. I would not wait for our
18 review of the reports to implement this effort if you are ready to move
19 forward soon.

20
21 Also, after speaking with both Kim and Kate [Woodward] this afternoon, I
22 have decided to assign Kate as the technical lead for reviewing the
23 reports, providing feedback and working with you and Triumvirate on next
24 steps.

25 On August 29, 2011, Chow sent an email message to Allen stating in pertinent part:

26 Kate and I have reviewed the report that Triumvirate provided on the
27 McGrath Elem School. We'd like to find some time to have a call to
28 discuss our initial thoughts with you and Triumvirate.

29
30 The focus of our discussion would be on your interim plans and next steps
31 for the schools, including strategies for removal of unlabeled ballasts,
32 caulk/glazing containment, and other activities.

33
34 Also, if you have a summary chart showing all of the schools and their
35 rank order using [the] Triumvirate scoring matrix that you can send us that
36 might be helpful.

37
38 Kate and I are available this week. Wed am and Thurs any time would be
39 best. If not this week, Wed. 9/7 is open.

1 The Employer and the EPA subsequently participated in a conference call on
2 Thursday, September 1, 2011 about the Employer's efforts to comply with
3 Triumvirate's recommendations. On Friday, September 9, 2011, Chow sent an
4 email message to Allen that stated in pertinent part:

5 Thanks again for your time on Sept. 1. As we've discussed, Worcester
6 took steps to remove leaking unlabeled ballasts and associated stained
7 fixtures this summer. Moving forward, the school district plans to remove
8 and replace intact unlabeled ballasts as part of an energy update program.
9 The district also plans to implement many of the best management
10 practices recommended by EPA's PCB program, such as cleaning out
11 accumulated dust in HVAC systems, reinforcing good hygiene and
12 housekeeping procedures, and optimizing air circulation and ventilation
13 systems in your schools. All of these steps will help to reduce potential
14 exposures to PCBs in your schools. These efforts are also being done
15 within the framework of the district's overall environmental management
16 system.

17
18 Additional steps that Worcester should consider include conducting indoor
19 air testing if there are significant concerns about the presence of PCBs. If
20 you or your team want to discuss this option, please let us know.

21
22 In the meantime, EPA will continue to review the survey reports that were
23 prepared on behalf of the school district by Triumvirate. We will plan to
24 touch base with you sometime in the next few months to share any
25 additional comments that we have and to inquire on the status of your
26 activities. If you need our assistance sooner, please don't hesitate to
27 contact Kate Woodward at ____.

28
29 As a reminder, please send us a rank order list of the schools assessed by
30 Triumvirate so we can know which school reports to review first and a
31 schedule for activities the district plans to take in the future.

32 Approximately, two and one-half hours later, Allen replied via email by stating that:

33 Attached [are] the two documents that you have requested.

34
35 The first is the task priority by school as prepared by Triumvirate. The
36 second document is the planned schedule by year (sorted by task priority).
37 The intent is to address all equal priorities throughout the district at the
38 same time rather than addressing building by building.

39

1 Please review the attached documents and if an additional conference call
2 i[s] needed, please let us know.

3 In December 2011, Allen made a PowerPoint presentation about the EMS to the
4 School Committee in open session. As part of the presentation, Allen noted that the
5 Employer had engaged Triumvirate to conduct a "comprehensive facilities" assessment
6 for twenty-nine school buildings. He also emphasized that the Employer had worked
7 cooperatively with the EPA throughout the assessment process and that the Employer
8 had developed interim and long-term steps. The interim steps were Triumvirate's
9 recommendations. The long-term steps were the Employer's application to the
10 Massachusetts School Building Authority for funding to assist the Employer with the
11 cost of replacing the windows at three of the schools, the Chandler Magnet School, the
12 Caradonio New Citizens Center and the May Street School. The School Committee
13 also discussed the possibility of using \$975,000 in savings from a new electricity
14 contract⁵⁴ to accelerate and accomplish in Spring/Summer 2012 the entire five-year
15 Priority Plan.⁵⁵ Sireci on behalf of the Union addressed the School Committee in
16 support of using the \$975,000 to accelerate the Priority Plan. Ultimately, the School
17 Committee voted in favor of earmarking the \$975,000 as part of the FY13 budget to pay
18 the costs of completing the five-year plan in one year.⁵⁶

⁵⁴ As the result of a reverse auction, the Employer entered into an energy renewal contract with Honeywell, which guaranteed annual savings to the Employer.

⁵⁵ The School Committee previously had asked Allen as CFOO to investigate possible funding sources that could be used to accelerate the five-year Priority Plan.

⁵⁶ It was unprecedented for the School Committee to agree nearly six months in advance to commit funds for a particular purpose in the next fiscal budget.

1 In February 2012, Allen made a PowerPoint Presentation to a Joint Meeting of
2 the School Committee's Finance & Operations Subcommittee and the City Council's
3 Education Committee. The purpose of the meeting was to discuss the Employer's
4 earmarking of the \$975,000 in the FY13 budget, which the City Council would need to
5 approve when it voted on the entire proposed FY13 municipal budget, as well as to
6 discuss the Employer's long-term funding needs. The PowerPoint presentation
7 provided an overview of: the status of the Employer's buildings,⁵⁷ ongoing and recently
8 completed rehabilitation projects, energy savings projects, environmental management,
9 including Triumvirate's assessments and recommendations concerning PCBs in
10 building materials, its proposed use of \$975,000 in energy savings to accelerate the
11 five-year Priority Plan, and the statement of interest requests that the Employer had
12 filed seeking funds for replacement and renovation of certain buildings as well as the
13 replacement of windows and/or boilers at certain schools. The Employer also indicated
14 that its goal was to improve the facilities infrastructure of its schools.

15 Spring/Summer 2012

16 During the spring/summer 2012, outside vendors, whom Triumvirate assisted the
17 Employer in hiring, completed the outstanding tasks from the five-year Priority Plan,
18 which included the application of sealant to interior glazing and the application of
19 sealant to exterior glazing and caulking to a height of eight to ten feet. In fall 2012,
20 Triumvirate re-investigated the schools that were the subjects of its July 7, 2011
21 Building Inventory Reports in order to assess potential PCB-containing building
22 materials. Triumvirate was expected to make recommendations in late winter, early

⁵⁷ The average age of the Employer's buildings was seventy years.

1 spring 2013 about additional remedial efforts that the Employer could undertake to
2 reduce the possible exposure of students and staff to those building materials. As of
3 the final date of hearing, the Employer had not tested for PCBs in any of its schools with
4 the exception of the now demolished North H.S and had not allowed the EAW access to
5 any of its premises to conduct testing.

6 Employer's Expert Witness

7 Okun earned a bachelor's degree in chemistry and a master's degree in
8 toxicology. He previously worked at the University of Hawaii, where he developed a test
9 for the presence of PCBs in mineral and transformer oils. He then worked for the EPA
10 for three years in the Office of Pesticides and Toxic Substances. He subsequently
11 became a licensed site professional (LSP) under M.G.L.c.21E, commonly referred to as
12 the state Superfund Law. As an LSP, he is qualified to oversee the clean up of sites
13 contaminated with chemicals, asbestos and PCBs. He is a founding partner in the
14 environmental consulting firm of O'Reilly, Talbot, Okun and Associates, which has
15 overseen the cleanup of the former Monsanto Plant in Everett, a building at Salem State
16 University and land at the University of Massachusetts-Boston. The Employer hired his
17 firm in 2012 to review Triumvirate's Inspection Reports, but Okun and his firm had no
18 involvement with the Employer in the period from 2008 through 2010 when the EAW
19 requested access to the Employer's premises to take caulking samples. Based on his
20 education and experience, I designated Okun as an expert witness and found his
21 testimony useful concerning the history of the regulation of PCBs.

22 He testified that the EPA promulgates regulations concerning PCBs pursuant to
23 the TSCA, 15 U.S.C. §2601 et. seq. that was enacted in 1976. Prior to 1998, PCBs that

1 were being used in building materials or light fixtures could remain in service, but when
2 they were taken out of service, they needed to be disposed of properly. In 1998, the
3 EPA promulgated the so-called Mega Rule that, in part, required the removal of building
4 materials that contained PCBs in concentrations greater than 50 ppm. However, neither
5 TSCA nor the EPA's regulations require a building owner to test for PCBs. Also,
6 according to Okun, no state laws speak to the issue of PCBs in buildings.

7 Okun opined that there was a regulatory overreaction to PCBs and claimed that
8 there was a difference between the public perception of the risk of adverse health
9 effects from exposure to PCBs and the actual risks from such exposure. He
10 acknowledged that PCBs were a known carcinogen to rats, as studies had shown that a
11 certain species of rats developed greater instances of non-metastatic liver cancer after
12 exposure to PCBs. However, he contended that the EPA characterized PCBs as a
13 "probable" carcinogen to humans because the results of studies claiming to show a link
14 between PCB exposure and cancer in humans were not scientifically rigorous enough
15 as the results were not able to be consistently duplicated. He claimed that the only
16 effects that workers, who had skin and inhalation exposure to PCBs, while working at
17 transformer and capacitor plants where PCBs were used as coolants, developed were
18 chloracne, fingernail effects and increased liver function, which could also result from
19 the consumption of alcohol. He noted that the employees' chloracne cleared up several
20 months after their exposure to PCBs ended.

21 He testified that he would not recommend that the Employer test the caulking in
22 its schools for PCBs but acknowledged that such testing was the only way to ascertain
23 whether caulking or any other building materials contained PCBs. He also described

1 how the Westport Public Schools (Westport) had spent over three million dollars in an
2 unsuccessful attempt to remove PCBs from one of its schools. Ultimately, Westport had
3 to demolish the building.

4 Opinion

5 If a public employer possesses information that is relevant and reasonably
6 necessary to an employee organization in the performance of its duties as the exclusive
7 collective bargaining representative, the employer is generally obligated to provide the
8 information upon the employee organization's request. Higher Education Coordinating
9 Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's
10 right to receive relevant and reasonably necessary information is derived from the
11 statutory obligation to engage in good faith collective bargaining, including both
12 grievance processing and contract administration. Boston School Committee, 10 MLC
13 1501, 1513, MUP-4468 (April 17, 1984). The Commonwealth Employment Relations
14 Board's (CERB) standard in determining whether the information requested by an
15 employee organization is relevant is a liberal one similar to the standard for determining
16 relevancy in civil litigation proceedings. Board of Higher Education, 26 MLC 91, 92,
17 SUP-4509 (January 11, 2000); Board of Trustees, University of Massachusetts
18 (Amherst), 8 MLC 1139, 1141, SUP-2306 (June 24, 1981). Information about terms and
19 conditions of employment of bargaining unit members is presumptively relevant and
20 necessary to an employee organization to perform its statutory duties. City of Lynn, 27
21 MLC 60, 61, MUP-2236, 2237 (December 1, 2000). The relevance of the requested
22 information must be determined by the circumstances that existed at the time when the
23 exclusive bargaining representative made the request.

1 Once a union has established that the requested information is relevant and
2 reasonably necessary to its duties as the exclusive representative, the burden shifts to
3 the employer to establish that it has legitimate and substantial concerns about
4 disclosure, and that it has made reasonable efforts to provide the union with as much of
5 the requested information as possible. Board of Higher Education, 26 MLC at 93 (citing
6 Boston School Committee, 13 MLC 1290, 1294-1295, MUP-5905 (November 2, 1986));
7 Adrian Advertising a/k/a Advanced Advertising, 13 MLC 1233, 1263, UP-2497
8 (November 6, 1986), aff'd sub nom., Despres v. Labor Relations Commission, 25 Mass.
9 App. Ct. 430 (1988). If an employer advances legitimate and substantial concerns
10 about the disclosure of information to a union, the CERB will examine the facts
11 contained in the record. Boston School Committee, 13 MLC at 1295. The employer's
12 concerns are then balanced against an employee organization's need for the
13 information. Commonwealth of Massachusetts, Chief Administrative Justice of the Trial
14 Court, 11 MLC 1440, 1443-1444, SUP-2746 (February 21, 1985) (adopting the
15 balancing approach used by the United States Supreme Court in Detroit Edison C. v.
16 NLRB, 440 U.S. 301, 100 LRRM 2728 (1979)). Absent a showing of great likelihood of
17 harm flowing from disclosure, however, the requirement that a bargaining representative
18 be furnished with relevant information necessary to carry out its duties overcomes any
19 claim of confidentiality. Greater Lawrence Sanitary District, 28 MLC 317, 318-319, MUP-
20 2581 (April 19, 2002).

21 EAW's Access Request

22 The National Labor Relations Board (NLRB) previously has decided that the
23 duty to furnish relevant and reasonably necessary information encompasses a request

1 for access to an employer's worksite by union experts for the purpose of conducting
2 technical studies. Holyoke Water Power Co., 273 NLRB 1369, 1370 (1985), enf'd 778
3 F.2d 49 (1st Cir. 1985), cert. denied 477 U.S. 905 (1986). Here, the EAW president
4 DelSignore sent a letter on February 25, 2010 requesting that the Employer allow
5 access to representatives from an environmental consulting firm (environmental expert)
6 that the EAW had hired in order to take exterior caulking samples at Burncoat H.S.,
7 Doherty H.S. and the former North H.S. and to test those caulking samples for the
8 presence of PCBs. As a preliminary matter, I must determine whether the access
9 requested was relevant and reasonably necessary for the EAW to execute its duties as
10 the exclusive bargaining representative. It is undisputed that matters affecting the
11 safety and health of bargaining unit members are mandatory subjects of bargaining and
12 are included within a union's representation duties. See e.g. Town of Bridgewater, 12
13 MLC 1612, 1615, 1617, MUP-5356 (February 7, 1986).

14 The Employer argues that I must determine whether human exposure to PCBs
15 constitutes a health risk in order to determine whether the access requested is relevant
16 and reasonably necessary. Relying on the testimony of its expert witness Okun, the
17 Employer argues that no reproducible scientific studies have demonstrated that PCBs
18 pose a health risk to humans. The Employer posits that because PCBs do not pose a
19 hazard to the well-being of EAW unit members, the EAW does not need access to the
20 three schools to have its environmental expert take caulking samples and analyze those
21 samples for the presence of PCBs. Conversely, the EAW cites as grounds for its
22 access request that the three schools were built during the time period that PCBs were

1 present in building materials, including caulking, and that the EPA in its publications has
2 described PCBs as a “probable carcinogen” to humans.

3 However, I need not determine whether PCBs pose a health hazard to humans,
4 nor do I need to reconcile the differences between Sireci’s and Okun’s testimony on this
5 issue in order to determine whether the EAW’s request for access to obtain test
6 samples is relevant and reasonably necessary to its role as bargaining representative.
7 Here, the EAW was aware that EPA regulations required the removal of caulking that
8 contained a concentration of PCBs greater than 50 ppm and references those
9 regulations in its request for access.⁵⁸ It was relevant and reasonably necessary for the
10 EAW to seek access to the three schools for PCB testing to ascertain whether its unit
11 members’ workplaces actually contained caulking that would need to be removed and to
12 request bargaining over the impacts of the caulking removal on unit members’ terms
13 and conditions of employment, including their health and safety.

14 The Employer also argues that the EAW requested access to test because of
15 Sireci’s own attention to environmental health issues, including his interest in
16 participating in Herrick’s study on PCBs, rather than because unit members raised any
17 health or safety concerns about PCBs to the EAW. Contrary to the Employer’s claims,
18 certain teachers at Burncoat H.S. came to the EAW on or about June 2009 with
19 concerns about the number of unit members at that school who were diagnosed with
20 cancer. As part of its duties as the exclusive representative, the EAW acted on those
21 members’ health and safety concerns when DelSignore made the access request about
22 seven months later.

⁵⁸DelSignore quoted the EPA regulations in her February 26, 2010 request for access.

1 Additionally, the Employer also argues that even if the EAW's access request
2 was relevant, it was not necessary for the environmental expert to take caulking
3 samples at the three schools because Sireci already had taken caulking samples from
4 the three schools and submitted those samples for analysis. However, on several
5 occasions, the Employer had challenged the origin of those samples as well as whether
6 the chain of custody was adhered to when those samples were submitted for testing.
7 Because of the Employer's stated concerns about the authenticity of the samples, the
8 EAW's environmental experts needed access to the three schools in order to take new
9 samples and then test them for the presence of PCBs. Thus, the access requested is
10 relevant and reasonably necessary to the EAW in its role as exclusive bargaining
11 representative.

12 Access Standard

13 The EAW urges me to apply the DLR's traditional standard in information cases,
14 which is described above. The Employer argues that I should adhere to the NLRB's
15 balancing test first enunciated in Holyoke Water and Power that weighs a union's
16 interest in obtaining access against an employer's interest in controlling its property and
17 operations. See also, Caterpillar, Inc., 361 NLRB No.77 (2014). While weighing the
18 Employer's property interests, the following factors are often considered: a) the
19 availability of alternative means to the union to obtain information other than through
20 access to an employer's premises; b) the nature of the employer's operation; c) the
21 impact of access on production and discipline; d) the extent to which nonemployees are
22 permitted to enter on private property; e) the nature of the information sought as a result
23 of the access request; and f) the location on the property where the exercise of the

1 protected property will occur. See Hercules, Inc., 281 NLRB 961, 970 (1986).
2 However, it is an employer's obligation to demonstrate those factors that would support
3 a conclusion that its property interest is paramount to the union's right of access. Id.

4 The United States Court of Appeals for the First Circuit (First Circuit) enforced
5 the NLRB's order in Holyoke Power without endorsing the balancing of the employer's
6 property rights against the union's right to access. NLRB V. Holyoke Water Power Co.,
7 778 F.2d 49, 53 (1985). As is the case here, the First Circuit noted that the choice
8 between balancing a union's interest in obtaining access against either an employer's
9 interest in protecting its property under the Holyoke Power test, or an employer's
10 legitimate and substantial concerns under the traditional information case standard, was
11 not particularly crucial to the outcome of the case. Id.; see also, City of Boston, 21 MLC
12 1113, 1120, MUP-9048 (H.O. July 29, 1994).⁵⁹ I examine below the Employer's stated
13 reasons, some of which it characterizes as concerns and others as its property
14 interests, for denying the EAW's access request. Upon balance, the EAW's interest in
15 obtaining access to the three schools to gather information that it needs to effectively
16 represent its employees outweighs the Employer's interest in preventing the EAW's
17 environmental consultant from taking caulk samples at the three schools.

18 Intact Caulking Should Not Be Disturbed

19 First, the Employer contends that it denied the EAW's environmental expert
20 access because of concerns that taking caulking samples would be contrary to

⁵⁹ As I need not choose between the Holyoke Power test and the traditional information standard, I need not reach the issue of whether a public employer, such as the Employer here, has the same property rights as a private employer. However, it is undisputed that the Employer has an interest in controlling its schools and their operations.

1 information contained in the December 2009 MDPH Information Booklet. Specifically,
2 the Employer points out the MDPH Information Booklet noted that intact caulking should
3 not be disturbed because it did not present appreciable exposure opportunities.
4 However, there were differences of opinion as to whether the caulking at Burncoat H.S.,
5 Doherty H.S. and the former North H.S. actually was intact. In July 2009, when Tighe
6 and Bond reviewed the caulking at the former North H.S. in preparation for its
7 demolition, the environmental engineering firm described the caulking there as in good
8 condition. In January 27, 2010, UEC described the condition of the caulking at Doherty
9 H.S. as good with minor cracking and the condition of the caulking at the former North
10 H.S. as good. However, UEC described the caulking at Burncoat H.S. as damaged,
11 falling or missing at various locations and recommended that such damaged caulking
12 be tested for PCBs. In June 2010, Sireci took photographs of some of the caulking at
13 the three schools, those photographs showed missing pieces of caulking and cracked
14 and frayed caulking. At minimum, the EAW's environmental expert needs access to
15 assess the condition of the caulking at Doherty H.S. and Burncoat H.S. Cf. City of
16 Boston, 22 MLC 1698, 1707, MUP-9605 (April 26, 1996) (finding that union need not
17 rely on the employer's conclusion that requested information is not relevant but should
18 have the opportunity to make its own determination).

19 Next, the Employer argues that allowing the EAW's environmental expert access
20 could disrupt the Employer's comprehensive remediation plan to address the issue of
21 PCBs in all affected schools using savings from the energy renewal contract and
22 possible funds from the Massachusetts School Building Authority. Instead, the
23 Employer contends that allowing the EAW's access request potentially would require

1 the Employer to focus its remediation efforts on Burncoat H.S. and Doherty H.S. rather
2 than on other schools. However, the mere possibility that the findings of EAW's
3 environmental expert could alter the time line of the Employer's remediation efforts does
4 not override the EAW's right to access the Employer's schools. See Commonwealth of
5 Massachusetts, 11 MLC 1440, 1443-1444, SUP-2746 (February 21, 1985) (rather than
6 merely articulating concerns about the disclosure of information, an employer must
7 provide evidence in support of its contentions); Board of Higher Education, 29 MLC 169,
8 1717, SUP-4612 (March 6, 2003) (same).

9 Third, the Employer argues that the EAW previously has represented its unit
10 members effectively concerning the issue of PCBs without the need to invade the
11 Employer's property rights. The EAW has engaged in picketing at Burncoat H.S. and
12 Doherty H.S. and has spoken at School Committee meetings to raise public awareness.
13 In response to the EAW's efforts, the Employer has undertaken and committed monies
14 to remediation efforts. While the EAW has been successful in making the remediation
15 of PCBs a priority for the Employer, it still has an obligation to its members to determine
16 whether caulking at Burncoat H.S. and Doherty H.S. contain PCBs at concentrations
17 greater than 50 ppm, which would necessitate removal under EPA regulations. The
18 Employer's own expert Okun confirmed that testing is the only means by which the
19 presence and concentration level of PCBs can be determined. It is an employer's
20 burden to show that there are alternate means other than access that would satisfy a
21 union's need for information. Nestle Purina Petcare Company, 347 NLRB 891, 893-894
22 (2006). The Employer cannot meet that burden here because there is no alternative to

1 testing that would provide the type of information that the EAW needs to effectively
2 represent its unit members.

3 Next, the Employer contends that the matter is moot because, as was discussed
4 above, the EAW already has the results from March 2009 samples that Weymouth took
5 and the April 2009 samples that Sireci and Weymouth took and that the EAW has
6 satisfied its duties as the exclusive representative by focusing attention on the issue of
7 PCBs. Generally, a case is not moot as long as there is a real and existing controversy,
8 calling for a present adjudication involving present rights, for which specific relief is
9 sought that may be granted. Commonwealth of Massachusetts, 12 MLC 1590, 1595,
10 SUP-2619. 2638 (January 31, 1986); see also Caterpillar Inc. v. N.L.R.B., 893 F.3d 360
11 (2015) (refusing access to a union safety expert after a fatal accident was not mooted
12 by the passage of time because of the possibility of similar refusals in the future). In the
13 present case, there is a live controversy because the Employer still has actually refused
14 to provide access to the EAW's expert.

15 Also, the Employer argues that the EAW's own "unclean hands" precludes it from
16 asserting that the Employer failed to bargain in good faith by refusing the EAW's access
17 request. The Employer contends that the EAW acted in bad faith when it made its
18 earlier requests for access because the Employer never received the verification that it
19 had requested about Herrick's study. Also, the Employer asserted that Weymouth and
20 Sireci had exercised self-help when they took the caulking samples in 2009, and those
21 samples were never returned to the Employer. As a preliminary matter, I note that
22 record before me does not show that either Herrick or Weymouth were agents of the
23 EAW and, thus, their actions are not attributable to the EAW. Also, Sireci testified about

1 his belief, probably mistaken but not irrational, that he had tacit approval to access the
2 Employer's four schools for testing. Thus, none of the conduct that the Employer cites
3 to supports a claim of bad faith conduct that is either attributable to the EAW or was
4 undertaken in bad faith.

5 Furthermore, the doctrine of "unclean hands" is an equitable doctrine and
6 generally, the CERB does not award parties relief in equity. Town of Hudson, 25 MLC
7 143, 146, n.21, MUP-1714 (April 1, 1999). In determining whether a charging party has
8 standing to challenge the actions of the respondent in a bad faith bargaining case, the
9 CERB examines whether the charging party's actions were solely responsible for the
10 respondent's failure to bargain in good faith. Clinton Teachers Association, 16 MLC
11 1058, 1064, n.14, MUPL-3263 (June 26, 1989). A review of the record before me does
12 not support a finding that the sole reason that the Employer denied the EAW's access
13 request was because the EAW previously acted in bad faith.

14 Finally, the Employer contends that granting access to the EAW's expert is
15 unduly burdensome because the EAW wants to use that access to compel the
16 Employer to acknowledge the authenticity of the results of those tests. If the Employer
17 acknowledges the authenticity of those test results and if those results show a
18 concentration of PCBs greater than 50 ppm, the EPA would require the Employer to
19 immediately remove caulking from the school(s), where the test samples were taken.
20 The Employer contends that such a mandatory removal could cost millions of dollars,
21 force the closure of schools, and displace students. The Employer also points out that
22 remediation efforts might be unsuccessful and referenced Okun's testimony about the
23 unsuccessful and expensive efforts to remove PCBs from a school in Westport. I do not

1 find the Employer's argument to be persuasive because it fails to draw a distinction
2 between providing access to the EAW's environmental expert to conduct tests and
3 various speculative scenarios that might arise as a result of the testing.

4 Further, the record before me contains no evidence showing that granting the
5 EAW's access request would be burdensome on the Employer's right to control its
6 operations. Rather, in the February 25, 2010 access request, DelSignore expressed a
7 willingness to accommodate the Employer's interest in ensuring the orderly operations
8 of its schools and the safeguarding of its students while testing took place. Previously,
9 the EAW had agreed to abide by conditions that the Employer had imposed in response
10 to Sireci's November 20, 2008 access request, which included that: testing would occur
11 when students were not in school; testing would occur in the presence of an Employer
12 representative; and testing would not result in any property damage. The Employer
13 subsequently withdrew its approval of the access request despite the EAW's agreement
14 to the proposed conditions.

15 Remedy

16 Pursuant to Section 11 of the Law, once the CERB determines that a prohibited
17 practice under Section 10 has been committed, it is authorized to issue a cease and
18 desist order to the offending party "and shall take such further affirmative action as will
19 comply with the provisions of this section" The phrase "further affirmative action"
20 has been construed as granting the CERB authority to fashion appropriate orders to
21 remedy unlawful conduct, including remedial measures not specified in Section 11.
22 Labor Relations Commission v. City of Everett, 7 Mass. App. Ct. 826, 829 (1979).
23 Moreover, Section 11 of the Law broadly commits the design of appropriate remedies to

1 the CERB's discretion and expertise. Town of Brookline v. Labor Relations Commission,
2 443 Mass. 315, 326 (2005). Here, the EAW seeks an order granting the EAW's access
3 to any of the Employer's schools where unit members work and permitting it to conduct
4 any form of PCB testing that it chooses. The Employer opposes the EAW's request and
5 seeks to limit the order to the schools which were the subject of the EAW's February 26,
6 2010 access request. The traditional remedy for cases involving an employer's failure
7 to provide requested information that is relevant and reasonably necessary is an order
8 that the Employer turn over the information to the union. City of Boston, 29 MLC 165,
9 168, MUP-2483 (March 6, 2003). Because the duty to furnish relevant and reasonably
10 necessary information encompasses a request for access to the Employer's work site
11 by union experts, the appropriate remedy here is to provide the EAW with access to the
12 schools that the EAW identified in its February 26, 2010 request, which is Doherty H.S.
13 and Burncoat H.S.⁶⁰ and for the reasons that it describes therein, which is to have its
14 expert conduct sampling for PCBs in exterior caulking.

15 Conclusion

16 Based on the record and for the reasons stated above, I conclude that the
17 Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by
18 denying the EAW's access request.

19 Order

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

22 1. Cease and desist from:

⁶⁰ The EAW no longer seeks access to the former North H.S. because it has been demolished. Thus, I need not make any reference to the former North H.S. in my order.

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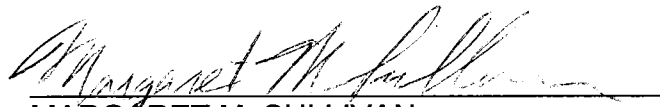
- a) Failing and refusing to bargain collectively in good faith with the EAW by denying access to the EAW's environmental expert in order to conduct sampling for PCBs in exterior caulking at Burncoat H.S. and Doherty H.S.
- b) In any like or related manner, interfering with, restraining and coercing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

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.



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

A Hearing Officer of the Massachusetts Department of Labor Relations (DLR) has held that the Worcester School Committee (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E 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 of Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The Employer assures its employees:

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 manner 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, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).