*New York State Nurses Association,* **3 OCB2d 36 (BCB 2010)**
(IP) (Docket No. BCB-2827-10).

***Summary of Decision:*** The Union alleged that HHC violated NYCCBL § 12-306(a)(1) and (4) by unilaterally changing the alternative work schedules for three of its employees, by failing to bargain over these changes, and by failing to provide the information needed to collectively bargain. HHC contended that the improper practice petition should be deferred to arbitration because it involves the interpretation of the parties' collective bargaining agreement. Furthermore, HHC contended that the instant petition should be denied as the Union did not establish that HHC failed to bargain in good faith over a mandatory subject of bargaining. The Board found that the issues related to the implementation of these new work schedules and the alleged refusal to bargain over that decision should be deferred to arbitration. The Board further found that HHC violated its duty to bargain in failing to produce information responsive to one of the Union's six document requests, while HHC did not violate the NYCCBL when it did not respond to the Union's other five requests. Finally, the Board denied the Union's claim that HHC independently interfered with the statutory rights of the Union's members. Accordingly, the Board deferred to arbitration a portion of the Union's instant petition, then granted the petition in part, and denied the petition in part. ***(Official decision follows.)***

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

**In the Matter of the Improper Practice Petition**

***-between-***

**NEW YORK STATES NURSES ASSOCIATION,**

***Petitioner,***

***-and-***

**THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,**

***Respondents.***

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## DECISION AND ORDER

On January 12, 2010, the New York State Nurses Association ("NYSNA" or "Union") filed

a verified improper practice petition against the New York City Health and Hospitals Corporation ("HHC") alleging that HHC violated the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(a)(1) and (4). The Union claims that HHC unilaterally changed the alternative work schedules ("AWS") of three members of NYSNA, and that this change breached HHC's duty to bargain in good faith. The Union also contends that HHC violated the NYCCBL when it refused to bargain over the changes of the AWSs for these employees and when it refused to provide, upon request, information needed by the Union to collectively bargain over this issue. HHC argues that the Union's petition should be deferred to arbitration because the allegations contained therein require the interpretation of the parties' collective bargaining agreement. Further, HHC argues that the Union has not set forth a valid claim against HHC for violating its duty to bargain because an extensive provision in the parties' collective bargaining agreement reflects the fact that they already have bargained over the issue of AWSs. In addition, HHC contends that it has provided all necessary documents it has available. The Board defers the claims concerning HHC's decision to change the AWSs for these three NYSNA members and HHC's alleged refusal to bargain over this implementation to arbitration because the resolution of these issues require the interpretation of the parties' collective bargaining agreement. We further find that HHC violated NYCCBL § 12-306(a)(4) when it failed to produce information responsive to one of NYSNA's six document requests, but find no violation based on HHC's failure to provide responsive documentation concerning the five other requests. Finally, we find that HHC did not independently interfere with the statutory rights of NYSNA members because the Union's allegations regarding this claim are speculative and conclusory.

## BACKGROUND

HHC provides medical, mental health and substance abuse services through its eleven acute care hospitals, four nursing facilities, six diagnostic and treatment centers, and more than eighty community-based clinics. One of these facilities is Bellevue Hospital Center, which has an Emergency Department comprised of numerous units, including Pediatric Emergency, Urgent Care, and Comprehensive Psychiatric Emergency ("Bellevue"). The Urgent Care Unit provides diagnostic evaluation and therapeutic management of patients within the spectrum of medical and surgical disease, illness or injury. Among the titles that staff the Urgent Care Unit are employees in the title of Nurse Practitioner ("NP"). The terms and conditions for employees in the NP title are governed by a collective bargaining agreement between HHC and NYSNA that was executed on June 27, 2008 and which covered the period from December 1, 2007 to January 20, 2010 ("Agreement"). As a part of the Agreement, a side agreement was entered into between the parties which governs the eligibility, assignment, implementation, alternation, reduction and termination of AWSs for employees in the NP title ("AWS Agreement").

According to the AWS Agreement, a "Normal Schedule" is defined as an "arrangement of workdays and hours in which an employee fulfills her/his work commitment in five (5), seven and one-half hour (7 ½) days within a seven (7) day period of time." (Pet., Ex. A). AWSs are defined as an "arrangement of workdays and hours in which an employee fulfills her/his work commitment in a manner other than the standard five (5), seven and one-half hour days." (*Id.*). The AWS Agreement further provides procedures for the implementation of AWSs, how overtime, shift differential, and meal/rest periods are affected by AWSs, and how AWSs are to be posted. The

AWS Agreement also sets out the four types of AWSs: I) the "Three Day Work Week" which is three twelve and one-half hour tours in one week; ii) the "Four Day Work Week" which is four ten hour tours in one week, three ten hour tours plus one five hour tour in the other week; iii) the "Four Week Tour" which is three eleven and one-half hour tours for three weeks, plus three eleven and one-half hour tours and one twelve hour tour in the other week; and iv) the ""Two Week Tour" which is three thirteen hour tours one week, three twelve hour tours in the other week. (*Id.*).

The AWS Agreement also sets forth the procedure by which AWSs may be terminated or reduced. This provision, entitled "Termination or Reduction of AWS," is § 5 of the AWS Agreement and states, in pertinent part:

> A. The employer may terminate or reduce the AWS to a normal schedule upon sixty (60) days written notice to [NYSNA] and [the] affected employees.
>
> B. After the above-mentioned sixty day notice of intent is provided, a Labor-Management Committee meeting will be convened to discuss alternatives to the termination or reduction. . . . At the conclusion of the sixty (60) day notice period, the final decision whether to terminate or reduce the AWS, or to modify the original notice of intent to terminate or reduce the AWS, shall be made by the facility Executive Director. . . . The sixty (60) day period may be extended to allow for further discussion upon the expressed written consent of the Employer to [NYSNA].
>
> C. Upon termination or reduction of the Alternate Work Schedule in a unit, employees will volunteer to cover all three tours. In the existence of a conflict regarding an assignment to a tour, seniority will prevail.

(*Id.*).

On June 15, 2009, Bellevue's Director of Nursing for the Emergency Department issued a memorandum stating the work schedules for NPs in the Urgent Care Unit would be changing in

order to address patient and work flow. This memorandum also set forth the new work schedules for these employees consisting of three ten and one-half hour tours and one ten hour tour all in one week. (Ans., Ex. 1). This new schedule did not comport with any of the four types of AWSs set forth in the AWS Agreement, nor did this newly enunciated schedule constitute a "Normal Schedule" as defined by the AWS Agreement. (Pet., Ex. A). Finally, this memorandum stated that these changes would be implemented on August 2, 2009. In conjunction with the implementation of the new work schedules for these NPs, HHC also decided that it would "add" nurse practitioners who "would be paid for by New York University Medical Center" ("NYU") and who are not represented by NYSNA. (Ans. ¶ 21). On July 16, 2009, NYSNA sent a letter to HHC stating that its implementation date violated the AWS Agreement's requirement that NYSNA and the adversely affected employees receive 60 days notice of such an alteration.

On July 23, 2009, Bellevue's Director of Nursing for the Emergency Department issued another memorandum stating that the decision to change the works of the NPs "was made in the context of the extreme budgetary constraints placed" on HHC and indicating that the implementation of the originally proposed change would be moved to September 27, 2009. (Ans., Ex. 3). On July 24, 2009 and August 6, 2009, NYSNA and HHC met to discuss the proposed implementation of the new work schedules, which according to HHC was for budgetary reasons. On September 8, 2009, Bellevue Executive Director of Human Resources informed the Union that the decision to implement the schedule changes would commence on September 27, 2009. It further set out the schedules for the three NPs within the Urgent Care Unit who were adversely affected by HHC's decision to terminate the AWSs within this unit.

On September 14, 2009, NYSNA filed a grievance on behalf of these three adversely affected

employees alleging that HHC violated the terms and conditions of the AWS Agreement, specifically § 5 thereof. On October 16, 2009, HHC issued a decision on this group grievance denying the Union's claim. On November 17, 2009, the Union appealed and amended the previous adverse decision to Step III.[1] Based upon the record before us, there has been no Step III determination issued, and the Union has not withdrawn the grievance.

Both parties assert that between June 2009, when the decision to change the schedules of these three employees was made, and December 2009, various documents and information were provided by Bellevue to NYSNA. Also, on November 17, 2009, NYSNA requested from HHC:

> 1. The Corporate Job Description for [NPs];
> 2. The Job Description for [NPs] at Bellevue;
> 3. A copy of the contract and/or agreement between Bellevue and NYU giving privileges to the NYU [NPs] to work at Bellevue;
> 4. A copy of all work schedules for Urgent Care [Unit] since September 27, 2009 and all future schedules;
> 5. A written explanation on exactly why hours of operation in Urgent Care [Unit] were reduced and/or changed;
> 6. It is my understanding that the hours of operation were reduced to 12 hours on weekdays and 10 hours on weekends and Holidays. What are the current hours of operation and what were the previous hours of operation?
> 7. In a letter dated July 23, 2009, Susanne Greenblatt indicated that the hours of operation had to be reduced due in part to the continuing financial crisis and its direct effect on the [Bellevue] NP staffing budget (via the NYU JOC - Joint Operations Committee). Please provide any and all documentation that substantiates this claim, including any documentation from the NYU JOC;
> 8. Please provide a detailed explanation and financial breakdown of exactly how subcontracting of NYU [NPs] will improve and exactly what effect it will have on the [Bellevue]

[1] According to the record, the amendment to the original grievance, dated September 14, 2009, was limited to amending of the relief sought therein and NYSNA's substantive allegations were unchanged.

staffing budget;

9. Please provide a written explanation of exactly how the reduction of hours in Urgent Care [Unit] and the staggering of NP shifts will better meet the business needs of the facility and improve patient care;
10. A full and complete Over Time Report and Agency Usage Report in the Urgent Care Unit since June 2009;
11. Exactly what is being done to ensure the safety of the NP that has to work alone a 9:00 p.m.?
12. Please explain why the NPs were not paid Shift Differential in the past and why they are not currently receiving it?

(Pet., Ex. B) (internal quotations omitted).

On December 28, 2009, in response, Bellevue's Director of Labor Relations sent to NYSNA an email attaching some of the documents requested by the Union. Based upon the record before us, HHC has not produced documents responsive to the following NYSNA requests:

1. Copy of the Contract and/or agreement between Bellevue and NYU giving privileges to the NYU [NPs] to work at Bellevue.
2. Any and all documentation from NYU JOC that would substantiate a claim in an HHC missive from Susanne Greenblatt dated July 23, 2009 regarding the need for a reduction in the Urgent Care [Unit] hours due in part to the continuing financial crisis and its direct effect on the [Bellevue] NP staffing budget (via the NYU JOC - Joint Operations Committee).
3. A full and complete Overtime Report and/or Agency Usage Report in the Urgent Care unit since June 2009.
4. A written explanation on exactly how the change or reduction in hours has improved operation and/or patient care in Urgent Care [Unit].
5. A detailed explanation and financial breakdown of exactly how the subcontracting of NYU [NPs] will improve, and exactly what effect the subcontracting will have on, the [Bellevue] staffing budget.
6. Policy and/or Operating Procedures regarding the Outsourcing and/or Subcontracting of services and work.

(Ans. ¶ 35 and Rep. ¶ 21) (internal quotations omitted). Based upon the record before us, no further

requests by the Union have been made, and HHC has not provided any additional documents.

On January 12, 2010, the Union filed the instant improper practice petition alleging that HHC violated NYCCBL § 12-306(a)(1) and (4) by unilaterally changing the work schedules of three of its members, by failing to bargain over these changes, and by failing to provide, upon request, information needed to collectively bargain over these changes. The Union, as a remedy, sought an order requiring HHC: to bargain over the changes in the work schedules for the three NPs, provide the information and documentation requested by NYSNA, and to reinstate the AWSs of the three NPs.

## POSITION OF THE PARTIES

### Union's Position

The Union contends that HHC violated NYCCBL § 12-306(a)(1) and (4) when it refused and failed "to bargain with NYSNA over the AWS schedule changes and the effects of the AWS schedule changes to the three NPs."[2] (Pet. ¶16). HHC further violated this provision of the NYCCBL "by unilaterally implementing the changes to the three NPs' AWS schedules without

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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;
* * *
(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. . . .

NYCCBL § 12-305 provides, in relevant 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.

bargaining such changes with NYSNA." (Pet. ¶ 17). Additionally, HHC violated NYCCBL § 12-306(a)(4) "by failing to provide NYSNA requested information and documentation."[3] (Pet. ¶ 18). Finally, the Union argues that HHC, by changing the work schedules of the three NPs, interfered with, restrained, and coerced the exercise of the statutory rights of NYSNA's members.

**HHC's Position**

HHC contends that the Union's claims should be deferred to arbitration because the contractual arbitration procedures provide an appropriate means of resolving the underlying dispute. Furthermore, the resolution of this issue requires interpretation of the Agreement and the AWS Agreement. The Union's claims against HHC arise out of the termination of the AWSs of three NPs who work in the Urgent Care Unit of Bellevue. The AWS Agreement governs the terms and condition of AWSs amongst applicable HHC employees, and this side agreement addresses various topics that affect AWSs. Specifically, § 5 of the AWS Agreement establishes the manner by which HHC may accomplish said termination or reduction. In fact, the Union recognized its obligation to redress any violation of the AWS Agreement through the grievance process and filed a grievance on behalf of these three employees.

HHC further argues that the Union failed to present facts demonstrating that HHC failed to and/or refused to bargain in good faith over a mandatory subject of bargaining. Although the issue of AWSs admittedly relates to a mandatory subject of bargaining, HHC contends that it satisfied that

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[3] NYCCBL § 12-306(c) defines good faith bargaining and states, *inter alia*, that:
The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation . . . 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.

obligation through the memorialization of the AWS Agreement. Since the AWS Agreement already contains a protocol by which HHC may terminate or reduce the AWSs of NPs, HHC bargained to fruition on this issue. Furthermore, HHC denies that its failure to produce information to NYSNA violated NYCCBL § 12-306(a)(4). HHC provided some of the requested documents, and moreover, the Union has not demonstrated that any of the documents not disclosed to the Union, to date, are available and/or necessary for the proper discussion, understanding and negotiation over the issue of AWSs.

Finally, the City contends that the Union's claim that HHC interfered with, restrained and coerced its members statutory rights under § 12-305 of the NYCCBL is unsupported by the record in the instant matter. NYSNA proffered no facts independent of those alleged in support of their claim under § 12-306(a)(4) to support a claim under § 12-306(a)(1). Moreover, since NYSNA failed to establish that HHC failed to bargain in good faith over a mandatory subject of bargaining, in contravention of NYCCBL § 12-306(a)(4), there is no derivative violation of § 12-306(a)(1).

## DISCUSSION

The Union claims that HHC violated its duty to bargain in good faith when it unilaterally implemented new work schedules for three employees within the NYSNA bargaining unit, failed to bargain over this implementation, and failed to provide NYSNA with the necessary documents required to bargain collectively over said change. Preliminarily, we address HHC's argument that the instant petition should be deferred to arbitration because the underlying dispute involving the decision to implement new work schedules for the three NYSNA members involve the interpretation of the AWS Agreement.

This Board has recognized, as a matter of law, that it "shall not have the authority to enforce an agreement between a public employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice." *SSEU, Local 371*, 1 OCB2d 20, at 12 (BCB 2008) (citing N.Y. Civ. Serv. Law § 205.5(d)). We have consistently held that "[a]lleged violations of an agreement between the employer and an employee organization that do not otherwise constitute improper practices are expressly beyond the jurisdiction of this Board." *Id.*; *see also DC 37*, 79 OCB 11, at 10 (citing *IBT, Local 237*, 61 OCB 31 (BCB 1998)). We will defer disputes to arbitration "where the circumstances are such that the contractual arbitration procedure provides an appropriate means of resolving the matter, consistent with the declared policy of the NYCCBL to favor and encourage . . . final, impartial arbitration of grievances between municipal agencies and certified employee organization." *DC 37, Local 1508*, 79 OCB 21, at 21 (BCB 2007) (internal quotations omitted). The Board will "defer improper practice claims where the improper practice allegations arise from and require interpretation of a collective bargaining agreement and in cases where it appears that arbitration would resolve both the claims that arise under the NYCCBL and the agreement." *DC 37*, 1 OCB2d 4, at 8-10 (BCB 2008).

In the instant matter, we find that the facts concerning the claimed failure to bargain over and unilateral implementation of new work schedules for the three NPs in Bellevue's Urgent Care Unit are inextricably intertwined with the interpretation of the AWS Agreement. As alleged, the grievance raises the question of whether HHC satisfied its contractual obligations under the AWS Agreement. In order for this Board to resolve the instant improper practice petition, we would have to ascertain whether HHC was permitted under the AWS Agreement to unilaterally rescind the prior

AWSs for these three NPs employees and whether the AWS Agreement authorized HHC to unilaterally implement the new work schedules for these three employees. We find that the examination of these issues, as well as potentially others not enunciated herein, are inextricably linked to the interpretation of the AWS Agreement and are left open for interpretation and adjudication by arbitration. This Board will not, at this juncture, stand in place of an arbitrator.[4]

Accordingly, we defer the instant disputes related to the implementation of the new work schedules for these three employees and the alleged failure to bargain over said implementation.[5] However, this deferral is "without prejudice to reopen the charge should the City raise during the arbitration any argument that forecloses a determination on the merits of the grievance or should any award be repugnant to rights under the NYCCBL." *See UFA*, 1 OCB2d 16, at 10 (BCB 2008); *see also United Prob. Officers Assn.*, 47 OCB 38, at 15 (BCB 1991) (This Board "will retain jurisdiction over these claims in the event that the arbitration decision does not resolve the question of whether an improper practice has been committed or does not conform with the NYCCBL").

With regard to the Union's claim that HHC violated NYCCBL § 12-306(a)(4) by failing to provide the documents NYSNA requested over the course of the instant dispute, we find that one out of the six outstanding requests was reasonably related to collective bargaining and contract administration, while the five other outstanding requests by NYSNA are not. Pursuant to NYCCBL

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[4] Moreover, we recognize that the issue of AWSs constitute a mandatory subject of bargaining. *See NYSNA*, 51 OCB 37, at 8 (BCB 1993); *see also DC 37*, 75 OCB 10, at 8 (BCB 2005). However, at this time, it appears that the parties collectively bargained over this subject, and as a result thereof, executed the AWS Agreement, which is a comprehensive agreement addressing all recognizable facets of the AWSs.

[5] Since the Union has already initiated the parties grievance/arbitration process, we leave the parties to pursue their claims and defenses in that particular forum.

§ 12-306(c)(4), a public employer has a duty to furnish "data normally maintained in the regular course of business" in order to have full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. *COBA*, 63 OCB 9, at 12 (BCB 1999). "A failure to supply information in violation of NYCCBL § 12-306(c)(4) necessarily constitutes a violation of the duty to bargain in good faith pursuant to NYCCBL § 12-306(a)(4)." *OSA*, 1 OCB2d 45, at 16 (BCB 2008).

The duty to disclose documents by a public employer extends to information which is relevant to and reasonably necessary for purposes of collective negotiations or contract administration." *DC 37, L. 2507 and L. 3621*, 73 OCB 7, at 21 (BCB 2004); *see also CSTG, L. 375*, 25 OCB 41, at 10 (BCB 1980). This "duty stems from a union's obligation to effectively negotiate with an employer, and its duty to respond to its membership regarding what actions, if any, it plans to take in response to an employer's actions." *Bd. of Educ. of the City Sch. Dist. of the City of New York*, 42 PERB ¶ 4570, at 4773 (2009).

Even in the private sector, the National Labor Relations Board, in similar cases, has held that the union "bears the burden of establishing relevancy . . . [h]owever, that burden is not an exceptionally heavy one, requiring only a showing of probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Comar, Inc.*, 349 NLRB 342, 354 (2007) (citing *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 437 (1967)). Furthermore, "a broad, discovery-type standard" applies in order to ascertain whether an employer's obligation to provide information has arisen. *Westside Community Mental Health Ctr., Inc.*, 327 NLRB 661, 673 (1999).

Conversely, the duty to disclose such documentation does not attach when the party's request

involves a non-mandatory subject of bargaining or cannot be used in contract administration. *See COBA*, 63 OCB 9, at 14; *see also County of Ulster*, 43 PERB ¶ 4502 (2010) (citing *Bd. of Educ. of the City Sch. Dist. of the City of Albany*, 6 PERB ¶ 3012 at 3030 (1973)) (the obligation of a public employer to provide such information "is not absolute" and is "circumscribed by the necessity for and relevancy of the information sought and the reasonableness of the request, including the burden on the employer and availability of the information elsewhere"); *State of New York (Office of the State Comptroller)*, 35 PERB ¶ 4565, at 4717 (2002). Requests that seek documents that are irrelevant, burdensome to provide, available elsewhere, confidential, or do not exist, are deemed to fall outside the scope of the duty by the public employer to disclose. *Id.* (the duty to provide information also does not extend to the disclosure of information in the specific form requested, "as long the information supplied satisfies" the request).

Furthermore, public employers are not under a duty to respond to "requests for specific reasons" why an employer engaged in a particular action because these types of requests "are not for documents which contain information that will enable [the union] to negotiate more effectively . . ., but are more in the nature of conclusions to be drawn by [the employer]." *Bd. of Educ. of the City Sch. Dist. of the City of New York*, 42 PERB ¶ 4570, at 4774; *see also County of Ulster*, 43 PERB ¶ 4502 (by disclosing certain empirical data to the union, it places the union in a position where the union would be privy to the information relied upon by the employer; then the union, by its own review, can determine whether that information supported the employer's ultimate decision).

In the instant matter, HHC has not provided responsive documentation in connection with six of the Union's requests:

1. Copy of the Contract and/or agreement between Bellevue and

> NYU giving privileges to the NYU [NPs] to work at Bellevue.
> 2. Any an all documentation from NYU JOC that would substantiate a claim in an HHC missive from Susanne Greenblatt dated July 23, 2009 regarding the need for a reduction in the Urgent Care [Unit] hours due in part to the continuing financial crisis and its direct effect on the [Bellevue] NP staffing budget (via the NYU JOC - Joint Operations Committee).
> 3. A full and complete Overtime Report and/or Agency Usage Report in the Urgent Care unit since June 2009.
> 4. A written explanation on exactly how the change or reduction in hours has improved operation and/or patient care in Urgent Care [Unit].
> 5. A detailed explanation and financial breakdown of exactly how the subcontracting of NYU [NPs] will improve, and exactly what effect the subcontracting will have on, the [Bellevue] staffing budget.
> 6. Policy and/or Operating Procedures regarding the Outsourcing and/or Subcontracting of services and work.

(Ans. ¶ 35 and Rep. ¶ 21) (internal quotations omitted).

With regard to the first request, the contract between Bellevue and NYU, and the second request, the documentation related to the NYU JOC, we find that HHC has no obligation under the NYCCBL to provide information responsive to these requests. These requests, as drafted, are overly broad and are not relevant for or reasonably necessary to collective bargaining and/or contract administration of the Agreement or the AWS Agreement. The first request seeks the disclosure of the terms and conditions of an agreement between HHC and a third-party. The second request seeks a wide variety of unspecified documentation. In both instances, the Union does not enunciate how the information sought in these two requests are relevant for or reasonably necessary to collective bargaining or contract administration. *See DC 37, L. 2507 and L. 3621*, 73 OCB 7, at 21-22 (BCB 2004) (the union failed to establish how these requests relate to its ability to negotiate concerning

any mandatory subject of bargaining or its ability to enforce the parties' collective bargaining agreement). As such, the Union failed to meet its burden and, therefore, HHC was under no obligation to disclose information in response to the first and second request.[6]

With regard to the third request, the overtime and agency usage reports, the fourth request, the explanation regarding the improved operation and patient care, and the fifth request, the explanation concerning the effect subcontracting has on staff budgeting, we find HHC has represented that no such documentation exists, and NYSNA has not shown any thing to the contrary. *See DC 37, L. 376*, 1 OCB2d 40, at 19 (BCB 2008) (public employer was in the best position to testify and produce evidence concerning managerial decisions, such as the reason for docking employees' wages). The fourth and fifth requests fall outside the scope of HHC's duty to provide information to NYSNA because the Union's requests seek specific reasons why HHC decided to implement the new work schedules for these three NPs. When the Union obtains all the requisite information to which it is entitled under the NYCCBL, providing such information would be unnecessary because the Union will be able to, upon its own review, come to its own conclusions. *See County of Ulster*, 43 PERB ¶ 4502 ("it is not necessary for the employer to advise the union of its thought process in arriving at a decision").

With regard to the sixth request, the policies and/or procedures governing outsourcing/subcontracting out of work, we find that HHC should have provided information in

[6] This decision does not foreclose the Union from submitting a more narrow information request to HHC regarding the documentation sought in the first and second requests, and then, if HHC fails to respond thereto, filing another improper practice petition alleging a violation of the NYCCBL based upon this newer, narrower request. Furthermore, as the parties have already initiated the grievance/arbitration process concerning the issues that we have deferred to arbitration, the Union may seek to obtain responsive documentation to these two requests in the arbitration forum and allow the arbitrator to rule on their appropriateness.

response thereto. The sixth request relates to the outsourcing and subcontracting of work typically performed by NPs to non-unit employees. This request is reasonably necessary to the administration of the Agreement, as the responsive documentation will aid the Union in determining how best to protect its membership from further actions by HHC that could involve the loss of future work from NYSNA's membership. Essentially, this request seeks documentation, if it exists, that is relevant to the instant matter, is reasonably necessary to contract administration, aids NYSNA in its duty to respond to its membership, and assists the Union in carrying out its statutory responsibilities. *See COBA*, 75 OCB 17, at 7 ("Given these facts, we find that the Union has made a sufficient showing why the requested information is reasonably necessary for the purposes of contract administration."). Furthermore, HHC has not demonstrated that the information sought in this request is irrelevant, contains confidential information that HHC cannot disclose, can be found elsewhere, does not exist, or that responding to these requests would be unduly burdensome.

Accordingly, we find that HHC violated NYCCBL § 12-306(a)(4) with respect to HHC's failure to disclose documents responsive to NYSNA's requests regarding the policies and/or procedures governing outsourcing/subcontracting out of work.[7] However, we find that HHC did not violate this provision of the NYCCBL when it did not produce documents responsive to NYSNA's five other requests.

With regard to the Union's claim that HHC's actions independently violated NYCCBL § 12-306(a)(1) by interfering with, restraining, and coercing the exercise of NYSNA's members' statutory

[7] Since the denial of information to which the Union is entitled renders the Union less able effectively to represent the interests of the employees in the unit, the employer's failure to supply the information also interferes with the statutory right of employees to be represented, in violation of NYCCBL § 12-306(a)(1). *See Schuyler-Chemung-Tioga Educational Assn.*, 34 PERB ¶ 4521 (2001); *see also New York State Public Employees Federation*, 26 PERB ¶ 3072 (1993).

rights under NYCCBL § 12-305, we deny such a claim. NYCCBL § 12-306(a)(1) makes it an improper practice to interfere with, restrain or coerce public employees in the exercise of their rights granted in § 12-305. We have found violations of NYCCBL § 12-306(a)(1) where an employer's actions "either created visible and continuing obstacles to the exercise of future employee rights or directly and unambiguously penalized protected activity." *Nardiello*, 2 OCB2d 5, at 29 (BCB 2009); *see also CEU, Local 237*, 77 OCB 24, at 22 (BCB 2006). However, we have also held that "consideration of circumstantial or indirect evidence does not constitute a waiver of our pleading requirements, as petitioner must offer more than speculative or conclusory allegations." *DC 37, L. 1087*, 1 OCB2d 44, at 26 (BCB 2008); *see also SBA*, 75 OCB 22, at 22 (BCB 2005).

Here, the record is devoid of any specific, non-conclusory allegations that indicate that HHC interfered with and/or restrained the statutory rights under NYCCBL § 12-305 of the NYSNA members. There are no allegations that HHC's implementation of the new work schedules for these three employees and HHC's alleged failure to bargain over this implementation created obstacles to the exercise of these statutory rights or penalized NYSNA members for protected activity. Rather, the record before us contains only speculative allegations that HHC's actions with regard to the AWSs interfered with, restrained or coerced NYSNA members' statutory rights under the NYCCBL, which is insufficient to find an independent violation of NYCCBL § 12-306(a)(1).

## ORDER

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

ORDERED, that the claims relating to the unilateral implementation of new work schedules

and the alleged failure to bargain over this implementation contained in the improper practice petition filed by New York State Nurses Association, docketed as BCB-2827-10, and the same hereby are, deferred to the parties' grievance/arbitration process; it is further

ORDERED, that the claims contained in the improper practice petition filed by New York State Nurses Association, docketed as BCB-2827-10, relating to the violation of NYCCBL § 12-306(a)(4) for failure to produce documents in response to the Union's requests for the policies and/or procedures governing outsourcing/subcontracting out of work be, and the same hereby is, granted; it is further

ORDERED, that the New York City Health and Hospitals Corporation produce, within sixty (60) days of the date of this Order, all documents, to the extent they exist, responsive to this request; it is further

ORDERED, that the claims contained in the improper practice petition filed by New York State Nurses Association, docketed as BCB-2827-10, relating to the violation of NYCCBL § 12-306(a)(4) for failure to produce documents in response to the Union's five other requests be, and the same hereby is, denied; and it is further

ORDERED, that the claims relating to the alleged independent violation of NYCCBL § 12-306(a)(1) contained in the improper practice petition filed by New York State Nurses Association, docketed as BCB-2827-10, and the same hereby are, denied.

Dated: New York, New York
August 9, 2010

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER