Local 621, *SEIU*, 2 OCB2d 27 (BCB 2009)

(IP) (Docket No. BCB-2747-09).

Summary of Decision*:** The Union claimed that the City and DEP violated NYCCBL § 12-306(a)(1) and (4) when the DEP unilaterally rescinded its practice of allowing all Supervisors of Mechanics (Mechanical Equipment) in its Fleet Services Division possession of a City-owned vehicle for commuting. The City argues that DEP exercised its managerial authority pursuant to NYCCBL § 12-307(b) in reducing its fleet and reallocating its vehicles to maintain the efficiency of its operations, and that the reduction was not a material change in a term or condition of employment. The Board found that, under the circumstances herein, the use of a City-owned vehicle for commuting is an economic benefit such that the failure to bargain with the Union over the recision of the vehicles was an improper practice. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

LOCAL 621, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Petitioner,

-and-

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

DECISION AND ORDER

On February 26, 2009, Local 621, Service Employees International Union, AFL-CIO ("Union" or "Local 621"), filed a verified improper practice petition against the City of New York ("City") and the New York City Department of Environmental Protection ("DEP"). The Union alleges that the City and DEP violated the New York City Collective Bargaining Law (New York

City Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(a)(1) and (4) when DEP, in January 2009, unilaterally rescinded its long standing practice of allowing all employees in the title of Supervisor of Mechanics (Mechanical Equipment) ("SMME") in its Fleet Services Division ("Fleet Services") possession of a City-owned vehicle for commuting to and from work. The City argues that DEP exercised its managerial authority pursuant to NYCCBL § 12-307(b) in reducing the size of its fleet and reallocating its vehicles to maintain the efficiency of its operation, and that the reduction was not a material, substantial, or significant change in a term or condition of employment. The Board finds that, under the circumstances herein, the use of a City-owned vehicle for commuting to and from work is an economic benefit such that the failure to bargain with the Union over the recision of City-owned vehicles violated NYCCBL § 12-306(a)(1) and (4). Accordingly, the Union's petition is granted.

BACKGROUND

A hearing in the instant matter was held over two days and the Trial Examiner found that the totality of the record established the relevant facts to be as follows:[1]

The SMME title was created by the City in the late 1980s and instituted in Fleet Services in or around 1989.[2] Local 621 represents employees in the SMME title in Fleet Services. SMMEs "supervise, direct, and are responsible for the work of assigned personnel in connection with the

[1] The record also includes an on the record conference, a Stipulation of Facts ("Stipulation"), and three affidavits, which the parties agreed be admitted into evidence with the same force and effect as in-person testimony. (Tr. 4-6; 19-20). Two of the affidavits are from SMME Richard Schriefer; the third affidavit is from Director George Hinz, who also testified in person.

[2] In 1989, Fleet Services was known as "Fleet Administration." Its name was changed to Fleet Services in or about 2001.

repair, overhaul and maintenance of various types of mechanical equipment, motor vehicles and automotive equipment." (Joint Ex. B: SMME Title Specification). There are currently eleven SMMEs in Fleet Services. Deputy Director Marchesi, who supervises the day shift, is the highest-ranking SMME; Marshall Benedetti, who supervises the night shift, is the second most senior SMME. The remaining SMMEs report to Marchesi and Benedetti, who both report directly to George Hinz, the Director of Fleet Services, who is not a SMME.[3]

From the institution of the SMME title in or around 1989 until January 2009, all Fleet Services employees in the SMME title possessed City-owned vehicles, and it is undisputed that the majority of the use of the City-owned vehicles by SMMEs was for commuting to work. It is also undisputed that SMMEs have never been allowed personal use of City-owned vehicles other than for commutating. The vehicles were also used for travel to different work sites.

The City, however, claims that SMMEs were assigned overnight possession of City-owned vehicles because they needed "the ability to respond to incidents during off[-]hours." (Tr. 49). While the Union admits that, since the inception of the SMME title, SMMEs have, on occasion, been asked to report to work at times other than their regular scheduled tour of duty (such as evenings or weekends), the Union disputes that this was the sole, or even the principal, reason SMMEs possessed and used City-owned vehicles.

---

[3] Fleet Services has six regular work locations, two in New York City (the Central Repair Shop in Maspeth and Ward's Island), one in Katonah, and three upstate in Shokan, Downsville, and Grahamsville. Eight SMMEs work at the Central Repair Shop, one works on Wards Island, one works in Katonah, and one supervises the three upstate shops. Deputy Director Marchesi supervises all six Fleet Services location; Benedetti only supervises the Central Repair Shop, as it is the only shop with a night shift.

The parties stipulated that Fleet Services has utilized a rotating system since August 2005 under which one SMME is designated each week ("designated on-call SMME") to work off-hours, if needed.[4] The SMME so designated is free to make arrangements with another SMME to cover their dates.[5] Not all SMMEs are part of the rotating system; Deputy Director Marchesi and the SMME assigned to Fleet Services' three upstate shops are never the designated on-call SMME. If the designated on-call SMME is unexpectedly unavailable when an off-hour call came in, either Deputy Director Marchesi or Director Hinz, who is not a SMME, would respond to the incident.

The City states that, since the introduction of the rotating system, and for at least the last three years, the only SMMEs that could be called into work off-hours are the designated on-call SMME and Deputy Director Marchesi and that "any SMME not on rotation no longer had that duty, no longer had that responsibility, and the condition ceased to be." (Tr. 51). Director Hinz testified that, while DEP is free to call a SMME not on rotation to respond to an off-hour incident, "[w]e [do not] order them to respond to the emergency." (Tr. 65). Rather, if a SMME did not want to work off-hours, DEP would ask another SMME to respond.

On December 31, 2008, Mayor Bloomberg issued a memorandum to all agency heads detailing the Fleet Reduction initiative, under which each agency was required to reduce its fleet expenses by fifteen percent and reduce the size of its light-duty, non-emergency, active fleet by at least ten percent. (City Ex. A). Each agency's reduction plan had to be submitted by January 30, 2009, and the vehicles relinquished by March 27, 2009.

---

[4] The parties stipulated that the rotating system was initially instituted in 2002, discontinued in 2004, but than reinstated when Hinz became Director in or about August 2005. (Tr. 81).

[5] Director Hinz testified that Fleet Services has "no problem" with SMMEs so switching; that "[SMMEs] do that a lot." (Tr. 65).

The City claims that, in January 2009, in response to the Mayor's memorandum, DEP re-evaluated its vehicle distribution.[6] As a result, all but Deputy Director Marchesi and Benedetti, the two most senior SMMEs, were required to relinquish their City-owned vehicles.[7] Deputy Director Marchesi and Benedetti retained possession of a City-owned vehicle due to their supervisory responsibilities. The parties stipulated that no bargaining or negotiations regarding the recision of the City-owned vehicles occurred.

Fleet Services retained one City-owned vehicle to be available for use by the designated on-call SMME who, while on rotation, could retain possession of the vehicle and use it for commuting. The designated on-call SMME is not required to utilize the City-owned vehicle and, since the fleet reduction, only once has the designated on-call SMME actually taken the City-owned vehicle home for the designated week.

Director Hinz testified that, other than "[s]ome SMMEs prefer[ing] to report to an emergency from home using their personal vehicle," the fleet reduction has had "no effect on the Fleet Service's day to day operation." (Hinz Affidavit, ¶¶ 6, 7). However, SMME Schriefer testified that it is not feasible for a SMME, like him, when on rotation, to use the City-owned vehicle for commuting because he would have drive his personal vehicle to work in order to get the City-owned vehicle. As he could not drive two cars home, if he drives the City-owned vehicle home, he would have to leave his personal vehicle at work. This is not practical because he cannot use the City-owned

---

[6] The City asserts that the SMMEs were required to re-file paperwork for overnight authorization, and that DEP denied nine of the eleven SMME requests. The Union denies knowledge and information sufficient to form a belief as to the actual process.

[7] Director Hinz testified that 76 vehicles were relinquished to comply with the Mayor's directive. (Tr. 63).

vehicle for personal use. Therefore, he has to use his personal vehicle for commuting while he is the designated on-call SMME and, should he be called to work off-hour, he has to use his personal vehicle to respond.

The Union claims that, having possessed City-owned vehicles for commuting for decades, the SMMEs came to rely upon these vehicles for their transport to and from work. The Union notes a significant economic impact on the SMMEs who no longer have a City-owned vehicle for commuting, in additional wear and tear on their personal vehicles and additional fuel costs. The City admits that there is an economic impact to the SMMEs in having to use their personal vehicles for commuting, but argues that consideration of any economic benefit must be offset by the tax implications.[8]

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the SMMEs' possession and use of City-owned vehicles for commuting is an economic benefit which is not subject to unilateral change. The practice of SMMEs in Fleet Services possessing City-owned vehicles for commuting was unequivocal and uninterrupted for a period of time sufficient to create a reasonable expectation among the SMMEs that the practice would continue. DEP discontinued the possession of City-owned vehicles by SMMEs employed in

[8] Neil Matthew, Deputy Executive Director of the Office of Payroll Administration ("OPA") Payroll Operations Bureau, testified that if an employee "used the [C]ity-owned or leased vehicle for their own purpose, that there must be a dollar amount assigned to it." (Tr. 119-20). The City introduced into evidence an OPA memorandum entitled "Motor Vehicle Taxable Fringe Benefits: 2008" which states that the use of a City-owned vehicle for commuting "is a taxable fringe benefit" and advises City employees as to how to how to calculate the taxes owed. (City Ex. C).

Fleet Services without notice or bargaining. This removal has had a practical impact upon the affected SMMEs in additional commuting costs.

The use of City-owned vehicles by SMMEs employed in Fleet Services is a mandatory subject of bargaining and the unilateral action of DEP in removing City-owned vehicles from nine SMMEs constituted a refusal to bargain in violation of NYCCBL § 12-306(a)(4).[9] Further, by removing City-owned vehicles from SMMEs employed in Fleet Services, DEP interfered, restrained, and/or coerced Local 621 in violation of NYCCBL § 12-306(a)(1).[10]

The Union requests that the Board declare that the removal of City-owned vehicles from SMMEs employed in Fleet Services by DEP violated NYCCBL § 12-306(a)(1) and (4); direct DEP to restore City-owned vehicles to SMMEs employed in Fleet Services from whom they were taken; direct DEP to compensate the SMMEs for any losses sustained as a result of the removal of City-owned vehicles; and granting any such other relief as the Board may deem just and proper.[11]

City's Position

The City argues that DEP exercised its managerial authority pursuant to NYCCBL §

---

[9] NYCCBL § 12-306(a)(4) reads, in pertinent part: "It shall be an improper practice for a public employer or its agents . . . 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."

[10] NYCCBL § 12-306(a)(1) reads, in pertinent part: "It shall be an improper practice for a public employer or its agents . . . to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter."

NYCCBL § 12-305 reads, 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."

[11] In its Closing Brief, the Union requests that the Board "[d]irect the parties to attempt to stipulate to the losses sustained" or order a hearing as to the damages. (Union Brief at 21).

12-307(b) in reducing its fleet and reallocating its vehicles to maintain the efficiency of its operations.[12] Since the designated on-call SMME under the rotating system is allowed to possess a City-owned vehicle while on-call, the fleet reduction has not had a practical impact on the SMMEs ability to perform their jobs. The City argues that the effect on the SMMEs personal life and commuting costs do not constitute practical impact or are *de minimis*.

The City further argues that cases from the Public Employment Relations Board ("PERB") cited by the Union for the premise that employees' possession of employer-owned vehicles for commuting is a term and condition of employment and a mandatory subject of bargaining are not applicable as no statutory managerial rights clause is involved in those cases.

The City relies upon a 2005 PERB decision holding that where the employer's vehicle use policy conditioned the assignment of employer-owned vehicles upon the performance of certain job duties, the employer retained the right to re-evaluate vehicle assignments and determine that the affected employees no longer required an employer-owned vehicle. The City argues that the management rights clause "is an indicium of the City and DEP's reservation of the right to determine which employees use their equipment and how that equipment is used." (City Brief at 9). As such,

---

[12] NYCCBL § 12-307(b) reads, in pertinent part:

> It is the right of the city, . . ., acting through its agencies, to determine the standards of services to be offered by its agencies; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; . . . Decisions of the city . . . on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

possession of a City-owned vehicle, even if used for commuting, can be revoked without bargaining upon a reevaluation of job duties.

PERB has also held that where a benefit is granted under such a condition, the cessation of such a benefit in accordance with the cessation of the condition is not a unilateral change. In the instant case, the City argues that the possession of City-owned vehicles by SMMEs was always conditioned upon the SMMEs being available 24 hours a day to respond to off-hour incidents. Although the City put on no direct evidence of this condition precedent, it argues that this condition is established by circumstantial evidence, specifically that it is undisputed that the SMMEs were not allowed to use the City-owned vehicles for personal use. With the institution of the rotation system, the condition of the SMMEs being available 24 hours a day to respond to off-hour incidents ceased. SMMEs, except for the designated on-call SMME and Deputy Director Marchesi, both of whom have access to a City-owned vehicle, are not required to be available 24-hours a day. Therefore, the removal of City-owned vehicles from the SMMEs does not constitute a unilateral change.

Further, the City argues that the fleet reduction was mandated by the Mayor, and that DEP complied in the least intrusive manner possible, ensuring that SMMEs have access to a City-owned vehicle when they are expected to perform additional duties. While the City recognizes that there has been an economic impact to the SMMEs, in terms of increased costs of commuting, it argues that "[a] purely financial impact, such as the one alleged here, does not create a *per se* impact within the meaning of the statute, or in light of decisional law." (City Brief at 15). Further, the record only "establishes rough estimates" as to the damages incurred by the SMMEs, which is "not specific enough to support a finding of practical impact." (*Id.*). Moreover, due to the tax offsets and the availability of a City-owned vehicle for the designated on-call SMME, the City has alleviated any

practical impact.

Finally, the City argues that there is no independent or derivative violation of NYCCBL § 12-306(a)(1). Petitioners have alleged no facts that would support an allegation that DEP interfered with, restrained, or coerced a public employee in the exercise of NYCCBL § 12-305 rights. As Petitioners have failed to establish a NYCCBL § 12-306(a)(4) violation, there can be no derivative NYCCBL § 12-306(a)(1) violation.

DISCUSSION

NYCCBL §12-306(a)(4) makes it an improper practice "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." *DEA*, 2 OCB2d 11, at 12 (BCB 2009) (citing *Local 376, DC 37*, 79 OCB 20, at 9 (BCB 2007); *COBA*, 69 OCB 26, at 6 (BCB 2002); *DC 37, AFSCME,Locals 2507 and 3621,* 63 OCB 35, at 12 (BCB 1999)). It is undisputed that no bargaining or negotiation regarding the rescission of SMMEs' possession of City-owned vehicles occurred.

Here, the issue before the Board is whether, under the facts of the instant case, the revocation of possession of City-owned vehicles, provided to SMMEs for commuting but not for any other personal use, constituted a mandatory subject of bargaining. It is well settled that "the term 'wages,' which pursuant to NYCCBL § 12-307(a) are mandatorily bargainable, has been broadly defined to include 'direct and immediate economic benefits flowing from the employment relationship.'" *Detective Investigators Ass'n of the Dist. Attorneys' Offices*, 79 OCB 13, at 10 (BCB 2007) (quoting *UFA*, 43 OCB 4, at 202 (BCB 1989), *aff'd*, *Unif. Firefighters Ass'n v. Office of Collective*

Bargaining, No. 12338/89 (Sup. Ct. N.Y. Co. Oct. 30, 1989), *aff'd*, 163 A.D.2d 251 (1st Dept. 1990)); *see also W.W. Cross & Co., Inc. v. NLRB*, 174 F.2d 875, 877 (1st Cir. 1949) (holding that the term "wages" as used in the National Labor Relations Act ("NLRA") § 9 "embraces within its meaning direct and immediate economic benefits flowing from the employment relationship"); *Comm. of Interns and Residents*, 49 OCB 22, at 13 (BCB 1992) (analyzing *W.W. Cross & Co., Inc.*, and concluding that the term "wages" in both the Taylor Law and the NYCCBL has "as broad a meaning as the First Circuit found in NLRA §9(a)"); *Local No. 3, IBEW*, 15 OCB 23, at 14, n. 11 (BCB 1975) (citing with approval *W.W. Cross & Co., Inc.*).

The unilateral withdrawal of use of an employer-owned vehicle is a question of first impression for the Board. However, PERB has addressed this question on numerous occasions, consistently finding it to be an economic benefit and a mandatory subject of bargaining. *County of Nassau*, 38 PERB ¶ 3005 (2005); *County of Nassau*, 35 PERB ¶ 3036 (2002); *County of Nassau*, 26 PERB ¶ 3040 (1993), *aff'd*, *County of Nassau v. New York State Pub. Empl. Rel. Bd.*, 215 A.D.2d 381 (2d Dept. 1995), *lv denied*, 86 N.Y.2d 706 (1995); *County of Nassau*, 13 PERB ¶ 3095 (1980), *aff'g*, 13 PERB ¶ 4570 (1980), *confirmed,* 14 PERB ¶ 7017 (Sup. Ct. Nassau County 1981), *aff'd*, *County of Nassau v. New York State Pub. Empl. Rel. Bd.*, 87 A.D.2d 1006 (2d Dept. 1982), *lv denied*, 57 N.Y.2d 601 (1982); *but see County of Nassau*, 38 PERB ¶ 3030 (2005) (employer allowed to unilaterally rescind use of an employer-owned vehicle for commuting where the use of the vehicle was conditioned upon a job function which had ceased).

In the instant case, it is undisputed that possession of City-owned vehicles for commuting conferred an economic benefit upon the SMMEs. As PERB has stated under similar circumstances in *County of Nassau*, 38 PERB ¶ 3005, provision of a vehicle may amount to a past practice such

that it cannot be revoked unilaterally. PERB explained that "[t]o establish a past practice that may not be altered unilaterally by the employer, it must be proven that the practice was unequivocal and existed for such a period of time that unit employees could reasonably expect the practice to continue unchanged." *Id.* (citing *County of Nassau*, 37 PERB ¶ 3014 (2004)).

The City argues that the practice of SMMEs using City-owned vehicles to commute was conditioned upon the SMMEs being required to respond to off-hour calls and, therefore, not unequivocal. The City relies upon *County of Nassau*, 38 PERB ¶ 3030, in which PERB held that where the employer conditioned the assignment of employer-owned vehicles upon the performance of certain job duties, the cessation of such a benefit in accordance with the cessation of the job duties is not a unilateral change. PERB held that:

> As a general principle, a public employer need not bargain about the manner in which it provides services to the public or about the equipment that its employees will utilize in performing their job functions. The County has preserved its right to make such determinations regarding County cars through its vehicle use policy and its process for re-evaluating employees' need of assigned vehicles. *We have long held that when a benefit is granted under a stated condition or an express reservation of right, which remains unchanged by subsequent negotiations, the modification or cessation of the benefit in accordance with the stated condition or the retained right can not be considered an impermissible unilateral change.*

Id. (emphasis added) (citation omitted).[13] *See also Gananda Cent. Sch. Dist.*, 17 PERB ¶ 3095 (1984), *aff'g*, 17 PERB ¶ 4589 (1984); *County of Nassau*, 27 PERB ¶ 3049 (1994).

---

[13] In *County of Nassau*, 38 PERB ¶ 3030, PERB noted that Nassau had an established vehicle use policy which allowed for annual reviews. *See also County of Nassau*, 26 PERB ¶ 3040 (1993) (quoting Nassau's vehicle use policy: "The assignment of all vehicles . . . shall be reviewed annually by the Commissioner's office for re-evaluation of Department needs. Continued vehicle assignment shall not be viewed as a permanent right, rather a temporary privilege, granted for the performance of specific duties."). No evidence of any similar policy in Fleet Services was introduced.

Since the institution of the rotation system, SMMEs, except for Deputy Director Marchesi, were only required to respond to off-hour calls when they were the designated on-call SMME. The City argues that the institution of the rotation system removed the condition of all SMMEs being required to respond to off-hours calls and, therefore, the City was within its rights to rescind the SMMEs' possession of City-owned vehicles, and with it the benefit of using City-owned vehicles for commuting, without bargaining.

The PERB cases cited do not lead to the conclusion advocated by City. Accepting, *arguendo*, the facts as laid out by the City, for at least the last three years, SMMEs were provided City-owned vehicles for commuting unconditioned upon their responding to off-hour calls. That is, while the practice may have been equivocal prior to August 2005, it was unequivocal thereafter. By 2006, the SMME's possession of a City-owned vehicle was unconditioned upon responding to off-hour calls. Currently, under the rotating system, on average, SMMEs are only required to respond to off-hour calls one week out of seven–and a SMME could avoid this requirement by switching with another SMME.[14] The SMME assigned to the upstate shops is never the designated on-call SMME and, therefore, never required to respond to off-hour calls. After providing the SMMEs with an unconditional economic benefit for over three years, the City cannot unilaterally alter that practice. In the past, possession of City-owned vehicles may have been conditional upon job assignments, but it was not at the time it was rescinded, and it had not been for a "period of time that unit employees could reasonably expect the practice to continue unchanged." *County of Nassau*, 38 PERB ¶ 3005 (2005); *see also Chenango Forks Cent. Sch. Dist.*, 40 PERB ¶ 3012 (2007) (PERB clarified its

[14] Currently, there are eleven SMMEs, including two who are not part of the rotation system and two who are on medical leave. The remaining seven SMMEs alternated being the designated on-call SMME, such that only once every seven weeks would any SMME be so designated.

holding in *County of Nassau*, 38 PERB ¶ 3030, to reflect that the establishment of a past practice may be "presumed from its duration with consideration of the specific circumstances under which the practice has existed.") (citing *City of Rochester*, 21 PERB ¶ 3040 (1988), *aff'd*, *City of Rochester v New York State Pub. Empl. Rel. Bd.*, 155 A.D.2d 1003 (4th Dept. 1989) (13 months sufficient to establish past practice)). Therefore, assuming, *arguendo*, that the City had the right to rescind SMMEs possession of City-owned vehicles unilaterally without bargaining when it re-instituted the rotation system in 2005, it did not do so then, and it cannot now.

Accordingly, we find that, under the circumstances herein, the City breached its duty to bargain in violation of NYCCBL § 12-306(a)(4). When an employer violates its duty to bargain in good faith, there is also a derivative violation of § 12-306(a)(1) of the NYCCBL. *DC 37*, 77 OCB 34, at 18 (BCB 2006); *DC 37*, 71 OCB 20, at 5-6 (BCB 2003); *Uniformed Sanitation Chiefs Ass'n*, 67 OCB 32, at 8 (BCB 2001).[15]

For the reasons stated above, the Union's improper practice petition hereby is granted. Under the circumstances herein, we find the appropriate remedy to order the City to restore possession of City-owned vehicles for commuting to the SMMEs in Fleet Services who had such possession rescinded. We order that the City must bargain with the Union to the point of either agreement or exhaustion of impasse procedures over all bargainable aspects of SMMEs possessing City-owned vehicles for commuting, as set forth in this decision.

---

[15] Since this Board finds that the City breached its duty to bargain, we need not consider the Union's claim of practical impact and express no opinion on whether the Union's allegations of practical impact in this case would have been sufficient to warrant a hearing.

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, Docket No. BCB-2747-09, filed by Local 621, Service Employees International Union, AFL-CIO, against the New York City Department of Environmental Protection be, and the same hereby is, granted; and it is further

DETERMINED, that the New York City Department of Environmental Protection has violated NYCCBL § 12- 306(a)(1) and (4) by making a unilateral change by rescinding possession of City-owned vehicles by employees in the title Supervisor of Mechanics (Mechanical Equipment) in its Fleet Services Division for commuting to and from work, a mandatory subject of bargaining; and it is further

ORDERED, that the New York City Department of Environmental Protection restore possession of City-owned vehicles to employees in the title Supervisor of Mechanics (Mechanical Equipment) in its Fleet Services Division for commuting to and from work; and it is further

ORDERED, that the New York City Department of Environmental Protection cease and desist from implementing changes in the bargainable aspects of the possession of City-owned vehicles by employees in the title Supervisor of Mechanics (Mechanical Equipment) in its Fleet Services Division for commuting to and from work, until such time as the parties negotiate such changes and either reach agreement or exhaust the statutory impasse procedures.

Dated: September 24, 2009
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

PAMELA S. SILVERBLATT
MEMBER

M. DAVID ZURNDORFER
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER