

*BCB Rules Memo Was Illegal*

# DEP Can't Bar Computer Use for Union Activities

By DAVID SIMS

The Department of Environmental Protection violated the city Collective-Bargaining Law when it issued a memorandum barring workers from using their office computers for union communications, the Board of Collective Bargaining has ruled.

The DEP has been ordered to rescind a memorandum, issued in August 2009, that stated, "The DEP Outlook e-mail should not be used in connection with any type of union activity."

## Union: Must Be Negotiated

District Council 37 filed an improper practice petition challenging the order in December 2009, alleging that its members' rights had been violated. Most of the affected titles were represented by Local 375, the Civil Service Technical Guild.

The union argued that the use of computer, the Internet and e-mails at work "clearly affect the terms and conditions of bargaining" and could not be changed without negotiation with DC 37. It also charged that "communication between a union and its members, as well as among union members, constitutes protected union activity."

The memo was distributed after two complaints, in 2007 and 2008, of union members using their DEP work e-mails to communicate about union elections.

The city argued that it was authorized to decide unilaterally how operations were conducted, as the office and technology resources "belong to the agency, not the employee."

DEP also contended that with the proliferation of the Internet, cell phones and wireless communication, it was impossible to argue that union members needed to use their work accounts to communicate with each other on DC 37-related business.

But the board largely dismissed the city's claims, noting a National Labor Relations Board decision that found



**MARLENE A. GOLD: 'Can't single out protected activity.'**

such interference with union activity to be unlawful. The 7-0 ruling included the city-appointed members and the BCB's impartial chair, Marlene A. Gold.

## DEP Must Rescind Memo

The DEP's memo expanded on an existing set of rules that allowed use of the work computers and e-mails for personal business, as long as it was not unlawful, sexually explicit, connected to business transactions or relating to distribution of private or confidential material.

By altering those rules to include union activity, the DEP broke collective-bargaining laws, the BCB ruled. "We reject the notion that [the law] allows DEP, or any agency, to impermissibly single out protected union activity," the decision stated.

As a result, the agency must rescind its memo and post notices explaining its violations to workers.