OSA, 2 OCB2d 30 (BCB 2009)

(IP) (Docket No. BCB-2659-07).

Summary of Decision: Petitioner alleged that, by removing a number of Administrative Staff Analysts from the title during the pendency of a representation proceeding to determine whether those in the title are eligible for bargaining, NYCHA interfered with employees' right to seek representation, in violation of NYCCBL § 12-306(a)(1). The Board found that the Union's claims were untimely filed. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

- and -

THE NEW YORK CITY HOUSING AUTHORITY,

Respondent.

DECISION AND ORDER

On October 10, 2007, the Organization of Staff Analysts ("OSA" or "Union") filed a verified improper practice petition against the New York City Housing Authority ("NYCHA") claiming that NYCHA violated § 12-306 (a)(1) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by removing a number of Administrative Staff Analysts ("ASA") from that title during the pendency of a representation proceeding to determine whether employees in that title are eligible for bargaining, thus interfering with

employees' right to representation. NYCHA argues that the petition must be dismissed as untimely, that its actions were taken for legitimate management purposes, and that NYCHA was acting in accordance with its various legal obligations while also balancing the interests and preferences of the affected individuals. NYCHA also filed a counterclaim against the Union, alleging that OSA committed an improper practice by alleging as fact in the petition what it asserts to have been the position taken by NYCHA in confidential settlement negotiations between the parties, in violation of NYCCBL § 12-306(b) and (c). This Board finds that the Union's claim was untimely filed and dismisses NYCHA's counterclaim.[1]

BACKGROUND

On February 10, 2004, the Union filed a petition with the Board of Certification ("BOC") to add the title of ASA level M-II and M-III to its bargaining certificate. According to the Union, at the time there were approximately 800 employees in this title in the Mayoral agencies and NYCHA. The City of New York and NYCHA opposed the petition, claiming that all of the employees in the title were either managerial or confidential within the meaning of NYCCBL § 12-305 and, therefore, ineligible for collective bargaining. At a pre-hearing conference on April 15, 2004, it was determined that surveys would be completed by each of the employees in the title at issue. Hearings in the NYCHA part of the case commenced on August 23, 2006.

According to NYCHA, during 2006, its Classification Unit noticed that several positions

[1] Shortly after the record in this matter was completed, the Union's then-counsel mistakenly included the docket number for this matter in a letter meant to withdraw another case. The case was closed, and it was not until 2009 that the Trial Examiner was notified of the error and the case re-opened.

assigned to two departments in particular, Information Technology and Community Operations appeared to be erroneously classified as ASAs. NYCHA submitted the affidavit of its Chief, Classification, Human Resources Department, in which he stated that he was aware of OSA's petition because, from time to time prior to and during 2006, he was asked by NYCHA to provide lists of those employees in the title ASA M-II and III for use in the proceeding. (Ans., Ex. 5 ¶ 9-10). He also averred that, in 2006, he noticed that there was an obvious mis-classification of ASAs in two departments primarily. He stated that the mis-classification stood out because the ASA title would not perform the type of work or possess the skills or training ordinarily associated with those two departments. In the affidavit, he stated that he began to suspect the mis-classifications in the early summer of 2006, at which time he instructed his staff to take steps to review certain positions and determine whether they were correctly classified. He also affirms that by July 31, 2006, the Classification Unit was reviewing the positions he suspected were incorrectly classified, that the review took several weeks, and as a result of that review, on August 21, 2006, NYCHA changed the title of a certain number of employees because they were regularly performing out-of-title duties.

On August 4, 2006, in response to a scheduling inquiry by the Office of Collective Bargaining's Director of Representation, NYCHA noted in an email to her that it had "discovered that some people are in the wrong title and [NYCHA] will be taking action to place them in the appropriate title." (Ans., Ex. 4). The Union admits that NYCHA informed the Union of its "intentions to reclassify *some* positions" in 2006, and that NYCHA notified them of "isolated title changes" during the proceedings. (Emphasis in original) (Rep. ¶ 27-28). However, the Union avers that since the number of incumbents in the title remained "practically the same" between the fall of 2004 and August in 2006, and the notifications of the title changes were done in an isolated manner,

the cumulative effect of the changes were masked, so that at the time, OSA felt it "had no reason to probe any further." (Rep. ¶ 28).

On August 10, 2006, NYCHA provided OSA with a list of then-current NYCHA employees in the title. There were 151 employees in the contested title, 116 ASA M-IIs and 35 ASA M-IIIs. On that same date, the Director of Representation held a conference call with counsel for both parties to discuss which employees would testify. According to the Union, during the conference call, those involved discussed the question of the eligibility of the employees based upon the 154 surveys completed by those in the title in the fall of 2004. Shortly thereafter, the Union asserts that it offered a settlement proposal for NYCHA's consideration.

Representation hearings concerning the NYCHA employees commenced on August 23, 2006. In its Answer in the instant matter, NYCHA produced a transcript from the first day of hearing in the representation matter at which it raised its belief that several positions were assigned to out-of-title duties, but OSA objected on the basis that it was not relevant if the people were incorrectly classified. The Director of Representation sustained OSA's objection, noting that whether a person was performing out-of-title duties was beyond the scope of the representation proceeding.

On September 21, 2006, the parties met to discuss settlement of the representation case. The parties did not reach a settlement. In June 2007, after 11 days of hearing and testimony, the parties again entered settlement discussions. According to the Union, to prepare for those discussions, NYCHA sent OSA a list of then-current NYCHA employees in the title as of June 2007 on August 13, 2007. The Union alleges that the list contained only 114 employees in the ASA title in question, 87 level M-II and 27 level M-III. The parties met again on September 7, 2007 to discuss settlement. In its pleadings, the Union specified what it purported to be NYCHA's position regarding the

eligibility of certain positions on that date.

Following the September 7, 2007 meeting, OSA alleges that it compared the various lists of employees in the title that it had been provided throughout the course of the proceedings, including the list that had been provided to them on August 13, 2007. OSA alleges that it noticed that in the year since the August 10, 2006 conference call and the commencement of the hearings, there was a reduction of 37 employees in the title. OSA alleges that NYCHA moved 24 employees out of the title between June and August 2006, with 22 changes occurring on August 21, 2006. NYCHA alleges that the title changes to which OSA refers were in accordance with its August 2006 statements to the Union and the BOC that some employees were classified incorrectly and would be reclassified.

OSA also claims that it is unable to determine the current status of approximately 19 employees listed in its Exhibit F ("Exhibit F Employees") who completed a survey in Fall 2004 or appeared on the August 10, 2006 list, because they did not appear on the August 13, 2007 list. As to the 19 Exhibit F employees, NYCHA alleges that most of the employees on the list are former employees who either retired or resigned from their positions, or who have had name-changes due to marriage or divorce. NYCHA contends that during the hearing in the representation case, it frequently provided OSA with information regarding those listed. It asserts that even though it had provided much of that information to the Union on previous occasions, several weeks before NYCHA filed its answer, it also provided the Union with a detailed written list explaining the status of every person on OSA's list of 19 employees while the parties attended a hearing date in this matter at the OCB. (Rep., Ex. 6).

POSITIONS OF THE PARTIES

Union's Position

The Union claims that NYCHA implemented the August 21, 2006 reclassification just eleven days after the August 10, 2006 conference call in which the Director of Representation opined that the surveys suggested that most of the employees in the positions were eligible for collective bargaining and only two days before hearings were scheduled to commence. Additionally, OSA contends that NYCHA reclassified these positions after OSA made a settlement offer. It also argues that a public employer may not evaluate, reclassify, and reassign employees for the purposes of altering the outcome of a pending representation case. Under the circumstances here, NYCHA's transfer of 24 ASA M-II and M-IIIs to other titles is an attempt to foreclose the employees' right to seek representation while remaining in the ASA title. The removal of 29 employees or 25% of the proposed unit, over a 12-month period, during the pendency of a representation petition and immediately following the Director of Representation's preliminary evaluation of eligibility and a Union settlement offer, constitutes a violation of NYCCBL § 12-306(a)(1).[2]

Contrary to NYCHA's contention that the petition was filed in an untimely manner, the

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[2] 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 . . .
>
> * * *
>
> 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. . . .

Union asserts that its petition was timely filed. Although NYCHA may have informed the Director of Representation and OSA of its intentions to reclassify some positions in a piecemeal manner, it was not until OSA received the list of employees dated August 13, 2007, that it discovered the blatant 25% reduction of the unit. 37 employees were no longer ASA M-II or M-IIIs, reducing the size of the unit from 151 to 114 in a 12-month time span. Between fall 2004 and August 2006, the number of incumbents in the title remained practically the same. Therefore, when NYCHA throughout the course of the hearings occasionally informed OSA of isolated title changes, the Union had no reason to probe any further. Since the removal of 37 employees was only discovered in September 2007, and this petition was filed on October 10, 2007, the petition is timely.

The Union argues that NYCHA has not provided a single example to prove it had legitimate business reasons for the reclassifications. It has failed to identify what duties being performed by a former ASA were inappropriate to the title and more appropriate for the new title, or why it chose not to replace the employees with new hires to the title, as it has presumably done in the two-year time period between the fall of 2004 and August 2006. Moreover, NYCHA's argument that it undertook the reclassification to avoid future out-of-title grievances is unavailing because, upon information and belief, the salary ranges for the new titles are identical or close to identical to the salary ranges of ASAs. NYCHA has also failed to identify what tasks were being performed by the at-issue employees that prompted a reclassification. NYCHA's attempts to justify its reclassification as an effort to give NYCHA employees the chance to speak for themselves, preserve a level of prestige, and promote an employee's ability to move in their chosen field do not justify improper reclassifications in the course of an ongoing representation proceeding.

As to NYCHA's counterclaim that OSA committed an improper practice when it alleged as

fact details of confidential settlement negotiations, OSA asserts that neither the Public Employment Relations Board ("PERB") nor the Board has ruled that it is improper to reveal a party's position in settlement negotiations of a representation petition. OSA only revealed broad details of the informal settlement discussions without revealing any of the individual employees discussed by the parties. The facts were provided to show what prompted OSA to conduct a more detailed analysis of the current number of ASAs and demonstrate that NYCHA's reclassification was motivated by the Union's offer.

The Union requests that the Board order NYCHA to rescind, void, and annul the change in titles of the ASA M-IIs and M-IIIs named in its pleading in the instant matter and any other former ASA M-II or M-III whose title was improperly changed and reinstate the employees to their previous ASA title and level without any diminishment in pay; declare that NYCHA's actions in removing employees from the title during the pendency of a representation petition violates the NYCCBL; in the alternative, order a hearing on any disputed material issues of fact; order NYCHA to refrain from making further reclassifications of the ASA M-II and M-IIIs during the pendency of the representation hearings; order NYCHA to provide the current title and employment status of the Exhibit F Employees it identifies; and post appropriate notices.

NYCHA's Position

NYCHA contends that the reclassifications about which OSA complains were effective August 21, 2006, which is more than four months prior to the filing of the petition, making the claim untimely filed. NYCHA was very open about its intentions to reclassify certain employees at the time they were reclassified in 2006 and contends that it defies logic that NYCHA would be so open

about its intentions if the action was taken based upon anti-union animus.[3] NYCHA's openness was also apparent in the representation case, where updated organizational charts were submitted for virtually every position already addressed even marginally in that case. Those charts referenced many, if not all, of the positions listed. As the case progressed, NYCHA indicated that those positions were no longer classified as ASAs and, on August 23, 2006, the first day of hearings in the matter, NYCHA tried to solicit testimony that employees were performing out-of-title duties. Therefore, OSA knew or should have known that the reclassification actions with regard to the employees occurred in 2006.

NYCHA contends the 19 Exhibit F Employees should not even be involved in this matter, as NYCHA had already provided the Union with an accounting of their status showing whether they be resigned, retired, are still in the title, or, in very few cases, had assignment changes, including promotions.

NYCHA claims that its actions were taken for legitimate management purposes when it made proper use of available management tools, specifically evaluation, reclassification, and transfer of employees from the ASA title to other titles. Only those positions that were clearly out-of-title were reclassified, and then, only if the employee assigned to that out-of-title position agreed to it. Furthermore, the record shows that the determination that positions were assigned to out-of-title duties was completed before the parties discussed settlement and before the Director of Representation offered any preliminary thoughts.

Once the decision to reclassify had been made in the summer of 2006, like many things in

[3] NYCHA also argues that the Director of Representation did not perceive any anti-union animus, as she never even commented on NYCHA's email in which it explicitly stated its intentions to reclassify.

government, it took time to process the personnel changes. Thus, the meaningful date here is not the effective date of the title changes, but the date when the review started, which was some time before July 31, 2006. If the positions that were reclassified remained unchanged, and then became part of the bargaining unit through the representation proceeding, NYCHA would then be open to out-of-title claims under OSA's collective bargaining agreement. NYCHA's lack of anti-union animus is also shown by the fact that it did not hesitate to appoint people from a civil service list to the title of ASA during the proceedings and appointed everyone on the list except for one person who resigned.

Furthermore, NYCHA also willingly engaged in efforts to resolve the case by agreement rather than proceed with the difficult, time consuming, and protracted hearings. Any such agreement would most certainly have required acceptance by NYCHA that some positions would be represented by the Union. Additionally, some of the ASA positions OSA complains about were transferred into the title Administrative Manager, which is the subject of a representation petition by another union. When considered together, all of NYCHA's actions support the conclusion that the reclassification of some positions out of the ASA title demonstrates NYCHA's efforts to improve its civil service classification across the full compliment of its in-house titles.

NYCHA argues that assuming that this Board would find that the rights of NYCCBL § 12-305 are applicable to the NYCHA ASAs while the determination of their status is pending, the Board should then consider whether these ASAs want to be represented or prefer to refrain from any and all such activities as permitted by that provision. If the answer was that, collectively, these employees did not want and were not seeking Union representation, then whatever action NYCHA took would not be interference. "Anyone who wanted to remain an ASA, despite their out-of-title

duties, was permitted to remain in the title," thereby removing any indicia that reclassification could be coercive. (Ans. ¶ 127).

As to its counterclaim, NYCHA contends that by including what it purports to be NYCHA's bargaining position, OSA is attempting to prejudice NYCHA's position in the certification hearings, in settlement negotiations if they are able to continue, and in the eyes of this Board and the BOC. NYCHA acted in good faith when it attempted to negotiate a settlement of the case. It did so with an expectation and an understanding that neither party would reveal what was said during these negotiations. There is no legitimate reason for including what is purported to be NYCHA's positions in the negotiations between these parties. It did not enhance the understanding of the alleged facts, did not support or explain any of the allegations and did not enhance an understanding of what was alleged to have occurred. OSA's conduct tends to inhibit the free and open discussion necessary to successfully negotiate a resolution and, thus, it failed to bargain in good faith, in violation of § 12-306(b) and (c).[4]

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[4] § 12-306(b) provides in pertinent part:
Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:
(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;
(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;
(3) to breach its duty of fair representation to public employees under this chapter.

§ 12-306 (c) provides in pertinent part:
Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
(1) to approach the negotiations with a sincere resolve to reach an agreement;
(2) to be represented at the negotiations by duly authorized representatives prepared

DISCUSSION

We address initially NYCHA's argument that the petition is untimely. An improper practice charge "must be filed no later then four months from the time the disputed action occurred or from the time the petitioner knew or should have known of said occurrence." *Raby*, 71 OCB 14, at 9 (BCB 2003), aff'd, *Raby v. Office of Collective Bargaining*, No. 109481/03 (Sup. Ct. New York Co. Oct. 8, 2003) (citing NYCCBL § 12-306(e) and § 1-07(d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"));[5] *see also DC 37, Local 1457*, 1 OCB2d 32, at 21 (BCB 2008)*; Tucker*, 51 OCB 24, at 5 (BCB 1993).

In the instant matter, NYCHA argues that it told the Union that it intended to reclassify the

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to discuss and negotiate on all matters within the scope of collective bargaining;
(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
(5) if an agreement is reached, to execute upon request a written document embodying the
agreed terms, and to take such steps as are necessary to implement the agreement.

[5] NYCCBL § 12-306(e) provides, in relevant part:
A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. . . .

OCB Rule § 1-07(d) provides, in relevant part:
A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 12-306 of the statute may be filed with the Board within four (4) months thereof . . .

the employees in question in 2006 and that it kept the Union apprised of changes in personnel throughout the representation proceedings. NYCHA argues that the Union did not file the instant petition until over a year after the reclassification took place on August 21, 2006, making the petition untimely.

In *Captains Endowment Ass'n*, 79 OCB 42 (BCB 2007), we stated that, "[w]hen a claim arises more than four months prior to the filing of the petition and there is no allegation that the action continued or in other manner accrued at any time within the four-month time limitation, the petition will be dismissed as untimely." *Id.*, at 7 (citing *DC 37*, 77 OCB 34, at 12 (BCB 2006)). In considering the above, in the instant matter, the Union admits that NYCHA informed it as to the title changes of an unspecified number of employees in the ASA title but emphasizes that it was notified of those changes in an isolated manner as the hearing proceeded. The Union argues it was only in August 2007, when it received a comprehensive list of the employees at that time, that it realized the implications of the reclassifications. We find that, under the circumstances here, the Union has not established that its cause of action accrued within the four month statute of limitations, or that the statutory time frame should be tolled .

We note that the Union does not allege that it first became aware of any individual reclassification alleged in the petition within the four month statute of limitations. Rather, it admits that it was on notice of NYCHA's intentions to reclassify the employees, and the record shows that NYCHA reclassified the bulk of the employees in question on August 21, 2006, over a year prior to the filing of the instant improper practice petition. Further, NYCHA was quite open about its intent to reclassify. That the Union had notice that NYCHA actually reclassified these employees as it stated that it would is evidenced by the Union's admission that NYCHA "occasionally"

informed it of "isolated" title changes throughout the hearings, which commenced on August 23, 2006. (Rep. ¶ 27). Since the Union admits that it knew of NYCHA's intention to reclassify, and the uncontested fact that the reclassification of at least 21 of the employees occurred close to the commencement of the hearings, during which time the Union was admittedly receiving periodic updates from NYCHA on employee status, we find that the Union had sufficient information to, at a minimum, trigger a duty to inquire concerning the reclassifications. *See Putter v. North Shore Univ. Hosp.*, 7 N.Y.3d 548 (2006) (where plaintiff had sufficient information available to require him to investigate whether there was a basis for bringing suit, statute of limitations not tolled); *Matter of Long Island Power Ratepayer Litig.*, 47 A.D.3d 899, 900 (2d Dept. 2008) (in Article 78 proceeding, where petitioner had sufficient information to trigger duty to inquire, but failed to do so, statute of limitations defense granted) (citing *Matter of Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 279, *cert den.*, 488 US 801 (1988)). Therefore, we find that the Union's claim accrued more than four months prior to it filing the petition herein and that no persuasive ground has been adduced to toll the running of the statute of limitations. Since nothing persuasive intimates that the reclassification continued or in any other manner accrued at any time within the four-month time limitation, the instant petition is, therefore, untimely.

The Union claims that even though NYCHA did inform it of some of these title changes throughout the hearings, "[it] had no reason to probe any further." (Rep. ¶ 28). We find unpersuasive the Union's contention that when, during the pendency of an adversarial proceeding in which it sought to represent ASAs, the employer notified the Union of its intentions to reclassify certain of the very employees in question, raised the issue of their serving in the wrong title on the first day of hearing in August 2006, and inform the Union of reclassifications as the hearing

progressed, even though on an occasional or isolated basis, that the Union did not have notice of these reclassifications and other status changes until it received a compiled list of current employees in August 2007.[6]

At a very minimum, when the Union was made aware of these "isolated" reclassifications, it should have sparked some sort of informational request from the employer so that it could investigate, much like the very same Union did in *Organization of Staff Analysts*, 1 OCB2d 45 (BCB 2008). In that matter, which also involved an allegation that an employer changed the title of certain employees to deprive the members of their rights to collective bargaining, in discussing timeliness, we did not find the statute of limitations period began immediately upon the union's receipt of some information because upon receiving some notice "the Union requested information from HHC as to the former SMC's new positions promptly upon learning of the civil service title changes . . .". *Id.* at 11. *See Putter v. North Shore Univ. Hosp.*, 7 N.Y.3d at 553 (2006) ; *Matter of Long Island Power Ratepayer Litig*, 47 A.D.3d at 900, citing *Matter of Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 279, *cert den.*, 488 US 801 (1988). In the instant matter, upon admittedly receiving notice both of intent and of actual title changes from NYCHA, the Union failed to investigate, eliminating any justification to toll the statute of limitations.[7]

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[6] We find unpersuasive the Union's contention that it "had no reason to probe any further" because the number of incumbents in the title remained "practically the same" between the fall of 2004 and August 2006. (Rep. ¶ 28). There was no activity in the representation proceeding during that time period. When hearings commenced in August 2006, as described above, the Union admittedly had been informed of NYCHA's intention to reclassify employees it considered to be working out of title, and, in an isolated manner, of the actual transfer of employees. Given these facts, reliance on the lack of significant change in a prior two-year period would not be reasonable.

[7] At least one of the 19 Exhibit F Employees had their status indicated by NYCHA as "promoted 'Special Ass't to Executive Director (HA)' at M-3 effective 9/26/05." If, upon being

In the instant matter, in so holding, we reject the Union's suggestion that we are creating some sort of "perverse incentive to require a party to file an improper practice petition immediately upon recognizing the possibility of a NYCCBL violation, as opposed to actual or constructive knowledge thereof." *OSA,* 1 OCB2d 45, at 11. Under the circumstances of this case, there should have been some point well prior to October 2007 when the Union reasonably should have inquired about the reclassifications and status changes and filed an improper practice if it believed those reclassifications to be violative of the NYCCBL. Waiting until NYCHA provides OSA with a cumulative list of employees currently in-title, when it had been admittedly apprised of at least some of the contested title changes over a year prior does not stay the accrual of a claim.

As to NYCHA's counterclaim, although PERB has held that it is an improper practice for a union to reveal confidential settlement negotiations to a fact-finding panel in certain situations, we do not find that to be the case here. In *Uniondale Free Sch. Dist.*, 20 PERB 4634 (1987), which was cited by NYCHA, the terms of the offer disclosed concerned contract negotiations and included salary proposals. The impact of such premature disclosure of settlement proposals on collective bargaining impasse proceedings differs from what was revealed in OSA's improper practice petition, thereby removing the instant matter from *Uniondale's* ambit. Furthermore, PERB found it significant that the proposal revealed in *Uniondale* contained express language at the top which

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notified of even "isolated" title changes of the other employees near the commencement of the hearings in August 2006, the Union had inquired regarding the status of any of these employees and continued its inquiries throughout the proceedings, the status of at least some of the Exhibit F Employees may have been unearthed, or the Union could have taken action to glean that information from NYCHA if NYCHA were unwilling to provide it. However, neither action occurred here. Moreover, as the Union has not contested the information provided by NYCHA as to the nature of these employees' departure from the title, such employees cannot form the basis of a claim under the NYCCBL, as explained *ante*.

stated "OFF THE RECORD PROPOSAL NOT TO BE REVEALED TO ANY MEDIATOR OR FACT FINDER WITHOUT DISTRICT AGREEMENT." NYCHA has not made a similar claim here, and no basis for such a claim appears on the record. *See Village of Johnson City*, 40 PERB ¶ 3009 (2007) (adopting ALJ's reasoning in *Uniondale*, supra and in *Police Benevolent Association of the City of White Plains*, 25 PERB 4691 (1992)). Accordingly, we dismiss both the petition and the counterclaim.

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-2659-07, be and the same hereby is, dismissed as to any claims arising under NYCCBL § 12-306(a)(1), and it is further

ORDERED, that the counterclaim filed by the New York City Housing Authority, be, and the same hereby is, dismissed as to any claims arising under NYCCBL § 12-306(b) and (c).

Dated: New York, New York
September 24, 2009

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER