

**DEA, 2 OCB2d 11 (BCB 2009)**

(IP)(Docket No. BCB-2700-08).

**Summary of Decision:** Petitioner alleged that, by changing the requirements for Union members to obtain parking permits, the NYPD made a unilateral change in a procedure regarding an economic benefit to members, unilaterally changed a term and condition of employment, and interfered with Union members in the performance of their lawful activities. The Board found that the City is not required to bargain over the changes, that the City's actions did not interfere with Union members' rights under the NYCCBL, and dismissed the petition in its entirety. *(Official decision follows.)*

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

**In the Matter of the Improper Practice Proceeding**

*-between-*

**DETECTIVES' ENDOWMENT ASSOCIATION, PATROLMEN'S  
BENEVOLENT ASSOCIATION, SERGEANTS BENEVOLENT  
ASSOCIATION, LIEUTENANTS BENEVOLENT ASSOCIATION,  
and CAPTAINS ENDOWMENT ASSOCIATION,**

*Petitioners,*

*- and -*

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

*Respondents.*

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**DECISION AND ORDER**

On June 2, 2008, the Detectives' Endowment Association, Patrolmen's Benevolent Association, Sergeants Benevolent Association, Lieutenants Benevolent Association and Captains Endowment Association (collectively "Petitioners" or "Unions") filed a verified improper practice

petition, subsequently amended on July 11, 2008, against the City of New York (“City”) and the New York City Police Department (“NYPD” or “Respondents”) claiming that the City violated § 12-306 (a)(1), (2), (3), and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). The petition alleges that, by changing the requirements for Union members to obtain parking permits, the NYPD unilaterally changed a procedure regarding an economic benefit to members, unilaterally changed a term and condition of employment, and interfered with Union members in the performance of their lawful activities. The City contends that it did not violate the NYCCBL because it has not denied Restricted Parking Permits to uniformed members of the service and still provides the permits to those who request one, that the subject is not within the scope of bargaining, and that it has not dominated the Unions or otherwise interfered with their rights. This Board finds that the City is not required to bargain over the changes, that the City’s actions do not interfere with Union members’ rights under the NYCCBL, and dismisses the petition in its entirety.

### **BACKGROUND**

The NYPD has historically issued three types of permits or placards related to employee parking. First, a member of the NYPD or uniformed service is eligible to apply for a Restricted Parking Permit that allows a member to park his or her private vehicle at or around the NYPD commands. Restricted Parking Permits are issued directly to individual members of the service who request such permits. In order for a member of service to receive a Restricted Parking Permit, he or she would submit his or her vehicle information to his or her commanding officer, who then would perform a “scofflaw” check on the vehicle before issuing the permit.

Second, the NYPD issues Pool Placards to the NYPD commands to be used for work-related purposes. An NYPD command can authorize a member of the service, who requests or needs to use his or her personal vehicle for NYPD business, to use a Pool Placard to park at locations other than at or near NYPD commands. Pool Placards are not issued to individual members of service, but are issued to various NYPD commands to be assigned, as warranted, on an as-needed basis to individuals. Pool Placards have been used by employees to attend court or training, perform assignments and investigations, and to conduct other police duties.

The City claims that in order to receive a Pool Placard, a member of service had to comply with AGP 325-14, titled, "Private Vehicles Authorization." The purpose of this mandate, which was issued on June 1, 2005, is to "authorize members of the service to use their private vehicle in the performance of official police duty." The mandate outlines the procedures for such use, including the completion of an application by a member of service and grants the power for a commanding officer to approve or deny the application. The Unions assert that in order to utilize a Pool Placard, members of service had been simply required to seek permission from a supervisor and to make log entries documenting their use of the placard without completing an application.

Third, the NYPD also provides the Unions with a limited number of Pool Placards for their use. The Unions assert that to receive the permits, they would call the NYPD and request a certain number for their Union representatives and civilians who assist them, and the NYPD would provide them with that number. The City disputes that assertion.

On January 3, 2008, Mayor Bloomberg announced a comprehensive program to reduce the number and misuse of government parking permits in Lower Manhattan and throughout the City. As part of this program, the Mayor directed the NYPD to reduce the number of parking permits that

it issues to employees and other agencies. The City asserts that this initiative is part of the City's efforts to reduce traffic congestion, encourage the use of public transportation, decrease the City's carbon footprint, and reduce the need for curbside parking in connection with City business.

On February 1, 2008, the NYPD sent a Finest Message to Police Department commands informing commanding officers that, at the behest of the Mayor's Office, the NYPD must reduce the amount of Restricted Parking Permits that it issues to its employees. The Finest Message provided commanding officers with guidelines regarding the issuance of parking permits. It reads, in pertinent part:

Applications for 2008 Restricted Parking Permits (Misc.23-N Rev. 03-07) will be made available to commanding officers or appropriate designee via the Department intranet on February 01, 2008. Commanding officers will ensure that a Restricted Parking Permit application be distributed to members of his or her command based on command code only. Commanding officers of precincts will be responsible to distribute permits to detective squads in their commands. Each member of service, uniformed and civilian, requesting a permit will then complete this application and return it to the commanding officer. Commanding officers will then be responsible for attaching NYS DMV inquiries of both the members' driver's license and vehicle registration. . . .

Commanding officers, or designees, when initially attempting to access the Department intranet application, must create a user account. The user must enter his/her name and create a password; the users will be notified of approval via telephone or Department e-mail. . . .

Only [a] limited number of parking permits are available for each command code; commanding officers will be notified by the Internal Affairs Bureau of the number of permits allocated to their commands. . . .

MOS [Members of Service] will be deemed ineligible for a Restricted Parking Permit for the following reasons:

\*Member has been assigned a category one department vehicle (Department owned, leased, rental vehicle).

\*Members who are assigned to One Police Plaza and have access to One Police Plaza garage parking.

\*Members assigned to MELD and members on terminal leave or currently out long term sick will not be issued a permit.

\*Auxiliary MOS will not be issued Restricted Parking Permits.

Commanding officers should consider the following factors when evaluating a member's request for a Restricted Parking Permit:

\*The availability and accessibility of public transportation between worksite and employee residence.

\*The hours an employee is routinely assigned to work.

\*The likelihood of employee being held for extended hours (consider availability of public transportation and frequency of service to residence at release time).

Commanding officers will then forward all approved applications, via the Department Intranet, as well as printed copies, including appropriate NYS-DMV printouts attached to each, to the Internal Affairs Bureau, Vehicle Identification Unit . . . no later than February 13, 2008. Upon completion of processing, of applications by the Internal Affairs Bureau, each Commanding officer will be directed to pick up approved 2008 Restricted Parking Permits . . . on a prescheduled date. . . .

Shortly after the NYPD issued the Finest Message, it issued more specific guidelines ("Guidelines") to commanding officers regarding Restricted Parking Permits for 2008. The Guidelines mention the specific background checks that Integrity Control will perform (scofflaw check, vehicle registration check, driver's license check, and residency verification) and mandate that a failure in any of the categories will disqualify the applicant from receiving a Restricted Parking Permit. The Guidelines state that any inquiry results that may require disciplinary action will be brought to the immediate attention of the commanding officer for appropriate action. Further, the Guidelines mandate that employees return their 2007 Restricted Parking Permit in order to receive

their 2008 Restricted Parking Permit. The Guidelines also state that only members of service who apply for a permit will be considered for one and that NYPD commands may only issue Restricted Parking Permits to members of service under their specified command code.

The City contends that through this program, the NYPD significantly reduced the number of Restricted Parking Permits it issued as of July 23, 2008. The City contends that the 2008 Guidelines provided better control of the permit process, eliminated abuses that occurred in prior years, and allowed the NYPD to reduce Restricted Parking Permits by more than 20 percent. Through this program the City claims it was able to eliminate the issuance of multiple permits to a single employee, permits for members of service on long-term sick, military, or terminal leave, as they are not actively working for the NYPD, permits for members of service who work at One Police Plaza and are already assigned a parking space in the garage, and permits for auxiliary members of service, as they are not NYPD employees and not members of any bargaining unit. Also, members of service who are assigned an NYPD vehicle are not now given a permit because the vehicle is already assigned a permit, and it is not necessary for a vehicle to have two. The NYPD does not seek to reduce the number of permits allocated to members of service; it just seeks to eliminate extraneous and duplicate permits. The City maintains that all uniformed members of service are, and remain eligible for, a permit for a personal vehicle that is used to commute to and from work.

As a remedy, the Unions request that the City be ordered to cease and desist from implementing its policy to reduce the number of parking placards and permits issued to NYPD members and union organizations, rescind any directive of the City and/or the NYPD regarding parking permits, maintain the *status quo*, make all affected employees whole, post conspicuous notices throughout the NYPD that Respondents have violated the NYCCBL, and be enjoined from

unilaterally imposing the new policy on the issuance of parking permits.

### **POSITIONS OF THE PARTIES**

#### **Unions' Position**

The Unions argue that the Respondents made a unilateral change to a term or condition of employment related to an employee's wages, hours, or other working conditions. First, the City issued a directive in the Finest Message, noting that the NYPD, at the direction of the Mayor's Office, was reducing the number of parking permits issued to its members. Prior to the issuance of the order, virtually every member of service was provided with a Restricted Parking Permit that permitted them to park in proximity to their work assignments, near a precinct or a specific command, for example. Now, members of service must apply for a permit, and those who lack one have had their vehicles, which were parked in their usual parking places, ticketed and, in some instances, towed.

The Unions contend that free parking is an economic benefit that may not be unilaterally revoked. Furthermore, in the past, members of service simply provided their supervisor with information regarding their driver's license and registration. Now, as a result of this new policy, members must take an application, complete it, and participate in the process. These new actions constitute a material change in the level of employee participation in record-keeping procedures. Therefore, the new requirements change employees' terms and conditions of employment and are mandatorily bargainable.

Second, the Unions argue that the NYPD unilaterally reduced the number of Pool Placards by 20 percent, and in some cases, they were eliminated. These Pool Placards were traditionally

assigned to commands and used by members of service on a daily basis so that they could perform assignments, “fly” to another precinct, and attend training and various other assignments away from their precinct. Prior to the reduction, the NYPD did not expressly limit the number of placards issued, and they were kept in the commands for use by members of service for police purposes.

The Unions contend that Pool Placards have also been provided to Petitioners, to be used for union purposes, including the performance of critical joint labor/management tasks by their civilian employees and representatives. The number of these placards was reduced as well. Despite the Respondents’ claim that they provided placards only to officials on full-time release, the NYPD did not expressly limit the number of these placards issued prior to the reduction. Prior to the new policy, other Union representatives and civilians used the “Union” Parking Placards as needed. The NYPD’s reduction in these placards has made it more difficult for Petitioners to represent the rights of their membership and has interfered with lawful union activity.

The Union provided affidavits from several Union officials as to how their ability to represent their members would be impacted by not being able to utilize a Pool Placard. As one example, the Unions provided an affidavit from the Communications Director of the PBA, who attested that without a Union Parking Placard, it becomes “virtually impossible” to accomplish tasks such as performing advance work for news conferences and to set up audio and video equipment at the location in advance of the principals, since it is necessary to gain access as close to the site of the event as possible to offload equipment and to set up for such events. (¶ 3, O’Leary Affidavit, Union Petition).

Further, the Unions argue that the new policy and procedures give commanding officers the authority to deny parking permits for any member of service, an authority which did not exist prior



to the announced policy. Also, the Internal Affairs Bureau now plays an active role in the approval and denial of placards, which adds a higher level of scrutiny to the process. The NYPD's grants of authority in these areas signify a change to existing practice, despite the City's claim that no changes have been made. The Unions contend that several members have been denied a permit because they drive a vehicle that is not registered in his or her name, and that other members of service who submitted their application late have been denied a permit.

Respondents also point to AGP 325-14, issued in 2005, for the premise that officers have been and still will be allowed to use private vehicles for police duties, when deemed appropriate. However, this directive is inapplicable since the NYPD did not previously require members of service to have a private vehicle authorization to use the Pool Placards kept in commands for general use. Members had been simply required to seek permission from a supervisor and to make log entries documenting their use of the placard.

Respondents' arguments also ignore the monetary and other consequences that members must bear. The Unions specifically point to the adverse employment conditions that arise from their members' attempts to find parking. The changes directly affect the time it takes to attend to NYPD responsibilities. Petitioners' members will constantly have to interrupt their routine to leave work every few hours to feed a parking meter, and that could affect their job performance. Members may need to park outside the vicinity of a command, which presents a significant interference with their work routines. The only alternatives a member may have include waiting for a parking place to become available, which creates the potential for workplace tardiness, taking public transportation, which runs on fixed schedules, or paying for limited, time-metered spots, which requires constant attendance to avoid tickets. These alternatives interfere with job performance, especially in

emergency situations, which unquestionably arise at all times of day or night for these employees.

The City cannot claim that the issuance of this policy is a managerial prerogative because this is not a policy that lies at the core of managerial control. The City is not in the business of selling parking spaces to its employees, and the act of providing parking spaces to its employees is not central to the enterprise of the NYPD. Therefore, parking arrangements for the Petitioners and their members are not acts in furtherance of the employer's mission that are exempt from bargaining. Thus, the Union argues that the City has violated NYCCBL § 12-306(a)(1), (2), (4), and (5).<sup>1</sup>

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<sup>1</sup>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;
- (2) to dominate or interfere with the formation or administration of any public employee organization;
- (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
- (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 collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

NYCCBL § 12-305 provides in pertinent part:

Rights of public employees and certified employee organizations. 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. . . .

**City's Position**

The City argues that in 2008, the NYPD issued a Restricted Parking Permit to each uniformed member of the service who applied for one, and all uniformed members of the service are, and remain, eligible for a Restricted Parking Permit for a personal vehicle that is used to commute to and from work. The NYPD has not sought nor does it seek to reduce the number of Restricted Parking Permits allocated to uniformed members of the service. The NYPD reduced the number of Pool Placards assigned to individual commands, and commanding officers continue to make managerial decisions on how to conduct NYPD operations consistent with procedures that were outlined in AGP 325-14.

In 2007, the NYPD had issued 34 Pool Placards to the PBA. In 2008, the NYPD issued 28 Pool Placards to the PBA in order to more accurately reflect the number of PBA members on full-time release, which is 27. Similarly, the NYPD gave the other Petitioners Pool Placards to match the number of Union members on full-time release. Therefore, any of Petitioners' members who are on full-time release will have a Pool Placard available to him or her.

In a claim that the promulgation of a new policy, rule, or action violated the duty to bargain in good faith, the City contends that the charging party must demonstrate the existence of such a change in existing policy. Since Petitioners fail to allege that the NYPD denied Restricted Parking Permits to uniformed members of service and because the NYPD continues to provide Restricted Parking Permits to all uniformed members of service who request one, it did not violate NYCCBL § 12-306(a)(4) or (5).

Regarding the Pool Placards, the City does not dispute that employee parking, in some circumstances, may be a mandatory subject of bargaining. However, here, the NYPD does not

require uniformed members of the service to use their personal vehicles for police duties. In addition, the NYPD's decision to issue Pool Placards to individual commands and the decisions by commanding officers regarding the utilization of those Pool Placards to carry out police duties falls squarely within the NYPD's right to manage, direct, and maintain the efficiency of its operations. AGP 325-14 already provided commanding officers with discretion regarding a member's use of his or her private vehicle to perform official police duties. Commanding officers make determinations on how members perform assignments and investigations, or attend court and training, using NYPD vehicles or public transportation, and those determinations are not within the scope of bargaining.

The City argues that it did not dominate or interfere with the formation or administration of any public employee organization and did not favor one Union over another or provide assistance to one of the Petitioners to such an extent that one of the Unions became the NYPD's creation, in violation of NYCCBL § 12-306(a)(2). Finally, the City did not independently violate NYCCBL § 12-306(a)(1) when it issued Pool Placards to Petitioners that reflected the number of Petitioners' members on full-time release.

### **DISCUSSION**

It is an improper practice under NYCCBL § 12-306(a)(4) for a public employer or its agents to refuse to bargain collectively in good faith with certified or designated representatives of its public employees on matters within the scope of collective bargaining, which generally consist of certain aspects of wages, hours, and working conditions. *Local 376, DC 37*, 79 OCB 20, at 9 (BCB 2007); *see COBA*, 69 OCB 26, at 6 (BCB 2002); *DC 37, AFSCME, Locals 2507 and 3621*, 63 OCB 35, at 12 (BCB 1999). In *Local 376, DC 37*, we explained that:

When a petitioner asserts that a unilateral change has occurred in a term and condition of employment which is determined to be a mandatory subject, then the petitioner must demonstrate the existence of such a change from existing policy. *PBA*, 73 OCB 12, at 17 (BCB 2004). *See also Local 371, SSEU*, 69 OCB 10 (BCB 2002); *Town of Stony Point (PBA)*, 26 PERB ¶ 4650 (1993). A petitioner seeking bargaining over such an asserted change must demonstrate that the matter sought to be negotiated is, in fact, a mandatory subject. *See Doctors Council, S.E.I.U.*, 67 OCB 21, at 7 (BCB 2001). If a unilateral change is found to have occurred in a term and condition of employment which is determined to be a mandatory subject, then this Board of Collective Bargaining will find the change to constitute a refusal to bargain in good faith and, therefore, an improper practice. *See DC 37, AFSCME*, 75 OCB 14, at 13 (BCB 14); *Local 1182, CWA*, 67 OCB 26, at 4 (BCB 2001); *PBA*, 63 BCB 4, at 10 (BCB 1999).

*Local 376, DC 37*, 79 OCB 20, at 9. (Editing marks omitted).

In the instant matter, three types of parking permits are involved. First are Restricted Parking Permits issued to individual members of service enabling them to park private vehicles at or around NYPD commands after commuting to work. Second are the “general” Pool Placards, which are issued to NYPD commands so that individual employees may use their private vehicles for work-related purposes on an as-needed basis. Finally, the NYPD issues “Union” Pool Placards that are issued to the Unions for use in Union-related activities.

This Board has held that the issue of the availability of free parking, whether the employees use their personal vehicles in the performance of their duties or not, is a mandatory subject of bargaining. *See DC 37*, 71 OCB 12, at 8 (BCB 2003); *SSEU*, 1 OCB 22, at 15 (BCB 1968). However, at least as far as the Restricted Parking Permit and the “general” Pool Placards are concerned, the Unions have not alleged facts which, if proven, would show that there has been a change in employees’ terms and conditions of employment through a decrease in the availability of free parking. In *DC 37*, 71 OCB 12, employees assigned to work at Bellevue had approximately 20 parking spaces reserved for them at a parking garage located on the Bellevue campus. To make

room for a new building on-site, it was announced that the parking garage would have to be demolished, leaving these employees without parking spaces, and it was not known whether parking could be provided for them once the new building was built. We held that the availability of free parking to employees in this circumstance was a mandatory subject of bargaining, noting that our holding comported with PERB's holdings on the issue. *DC 37*, 71 OCB 12, at 8, (citing *County of Nassau*, 14 PERB ¶ 3083 (1981), *aff'd sub. nom. County of Nassau v. PERB and Civil Service Employees Ass'n*, 15 PERB ¶ 7002, (Sup. Ct. Nassau Co.), *aff'd*, 90 A.D.2d 693 (2d Dept.), *appeal denied*, 58 N.Y.2d 603 (1982)).

Here, however, the Unions do not contend that the availability of parking spaces has been reduced as in the manner of the cases cited above.<sup>2</sup> Rather, the Unions contend instead that to utilize the parking that still exists, members of service must now apply, in writing, for a permit before utilizing those same spaces. The benefit that was granted in the past was a permit authorizing the bearer to park if a space was available, not the guarantee of a dedicated space. The availability of parking has not changed. In other words, the number of spaces has not been reduced, as in the cited cases. Instead, merely the procedure employed to allocate the opportunity to use those spaces has changed, which we will address below.

The Unions draw inferences from the 20 percent reduction in the overall number of permits, but that reduction is not germane to our discussion because the Unions have not specifically alleged

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<sup>2</sup> The Unions, in their papers, alternately assert that the permit program was eliminated or that the procedures for obtaining those permits have changed and are mandatorily bargainable. It is evident from those contradictory and alternative theories of the case, in relation to the factual allegations pleaded, that the program itself was not eliminated, but that for a member of service to obtain the same permit as before, he or she must now apply for that permit. Accordingly, we need not address any contention that the program itself was eliminated, or the arguments associated with such a claim.

that the reduction has resulted in a diminishment of the number of permitted parking spaces available to members of service. Specifically, the Unions have not alleged facts to dispute the City's contention that the 20 percent reduction was achieved by, among other things, the elimination of duplicate permits and permits issued to non-employees, without impacting the number of spaces available to permit holders. And, for the first and second categories of permits, which are used for parking after commuting to work or for actually performing work, the Unions have not alleged any entitlement to or justification for issuing duplicate permits. Thus, the facts of this case differ significantly from the cases decided by this Board and PERB which involved the elimination of dedicated free parking.

The Unions contend that as a result of the application process, the procedures to obtain a Restricted Parking Permit have changed, materially increasing employees' participation in the process. Prior to the issuance of the Finest Message and Guidelines, in order to obtain a Restricted Parking Permit, a member of service would present his vehicle's information to a commanding officer. Now, a member of service is to submit a one-page application, of which he or she must complete only one-quarter; the remainder is for NYPD notations. The members' portion of the application consists of little more than his or her name, the name in which the vehicle is registered, and information on the vehicle.

Thus, we find the changes involved here to be more analogous to *DC 37*, 77 OCB 34 (BCB 2006), in which we held that a change in procedure that required an employee to submit a physician's certificate during a protracted illness "on the first day of the month" rather than "at the end of each month" was *de minimis*. *Id.* at 17. See also *PBA*, 73 OCB 12, at 16-17 (BCB 2004), *aff'd*, *Patrolmens Benevolent Ass'n v. NYC Board of Collective Bargaining*, No. 112687/04 (Sup. Ct. N.Y.

Co. Aug. 8, 2005), *aff'd*, 38 A.D.3d 482 (1<sup>st</sup> Dept. 2007) (where we held that a change in a policy's language regarding employees' participation in interviews was *de minimis*).

In claiming that the completion of this application constitutes a material increase in employee participation, the Union cites to *DC 37*, 75 OCB 14 (BCB 2005), but the increase in employee participation was much greater in that matter than what we find here. In that matter, which pertained to enforcing the residency requirement, the City at one point attempted to verify residency only in certain, very specific instances. The City then instituted a new policy where it distributed documents to all employees requiring them to sign an attestation of their City residency, mandated that the employee have that form notarized, and then return it. Certain other randomly-selected employees also received an eight-page Residency Affidavit to complete. In sum, employees were required to increase their participation in the process by completing several mandatory tasks that they had not been asked to complete before.

In contrast, here, the difference in the employees' participation is minimal in proportion to the task assigned. Every member of service desiring a Restricted Parking Permit was already required to obtain his or her vehicle information, then submit that vehicle information to his or her commanding officer. The mere fact that a form has now been supplied for an employee to provide similar information does not increase the level of his or her participation to the extent that it would affect a term and condition of employment. *See, e.g., Local 371, SSEU*, 69 OCB 10, at 4-6 (BCB 2002) (the Board found that a revised timecard was not substantially different from the old one, as a new Social Security number requirement was merely a mechanical change that did not affect an existing term and condition of employment).

Similarly, as far as the "general" Pool Placard is concerned, we find that the increase in



employee participation is not significant enough to require bargaining over that subject, regardless of whether employees were required to adhere to the requirements of AGP 325-14 in the past. At a minimum, to receive a Pool Placard, members of service were required to approach their commanding officer and request the Placard for a specific use, which would then be approved or denied by that commanding officer. A member of service, according to the Unions, would then make a log entry to document his or her use of the Pool Placard. Now, a member of service must perform the same exact actions but must incidentally complete a request to use a private vehicle to accomplish the same task. In considering a written request to use a private vehicle for official police duty, under AGP 325-14, a commanding officer need note only the time the vehicle use is to begin, the member of service's information, the vehicle's information, and the general purpose of the trip. That an employee must provide this information to his commanding officer under the provision is not sufficiently significant enough a change over which to require bargaining.

The Unions also argue that the NYPD's discretion/criteria for an employee to obtain a permit has increased in two ways. First, the Unions contend that commanding officers now have the authority to deny parking permits for any member of service, but we find that this was true prior to the implementation of the new policy, as a certain amount of discretion is implied when a member of service submitted the pertinent information to his or her commanding officer under the old policy. *See PBA, 79 OCB 43, at 8 (BCB 2007)* (language of old policy implied a certain amount of discretion on NYPD's part to determine if an employee was, in fact, eligible for a certain type of leave; since there was no change in the amount of discretion, the new policy was not bargainable).

Likewise, in their pleadings, the Unions assume, without asserting any factual basis, that because the Internal Affairs Bureau now performs the check of a member of service's record, a check

that is more detailed than what the commanding officer had performed is automatically involved. The Unions did not plead facts which, if proven, would establish that the Internal Affairs Bureau would do anything different than the commanding officer, just that “IAB now plays an active role in the approval and denial of placards, adding a higher level of scrutiny to this process.” (Pet. Mem. of Law, p. 4-5). Any difference in the nature of the review or exercise of discretion has not been shown to be more than incidental. In *Correction Officers Benevolent Ass’n*, 69 OCB 26 (BCB 2002), we found that a revision to a Uniformed Sick Leave Program that included an increase in the number of types of absences that would qualify as sick leave and making it more likely that a member would be classified as “chronic absent” did not establish a new disciplinary component with an explicit categorical system for the imposition of penalties. As such, we found that the change in criteria was a non-mandatory subject of bargaining. *Id.* at 11.

Regarding the Unions’ demand to bargain over the change in the number of Pool Placards issued for the Unions’ use, we find that the City is not required to bargain. In making such a finding, we liken this issue to that of release time for representatives to conduct union activities. In the past, we have held that:

A demand for paid release time to conduct union activities which significantly and materially affect the bargaining relationship and which serve to further the policy favoring sound labor relations is a mandatory subject of bargaining. Thus, it is clear that activities such as participation in negotiations and grievance proceedings and membership on labor management committees are activities which are significantly and materially related to a collective bargaining relationship and are necessary to sound labor relations between the parties.

We note that certain types of union activity may not meet the test of significantly and materially affecting the collective bargaining relationship and they may not affect the mutual interest of the parties

to collective negotiations. A demand for paid release time to conduct such union activities, would not be a mandatory subject of bargaining.

*UFOA*, 15 OCB 22, at 8 (BCB 1975). We then clarified that a demand to participate in electoral politics or in meetings or conventions relating to internal union matters would not be mandatory. *Id.* at 9. In this matter, the Unions do not claim that they will be unable to attend to duties which significantly and materially affect the bargaining relationship, nor is it disputed that all Union representatives on full-time release time will still have access to the “Union” Pool Placard. They claim only that the ease with which they can attend to those duties has been affected, and we cannot find that those circumstances rise to the level of significantly and materially affecting the collective bargaining relationship. Further, to the extent that any of the Unions’ agents who are non-City employees utilized “Union” Pool Placards, we find that the City does not have to bargain over these individuals’ use of a Pool Placard. Therefore, we dismiss the Unions’ claim that the City violated NYCCBL § 12-306(a)(4) by issuing and adhering to the requirements of the Finest Message and the accompanying Guidelines. Additionally, since the Union has not shown that the City violated § 12-306(a)(4), there can be no derivative violation of § 12-306(a)(1). *PBA*, 79 OCB 43, at 9 (BCB 2007).

Also, the Unions claim that by reducing the number of Pool Placards allotted to the Unions, the City has violated NYCCBL § 12-306(a)(1). In this instance, we find that any limitations on Union activity that may result from a City reduction in the number of Parking Placards distributed to the Unions has resulted in mere inconvenience that does not rise to the level of interference, restraint, or coercion that is prohibited by NYCCBL § 12-306(a)(1). *Local 2627, DC 37*, 71 OCB 27, at 7-8 (BCB 2003); *cf. PBA*, 73 OCB 13 (BCB 2004) (finding a violation of NYCCBL § 12-

306(a)(1) when an employer denied union representatives access to a particular precinct in order to apprise their members of an ongoing retaliation claim involving a police officer at that precinct and certain management officials refused to discuss union matters with these union representatives); *Local 376, DC 37, 73 OCB 6* (BCB 2004) (finding a violation of NYCCBL § 12-306(a)(1) when a union proved that the employer admonished a particular union official's behavior and techniques when representing the membership and avoided dealing with the official). That the Union's Communications Director may not be able to park as closely as he desires to an event without a Pool Placard or that another Union representative who is not on full-time release may have his or her duties impeded does not present a "continuing obstacle that jeopardizes the position of the union as bargaining agent" nor does it unambiguously penalize or deter protected activity. *Feder, 1 OCB2d 23, at 16* (BCB 2008). Therefore, we dismiss the Unions' claim that the alleged reduction in the number of Parking Placards issued by the City to the Unions constitutes an independent violation of NYCCBL § 12-306(a)(1). We also dismiss any claim under NYCCBL § 12-306(a)(2) for failure to allege facts which, if established, would constitute a violation of that provision. *DC 37, 1 OCB 2d 5, at 51-52* (BCB 2008). Accordingly, we dismiss the improper practice petition in its entirety.

**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 improper practice petition docketed as BCB-2700-08, be and the same hereby is, dismissed in its entirety.

Dated: New York, New York  
March 9, 2009

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

CAROL A. WITTENBERG  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

PAMELA S. SILVERBLATT  
MEMBER

GABRIELLE SEMEL  
MEMBER