

PBA, 1 OCB2d 14 (BCB 2008)

(IP) (Docket No. BCB-2677-07).

Summary of Decision: The Union claimed that the New York City Police Department violated NYCCBL § 12-306(a)(1), (4), and (5) when it allegedly instituted an uniform allowance advance program and a college loan repayment program, thereby interfering with the statutory rights of Police Officers, failing to bargain in good faith regarding these programs, and unilaterally changing the terms and conditions of employment. The City claimed that the alleged implementation of these new programs did not violate the NYCCBL and that the college loan repayment program was, in fact, funded and administered by a private organization. Also, the City contended that, at a minimum, the dispute concerning the uniform allowance advance program should be deferred to arbitration. The Board severed the claims concerning the two new programs, and then held that the Union's claims concerning the uniform allowance advance program should be deferred to arbitration, while retaining jurisdiction over the underlying statutory dispute concerning this program. The Board further held that the Union's claims related to the college loan repayment program will be determined in a separate opinion. *(Official decision follows.)*

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

In the Matter of the Improper Practice Petition

-between-

**PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK,**

Petitioner,

-and-

**THE CITY OF NEW YORK and THE NEW
YORK CITY POLICE DEPARTMENT,**

Respondents.

INTERIM DECISION AND ORDER

On December 12, 2007, the Patrolmen's Benevolent Association of the City of New York

(“Union” or “PBA”) filed a verified improper practice petition against the City of New York (“City”) and the New York City Police Department (“NYPD”) alleging that the NYPD violated New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) (“NYCCBL”) § 12-306(a)(1), (4), and (5) by instituting two new programs: one for the advancement of a portion of the contractual uniform allowance to new recruits; and the other to provide grants of money to new recruits for repayment of college loans. The Union contends that the NYPD did not bargain in good faith regarding the implementation of these two programs, that the NYPD unilaterally imposed these two programs, and that, by engaging in these acts, the NYPD interfered with the statutorily-protected rights of Police Officers.

The City alleges that the implementation of these two programs was not inherently destructive to Police Officers’ statutory rights, did not unilaterally change Police Officers’ terms and conditions of employment, and, therefore, did not violate the NYCCBL. The City also alleges that the institution of the college loan repayment program cannot violate the NYCCBL because this program is funded and administered by the New York City Police Foundation (“NYCPF”) which is a private, non-profit organization. Additionally, the City alleges that, at a minimum, the dispute concerning the uniform allowance advance should be deferred to arbitration, as it requires interpretation of the parties’ collective bargaining agreement.

This Board finds that, in the circumstances of this case, severance of the claims concerning the college loan repayment program and the uniform allowance advance program is appropriate. The Board also finds that the claims concerning the uniform allowance advance program should be deferred to arbitration for interpretation of specific language contained in the parties’ collective bargaining agreement regarding uniform allowances, and it retains jurisdiction over the underlying

statutory disputes regarding this program and hold in abeyance that particular portion of the PBA's petition. This Board further finds that the Union's claim regarding the college loan repayment program will be determined in a separate opinion.

BACKGROUND

The PBA and the City are parties to a collective bargaining agreement covering the period from August 1, 2002 to July 31, 2004, which was the result of a 2005 interest arbitration award ("Agreement"). Pursuant to NYCCBL § 12-311(d), the terms and conditions set forth in the Agreement are in *status quo*. Article VII of the Agreement, entitled "Uniform Allowance," states that "[t]he City shall continue to pay each employee a uniform allowance of \$1,000.00 in accord with the existing standard procedures." It is undisputed that the NYPD traditionally has paid this allowance in December of each calendar year. The most recent payments are memorialized in Operations Order 2-23, issued December 16, 2003; Operations Order 2-18, issued December 15, 2004; Operations Order 11-16, issued December 29, 2005; and Operations Order 7-7, issued December 18, 2006. These four Operations Orders, which contain nearly identical language, detail how much each title within the NYPD received for a uniform allowance, during which pay period these payments occurred, and on what date those paychecks were "forwarded to the command." (Pet., Ex. B).

From August 2005 to June 2006, the parties conducted bargaining sessions, both informal and formal, for a successor contract. The Union alleges that during these bargaining sessions, it made proposals concerning uniform allowances and premium pay for education. Further, according to the Union, the City did not discuss the topics of the payment method for uniform allowances or

the college loan repayment. Since no successor contract was negotiated, the City, on July 7, 2006, filed a Declaration of Impasse with the New York State Public Employee Relations Board (“PERB”).¹

On August 10, 2007, a newspaper article appeared in *The Chief Leader*, entitled “To Ease Pay Squeeze, Offer Rookie Cops a Uniform Advance.” This article announced that the NYPD was going to implement a voluntary program by which new recruits in the police academy would receive \$600 of their \$1,000 uniform allowance prior to the typical payment of the uniform allowance to other Police Officers (“UAA”).² In return, the new recruits who choose to participate in the UAA are required to execute a “Recruit Payment Voucher” acknowledging receipt of the \$600 portion of the uniform allowance. This voucher listed the recruit’s name, “Company” and “Tax” numbers, address, and remaining balance of the uniform allowance. This voucher further contains the following covenant:

I understand that the uniform advance is a debt that must be repaid. I hereby authorize the [NYPD] and the [City] to withhold all monies owed on the uniform advance from my first uniform allowance check. In the event that I do not become eligible for the first uniform allowance check, I hereby authorize the NYPD and the City to deduct said monies from my final paycheck. I understand that failure to repay the uniform advance may result in legal action.

(Pet., Ex. E). The recruits who participate in the UAA agree to have their uniform allowance checks, which are routinely issued in December, reduced by the amount received in advance or to reimburse the NYPD prior to the issuance of their uniform allowance checks. It is undisputed that nearly all

¹ After mediation proved unsuccessful, an Impasse Arbitration Panel was designated and began conducting hearings on November 6, 2007. To date, the impasse process is ongoing.

² According to this article, the NYPD implemented this program with the class of recruits that entered the police academy in July 2007.

of the recruits who entered the police academy in July 2007 chose to participate in this program.

According to the City, the NYPD has “a long-standing practice of providing certain equipment to police officer recruits free of charge” or assisting these new recruits in purchasing their equipment. (Ans. ¶ 44). Items such as guns, bullet-proof vests, “personal protective equipment,” and “night-sights” are all given to recruits and/or police officers free of charge. (Ans. ¶¶ 44-50). Additionally, the City asserts that the NYPD assists recruits with the purchase of other equipment by arranging for either the Police Relief Fund or the Municipal Credit Union to issue “low-interest loans” to these recruits to help defray the cost of purchasing this other equipment. (Ans. ¶ 54). Furthermore, the City contends that the Union has never sought to bargain over the NYPD’s providing of the above-stated items for free or arranging for low-interest loans. Moreover, according to the City, police recruits, since 2006, have been able to request a “hardship voucher,” which allows the NYPD to provide the recruits with the required equipment and then, upon graduation, to deduct its cost from these officers’ subsequent paychecks.

According to the Union, the NYPD only provided personal protective equipment to recruits and Police Officers, such as guns, bullet proof vests, biohazard masks, and emergency evacuation bags because the NYPD was “required by statute to provide” this equipment. (Reply ¶¶ 6, 16, 18, 20 and 22). Furthermore, the NYPD never “granted advances” to Police Officers for their uniform allowances in the past, and the type of advance complained of here was the first of its kind. (Pet. ¶ 16).

On August 14, 2007, representatives met with Deputy Commissioner John Beirne and Assistant Commissioner David Cohen to discuss the UAA. At this meeting, the Union informed the NYPD that it believed this program dealt with a mandatory subject of bargaining. However,

according to the Union but denied by the City, Assistant Commissioner Cohen responded to the PBA's demand for bargaining by insisting that the NYPD wanted to implement this program before the recruits who entered the police academy in July 2007 graduated. Nevertheless, it is undisputed that, at this meeting, the NYPD gave the Union an itemized list of uniform and equipment totaling \$600 that recruits need upon entering the police academy and the above-stated "Recruit Payment Voucher." (Pet., Exs. D and E, respectively).

On October 22, 2007, NYCPF issued a press release announcing a new college loan repayment program for the NYPD recruits, which was set to commence with the class that entered the police academy in January 2008.³ Pursuant to the college loan repayment program, recruits would be eligible to receive up to \$15,000 over the course of five years to alleviate a portion of the financial burden placed upon them by the repayment of their college loans. This program would be managed and administered by NYCPF, would be funded completely by donations from private benefactors, and would start making payments to lending institutions upon the recruits' completion of the police academy. Additionally, if any beneficiary of this program separates from service with the NYPD for any reason during the initial five year period during which time his/her college loan is being repaid by NYCPF, this organization will not attempt to "recoup monies already distributed" to the respective lending institutions. (Ans. ¶ 40).

According to the Union, in order to properly implement the college loan repayment program,

³ NYCPF is a non-profit organization, established in 1971 by New York City business and civic leaders. NYCPF is funded through private donations, not public contributions, and "is the only organization authorized to raise funds for [NYPD]." (Ans., Ex. 1). In the past, NYCPF's assistance has included providing equipment, such as "biohazard masks, emergency evacuation bags, [and] bike patrol gear," as well as "mental health" counseling programs for Police Officers and their families. (Ans ¶¶ 29-30). Additionally, NYCPF has its own Chairperson, Board of Trustees, and staff, and the NYPD's Commissioner does not hold any position within NYCPF. (Ans., Ex. 2).

the NYPD's Commissioner must also authorize its implementation because NYPD Procedure No. 203-13 prohibits "[a]ccepting testimonial award, gift, loan or thing of value to defray or reimburse any fine or penalty, or reward police service except: . . . [m]onetary prize or award from foundations, universities, institutions, etc., after review by the Deputy Commissioner, Legal Matters and the approval the Police Commissioner." (Reply, Ex. A). Additionally, according to the Union, NYPD Procedure No. 203-16 provides "guidance to members of the service relating to acceptance of gifts and other compensation . . . to insure that the general public does not misinterpret the justification for these gifts." (Reply, Ex. B). NYPD Procedure No. 203-16 requires Police Officers who are offered such compensation to notify their commanding officer, who then prepares a report for the NYPD's Commissioner, "for review and final determination regarding acceptability of gift [*sic*]." (*Id.*).

According to the City, "[a]fter the implementation of the new salary schedule for Police Officers, [the NYPD Commissioner] asked [NYCPF] and its Trustees to join the [NYPD] in seeking ways to address recruitment." (Ans. ¶ 33). Later, the Commissioner then "approved [NYCPF's] plan to establish the college loan reimbursement program" (Ans. ¶ 34) because it "augment[ed the] recruitment efforts and financially assist[ed] new recruits upon graduation from the police academy." (Pet., Ex. F). According to the City, even though the Commissioner approved the "concept of a college loan reimbursement program," NYCPF created the parameters of this program, and its Board of Trustees had to approve of this program's implementation. (Ans. ¶35). Furthermore, the City claims that this program was funded by an initial donation by one private contributor in the amount of \$1.5 million.

On October 23, 2007, the PBA sent a letter to Deputy Commissioner Beirne requesting a

meeting to discuss the college loan repayment program. The Union stated monetary compensation is a mandatory subject of bargaining and requested that the parties bargain over the implementation of this program. The NYPD responded to this request by directing the PBA to contact NYCPF regarding the parameters of the college loan repayment program.

On December 12, 2007, the Union filed the instant improper practice petition alleging that the NYPD, by implementing the UAA and the college loan repayment program, violated NYCCBL § 12-306(a)(1), (4), and (5). The PBA requested this Board find that the NYPD acted in contravention of the NYCCBL, order NYPD to cease in further participating in these programs, rescind any and all Operations Orders related to these two programs, and post appropriate notices.

POSITION OF THE PARTIES

Union’s Position

The PBA alleges that the NYPD violated NYCCBL § 12-306(a)(1) by engaging in direct dealing with Police Officers and by engaging in inherently destructive activities by implementing the UAA and the college loan repayment program.⁴ Both of these programs, which give greater

⁴ NYCCBL § 12-306(a) provides in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

* * *

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees; . . .

(5) to unilaterally make any change as to any mandatory subject of bargaining or as to any terms and condition of employment established in the prior contract, during a period of negotiations with a public employee organization

(continued...)

benefits to Police Officers than those memorialized in the Agreement, were implemented through circumvention of the Union and the collective bargaining process. Additionally, by making Police Officers who participate in the UAA execute the “Recruit Payment Voucher,” the NYPD entered into a contract regarding a term and condition of employment with represented employees, without first negotiating the parameters of this contract with the employees’ bargaining representative. This contact between the NYPD and the participating Police Officers interferes with the PBA’s ability to represent its constituency and constitutes direct dealing.

The Union also avers that the implementation of these two programs violates NYCCBL § 12-306(a)(4) and (5). Both the UAA and the college loan repayment program deal with a monetary benefit, which is mandatory subject of bargaining as defined in NYCCBL § 12-307(a).⁵ No bargaining occurred concerning these new programs and the NYPD expected to accept their implementation as a “*fait accompli*.” (Pet. ¶ 13). Furthermore, the implementation of these two programs occurred while the NYPD and were in the midst of bargaining. By allowing recruits to receive a portion of their uniform allowance at an earlier date, by requiring them to execute a

⁴(...continued)

Further, § 12-305 of the NYCCBL provides, in pertinent part:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. . . .

⁵ NYCCBL § 12-307(a) provides in pertinent part:

“[P]ublic employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours . . . , working conditions and provisions for the deduction from the wages and salaries of employees in the appropriate bargaining unit who are not members of the certified or designated employee organization of an agency shop fee to the extent permitted by law

separate contract with the NYPD, and by allowing them to be eligible for up to \$15,000 for college loan reimbursements, the NYPD clearly changed the *status quo*.

Additionally, the Union contends that the City's attempt to deflect responsibility for and implementation of the college loan payment program upon NYCPF is disingenuous and contradicts the NYPD's own procedures. First, the college loan repayment program was created at the behest of the Commissioner. Next, Police Officers, as set forth in NYPD Procedure Nos. 203-13 and 203-16, are not allowed to accept gifts, awards or loans unless it is reviewed by the Deputy Commissioner of Legal Matters for the NYPD and approved by the Commissioner.

The Union also contends that the City's argument averring that the UAA is a continuation of existing past practices, thus maintaining *status quo*, is incorrect. Though the NYPD has provided certain articles of equipment to Police Officers in the past without having to bargain over these items with the PBA, such are provided because the NYPD is statutorily required to do so. Furthermore, uniform allowance advances have never been given to recruits or Police Officers, and, therefore, the UAA is not a continuation of the *status quo*.

Finally, the Union contends that the issue related to the UAA should not be deferred to arbitration, as requested by the City, because the Board of Collective Bargaining ("Board") has exclusive jurisdiction over alleged violations of the NYCCBL. The NYPD's unilateral implementation of the UAA and the college loan repayment program is "inextricably related" to the PBA's claim that the implementation of these programs constitutes direct dealing, is inherently destructive to the Union's right to represent its members, is a refusal to bargain over a mandatory subject of bargaining, and is a change in the *status quo*. (Reply ¶ 37).

City's Position

The City contends that the NYPD's implementation of the college loan repayment program does not violate any provision of the NYCCBL because this program is funded, managed, and administered by NYCPF, which is a wholly-independent entity from the NYPD and is a private non-profit organization incorporated under the laws of the State of New York. Additionally, since the money awarded to Police Officers through the college loan repayment program comes from private donations, the NYPD cannot be held responsible for a benefit that it does not grant. Further demonstrating the independence between the NYPD and NYCPF, this program was created by NYCPF, the Board of Trustees for NYCPF had to approve use of the funds for this program, and NYCPF established the parameters that govern the college loan repayment program. In addition, the availability of funds through the college loan repayment program cannot interfere with Police Officers' statutory rights under the NYCCBL because the NYPD does not determine who is eligible and how much money each beneficiary receives.

The City also avers that the UAA does not violate NYCCBL § 12-306(a)(1), (4), or (5). The NYPD did not fail to bargain in good faith or unilaterally change a mandatory subject of bargaining by implementing this program because the NYPD has an established tradition of helping its recruits to obtain the necessary equipment for their jobs. For over ten years, the NYPD has offered programs that allow its recruits to defray the initial cost of purchasing equipment through loans either directly from the NYPD or from third-party lenders. Thus, the UAA is merely a continuation of an established practice, requires no bargaining, and does not upset the existing *status quo*. Additionally, this program does not interfere with Police Officers' rights under the NYCCBL because the UAA is not inherently destructive to these employees' statutory rights and does not undermine the Union's

ability to represent its constituency. Rather, the UAA aids its employees in obtaining the necessary equipment and is consistent with the NYPD's past practice of assisting Police Officers in obtaining necessary equipment.

Finally, the City argues that, in the alternative, the Union's claims related to the UAA should be deferred to arbitration because it involves a dispute requiring interpretation of Article VII of the Agreement, as to the meaning of "in accord with existing standard procedures."

DISCUSSION

The first issue in the instant matter that this Board must address is the severance of the Union's claims concerning the implementation of two distinct programs which allegedly violate the NYCCBL. This Board has the authority to consolidate or sever two or more representation, scope of bargaining, arbitrability, mediation, impasse, and/or improper practice proceedings. *See* Rules of the Office of Collective Bargaining (rules of the City of New York, Title 61, Chapter 1) Rule § 1-12(m); *see also SBA and LBA*, 61 OCB 22, at 3-4 (BCB 1998); *UFA*, 47 OCB 6, at 17 (BCB 1991). Additionally, in the past, we have severed claims that arise from the same petition and proceeding. *See DC 37, Local 1407*, 47 OCB 1, at 8-10 (BCB 1991) (severing the claims of two employees because the union failed to recite enough facts to allege a *prima facie* retaliation claim for one of the employees; but, satisfied its initial burden for the other employee); *see generally DC 37, Local 1757*, 53 OCB 4, at 41 (BCB 1994).

Consistent with our case law, we sever the PBA's claims concerning the college loan repayment program from the PBA's claims concerning the UAA. We find that the claims concerning the UAA should be deferred to arbitration as interpretation of language contained in the

Agreement is required, prior to determining the existence of an improper practice. The claims regarding the college loan repayment program do not involve such contractual issues, and therefore are properly before us. Based upon the circumstances presented here, we see no need to delay the processing of either claim before the appropriate body pending the resolution of the other claim. Accordingly, we find severance appropriate in this matter.

Substantively, the Union's petition claims that the NYPD violated NYCCBL § 12-306(a)(4) and (5) by implementing a program by which recruits are given \$600 of their contractually-established uniform allowance in advance, if they choose to participate. Given this allegation, we must first decide whether the UAA involves a mandatory subject of bargaining. We have found that "mandatory subjects of bargaining generally include wages, hours, and working conditions and any subject with a significant or material relationship to a condition of employment." *DC 37, 77 OCB 34*, at 14 (BCB 2006). Uniform allowances are a form of compensation and encompassed within the scope of mandatory subjects of bargaining. *See UFA*, 43 OCB 4, at 62 (BCB 1989). Additionally, the timing and the method by which the employer distributes compensation to its employees is also a mandatory subject of bargaining. *See City of Troy*, 28 PERB ¶ 4657, at 4912 (1995) (date on which employees receive compensation is a mandatory subject of bargaining); *see also Pine Brook Care Center Inc.*, 322 N.L.R.B. 740, 748 (1996) (unilaterally changing the method by which employees receive their uniform allowance is a violation of the employer's duty to bargain in good faith), *Gratiot Community Hospital*, 312 N.L.R.B. 1075, 1080 (1993), *enf'd in relev. part*, *Gratiot Community Hospital v. NLRB*, 51 F.3d 1255 (6th Cir. 1995).

In the instant matter, the parties addressed the subject of uniform allowances, which is a mandatory subject of bargaining, and memorialized their mutual understanding on this topic in

Article VII of the Agreement, which provides “[t]he City shall continue to pay each employee a uniform allowance of \$1,000.00 in accord with the existing standard procedures.” (Pet., Ex. A). As the City has argued that this Board should defer the instant dispute to arbitration, in accordance with the grievance procedures set forth in Article XXI of the Agreement, we must consider whether deferral is appropriate in this case.

With regard to the issue of deferral, this Board has stated that it “has jurisdiction over an alleged breach of contract where the alleged acts would also constitute an improper practice.” *DC 37, Local 1508*, 79 OCB 11, at 9 (BCB 2007); *see New York Civil Service Law § 205(5)(d)*; *see also DC 37, 79 OCB2d 21*, at 20-22 (BCB 2007) (the Board is statutorily prohibited from exerting jurisdiction over contract violations, unless the alleged contract breaches also constitute improper practices); *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 31 n. 7 (1967). However, we will defer disputes to arbitration “where the circumstances are such that the contractual arbitration procedure provides an appropriate means of resolving the matter, consistent with the declared policy of the NYCCBL to favour and encourage . . . final, impartial arbitration of grievances between municipal agencies and certified employee organization.” *DC 37, Local 1508*, 79 OCB 21, at 21 (BCB 2007) (internal quotations omitted). Furthermore, the Board will “defer improper practice claims where the improper practice allegations arise from and require interpretation of a collective bargaining agreement and in cases where it appears that arbitration would resolve both the claims that arise under the NYCCBL and the agreement.” *DC 37, OCB2d 4*, at 8-10 (BCB 2008); *see DC 37, Local 1508*, 79 OCB 11, at 10 (BCB 2007).

Here, we find that to the extent that the PBA contends that the implementation of the UAA changed the procedures by which Police Officers received their uniform allowance, such a claim

should be brought as a grievance. Additionally, in the instant matter, we are not charged with the authority to interpret Article VII of the Agreement, which reads “in accord with the existing standard procedures”; such interpretation is entirely within the domain of an arbitrator. Moreover, though the City actually enunciated the deferral argument, we note that the Union, in asking this Board to apply the NYPD’s past practice of distributing uniform allowance checks in December in order to find that NYPD violated NYCCBL § 12-306(a)(4) and (5), is asking us to utilize a past practice to interpret ambiguous language in the Agreement. The Union, essentially, is asserting a grievance and requesting that this Board interpret their contract.

Therefore, we find that the claims alleging violations of NYCCBL § 12-306(a)(4) and (5) should be deferred to arbitration so that an arbitrator can interpret the meaning of Article VII of the Agreement and, if this contractual provision is deemed ambiguous, *inter alia* ascertain the effect of the past practice of distributing the uniform allowance checks in December has on this contractual provision. This Board will retain jurisdiction over these claims in the event that the arbitration decision does not resolve the question of whether an improper practice has been committed or does not conform with the NYCCBL. *United Prob. Officers Ass’n*, 47 OCB 38, at 15 (BCB 1991); *see also, Local 1930, DC 37*, 45 OCB 70, at 12 (BCB 1990); *Local 621, SEIU*, 45 OCB 16, at 12 (BCB 1990).

With regard to the Union’s claim that the NYPD’s implementation of the UAA independently violates NYCCBL § 12-306(a)(1) because this program interferes with, restrains, and coerces Police Officers’ exercise of their statutory rights under NYCCBL § 12-305, we will refrain from ruling on

this issue, pending the results of the above-ordered arbitration.⁶

With respect to the Union's claim that the implementation of the college loan repayment program violates NYCCBL § 12-306(a)(1), (4) and (5), we will resolve this dispute in a separate opinion.

⁶ We note that this Board, in certain instances, has recognized that a showing of improper motivation or anti-union animus is not required to support a finding of an independent violation of NYCCBL § 12-306(a)(1). *See, e.g., Local 1180, CWA*, 69 OCB 28, at 11 (BCB 2002); *see also DC 37*, 69 OCB 23, at 12 (BCB 2002), *Hudson Valley Community College*, 18 PERB ¶ 3057, at 3120 (1985).

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the claims involving the uniform allowance advance program in the improper practice petition filed by Patrolmens' Benevolent Association, docketed as BCB-2677-07, and the same hereby are, deferred to the parties' grievance/arbitration process without prejudice to reopen, should a determination on the merits of the due process contractual claims be foreclosed or should any award be repugnant to rights under the NYCCBL.

Dated: New York, New York
April 29, 2008

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

ERNEST F. HART
MEMBER

PETER PEPPER
MEMBER