ADW/DWA, 3 OCB2d 8 (BCB 2010)

(IP) (Docket No. BCB-2784-09)

Summary of Decision**:* Petitioner claimed that DOC violated the NYCCBL § 12-306(a)(4) when it refused to bargain over procedures for use, prior to retirement, of compensatory time accrued by Deputy Wardens. The City sought to defer the matter to arbitration, asserted that no unilateral change has taken place, and that the demand arose during the term of an unexpired contract, and thus no duty to bargain was implicated, and, in any event, there was no duty to bargain over the DOC's rules and regulations capping compensation for terminal leave time including comp time. The Board declined to defer the matter to arbitration, and held that, as the demand was made during the term of an unexpired contract and in the absence of any significant change, no duty to bargain existed at the time the demand was made. Accordingly, the improper practice petition is dismissed. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

ASSISTANT DEPUTY WARDENS/DEPUTY WARDENS ASSOCIATION,

Petitioner,

-and-

CITY OF NEW YORK and
NEW YORK CITY DEPARTMENT OF CORRECTION,

Respondents.

DECISION AND ORDER

On July 14, 2009, the Assistant Deputy Wardens/Deputy Wardens Association ("Union") filed an improper practice petition alleging that the City of New York ("City") and the New York City Department of Correction ("DOC") violated § 12-306(a)(1), (2), (4), and (5), of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3)

("NYCCBL"), by refusing to bargain over the Union's request that Deputy Wardens be permitted to expend prior to their retirement earned compensatory time ("comp time") which would otherwise be lost pursuant to the DOC's rules and regulations.[1] These rules and regulations cap the use of accrued leave prior to retirement, including comp time, at one (1) year. The Union does not claim that the restriction does not apply to comp time, nor does it seek modification of it for active employees. Rather, the Union seeks to bargain the right of Deputy Wardens, prior to their retirement, to use all of the comp time accrued, the only compensation they receive for working mandatory overtime, in order to prevent the inequitable result of such mandatory overtime becoming in effect uncompensated. The Union asserts that the accrual and use of compensatory time, including procedures attendant to the terminal leave cap, fall within the scope of mandatory bargaining. The City asserts that the matter should be deferred to arbitration, that it has acted within its managerial prerogative, and, finally, that no unilateral change has taken place and the demand was made during the term of a contract. The Board declines to defer the matter to arbitration, and finds that, as the demand was made during the term of an unexpired contract, and absent any changed circumstances, no duty to bargainarose. Accordingly, the improper practice petition is dismissed.

BACKGROUND

In 1995, the title of Warden (Correction), Level II, was accreted to Certification No. CWR 65-67 (as amended), held by the Union in the case at bar. *Asst. Dep. Wardens Assn.,* 56 OCB 21

---

[1] The Union subsequently withdrew claims alleging violation of NYCCBL §§ 12-306(a)(1), (2), (3) and (5); thus, only claims pursuant to NYCCBL §§ 12-306(a)(4) are addressed herein.

(BOC 1995). Deputy Warden (and Deputy Warden in Command) are office titles of employees serving at Level II of the title of Warden (Correction). Prior to accretion to the Union's bargaining unit in 1995, the City considered Deputy Wardens managerial employees.

The City and the Union are parties to a collective bargaining agreement (the "CBA") covering the period between March 1, 2008, and June 30, 2012 (Ans. Ex. 1). With respect to overtime worked by Deputy Wardens and Deputy Wardens-in Command, the CBA provides that:

> Overtime performed by Deputy Wardens and Deputy Wardens-in-Command shall be compensated for in compensatory time off at the rate of time and one-half when such overtime is ordered by the Commissioner, or the Chief of Department, N.Y.C. Department of Correction, or their designee, or is performed during an emergency without prior approval and when requests for compensation therefore after performed of such overtime are forwarded through channels together with recommendations and are approved by the Chief of Department, or designee, for such purposes.

CBA, Art. III, § 1.[2]

In addition to the parties' CBA, the City has identified a series of rules, regulations, and orders which limit the amount of terminal leave time, including comp time, that Deputy Wardens can accrue. In chronological order of promulgation, they are:

(1) Personnel Order No. 76/70 ("Regulations Governing Leaves for Employees and Officials

---

2

The remainder of Article III addresses hours and overtime conditions of employment for Assistant Deputy Wardens only, with nothing further about hours, overtime, compensatory, or terminal leave time for Deputy Wardens

At Article XX, the CBA also provides, in pertinent part, a grievance and arbitration procedure for the resolution of disputes arising from:

> a. a claimed violation, misinterpretation or inequitable application of the provisions of this [a]greement;
> b. a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment. . . .

Whose Salaries Are Established Under the Managerial Pay Plan and/or the Executive Pay Plan"), dated October 13, 1970 ("Personnel Order 76/70"), which limited the accrual rate of leave time for managerial and executive employees, and was applicable to Deputy Wardens who accrued comp time prior to the Board of Certification's finding that Deputy Wardens were found eligible for collective bargaining in *Asst. Dep. Wardens Assn.,* 56 OCB 21 (Ans., Ex. 2);

(2) Executive Order 26, dated October 13, 1970 ("Regulations on Leave and Overtime Liquidation on Retirement or Termination of Services"), expanding the leave-time accrual cap to "all other employees," *i.e.*, employees not excluded from bargaining as managerial or confidential employees, subsequently applicable to Deputy Wardens following their accretion to the Union's bargaining unit in 1995 in *Asst. Dep. Wardens Assn.* (Ans., Ex. 4);

(3) § 3.10.180(e) ("Time, Leave, Sickness, Death") of the General Rules and Regulations of the DOC, dated February 1977 ("DOC leave regulations"), governing leave allowances "for all employees, except *per diem*, per hour, per session, and prevailing rate employees" which provides, in pertinent part, as follows:

> Terminal leave with pay upon retirement shall be allowed not to exceed one month for every ten years of service prorated for a fractional part thereof. The character of the service rendered and the manner and extent of use of sick leave by the employee will be considered. The total paid to any employee, upon termination of services or upon retirement, for accrued annual leave, accrued overtime, and terminal leave granted in accordance with the provisions prescribed herein shall not exceed payment of twelve months of service. . . .;

(*Id.*, Ans., Ex. 3).

(4) § 3.10.160(E) of the General Rules and Regulations of the DOC providing, in pertinent

part, as follows:

> Any employee who as of January 1, 1995[,] . . . having a minimum of fifteen (15) years of service, may elect to receive terminal leave with pay upon retirement not to exceed one (1) month for every ten (10) years of service pro-rated for a fractional part thereof. The character of the service rendered and the manner and extent of use of sick leave by the employee will be considered for uniformed personnel. The total paid to any employee, upon termination of services or upon retirement, for accrued annual leave, accrued overtime, and terminal leave granted in accordance with the provisions prescribed herein shall not exceed payment of twelve (12) months of service. . . .;

(*Id.*; Ans., Ex. 5).

and finally:

(5) Memorandum from Lilliam Barrios-Paoli, then-Commissioner, New York City Department of Personnel, ("Payment of Unused Accrued Leave Balances Upon Final Separation From City Service"), dated March 24, 1995 ("Personnel Department Memo"), providing as follows:

> This is to remind you that, pursuant to Section 2.9 of the "Leave Regulations For Employees Who Are Under The Career And Salary Plan," there is a one-year maximum payment of unused accrued leave balances upon a covered employee's final separation from City service. This includes unused accrued overtime, including compensatory time; annual leave; and terminal leave based upon sick leave. Pursuant to Section 15 of the "Leave Regulations for Management Employees," managerial lump-sum payments for unused accrued annual leave; sick leave; and vested/non-managerial overtime, including compensatory time, may not exceed the salary earned or earnable during the last 12 months of service. This one-year limitation applies to managers and non-managers.

(*Id.*; Ans. Ex. 6).

The Union asserts that, in recent years, Deputy Wardens have been ordered to work increased amounts of overtime for a variety of reasons, including monitoring procedures for dealing with the H1N1 flu pandemic, sanitation inspections, monitoring digital video recordings of activities

in correctional institutions such as use-of-force investigations, attendance at DOC funerals, substituting for officers on bereavement leave, and so forth. The Union asserts that this increased amount of work puts a burden on Deputy Wardens causing them to earn more compensatory time than some can use up prior to retirement, due to the cap on accrued terminal leave time imposed by the DOC. The City has provided testimony, in the form of an affidavit executed by Assistant Commissioner for Personnel Alan Vengeresky, explaining that when a non-managerial employee informs DOC of his or her intent to retire, the employee's leave and comp time balances are calculated, and audited, and the prospective retiree informed of the available amount of terminal leave he or she may take prior to retirement. As Vengeresky explained:

> In the event that a non-managerial employee has accrued so much annual leave or compensatory time that his overall leave balance exceeds one year, he must either postpone his retirement in order to use up that leave time, or forfeit the excess amount of time. This is a result of the one year cap on terminal leave.
> Additionally, some employees choose to voluntarily waive some amount of their leave balance in order to ensure that they receive a pension check in the month in which they officially retire.

(Ans. Ex. 7 at ¶¶ 9-10).

Vengeresky further noted that, of the 51 deputy wardens who had not previously been managerial employees, and who retired and gone on terminal leave since 2000, 39 retired with less than one year's accrued leave; 5 waived varying balances; and 7 retired with more than a year's worth of leave and forfeited the excess. (Id. ¶¶ 11-14).[3] This limit of terminal leave, and resultant

---

[3] Exhibit 8 to the Answer, a list of the 51 Deputy Wardens referred to in the Vengeresky Affidavit, states that it lists "non-managerial" Deputy Wardens; in his affidavit in support of the Union's Reply, former Deputy Warden John Kiernan, notes his name is absent from the list, but avows that he had been a managerial employee at the time of the accretion, and so was allowed to "bank" a "cash buyout" of his 1995 leave balance in 1996. (Rep., Ex. B).

forfeitures and/or waivers, have been in effect at DOC, he testified, since he became Director of personnel in 1984. (*Id*. at ¶ 15).

According to the Union, "in many instances, Departmental employees elect to waive their time leave balances in order to commence receiving a pension check on a specific date." (Pet. ¶ 6). In what it says is "believed to be the first instance, a Deputy Warden elected not to waive such time leave balances." (Pet. ¶ 7) (emphasis in original). When that took place, the Union asserts, DOC "hid behind a thirty-five (35) year policy, which was not detrimental until [Deputy Warden Stephen] Wettenstein elected not to waive his time" upon his impending retirement from the force, scheduled to take place February 16, 2010. (Rep. ¶46). The parties agree that Wettenstein had accrued leave time in excess of one year. The Union contends the monetary equivalent of the time he forfeited was $70,000.

On May 4, 2009, representatives of the Union and the Mayor's Office of Labor Relations ("OLR") conferred in a labor-management meeting concerning comp time. It is undisputed that at this labor-management meeting, OLR Assistant Commissioner Richard Yates stated that the City had no obligation to bargain regarding the cap on terminal leave, because negotiations over the most recent contract were closed, resulting in an executed and ratified collective bargaining agreement. Assistant Commissioner Yates's affidavit further states that he reminded the Union at the labor management meeting that the very issue of terminal leave had been bargained over at the time of the first contract after the accretion in 1995, and that the terminal leave cap had not been disturbed. The Union's account of the labor-management meeting is consistent with Yates's, without conceding the accuracy of all of Yates's statements at the meeting.

On May 7, 2009, the Union filed a group grievance on behalf of Deputy Warden Wettenstein

as well as all similarly situated Deputy Wardens (and Deputy Wardens in Command). The grievance alleged that the DOC violated Article III, § 1, of the CBA when it required Wettenstein to forfeit his leave balance in excess of one year. Before a Step III decision could be issued, the Union filed a request for arbitration of the grievance on June 12, 2009.

The instant petition was filed the following month, asserting that the refusal to negotiate regarding procedures by which employees may utilize their accrued comp time without forfeiture violated the duty to bargain in good faith with respect to wages.[4] The relief which is seeks is a procedure for utilization specifically of comp time for Deputy Wardens similar to that applicable to Police Captains in the New York Police Department ("NYPD"), under Administrative Guide Procedure ("AGP") 320-29 promulgated by the NYPD. AGP 320-29 provides, in pertinent part:

> Those Captains through Deputy Chiefs who currently exceed [a specified] hour limit may continue to accrue compensatory time until they reach the . . . limit. Any accumulations of compensatory time which cause the member to exceed this limit . . . must be used within thirty (30) days of accrual, needs of the service permitting and in any event, MUST be taken within one year of the date earned, or prior to retiring from the Department, whichever is earlier.

Captains Endowment Ass'n., 75 BCB 16 (BCB 2005) at 5, 10 (change in existing procedure by which public employees are permitted to use comp time implicates duty to bargain because comp time is a form of wages).

POSITIONS OF THE PARTIES

---

[4] NYCCBL § 12-306(a) states in pertinent part:
It shall be an improper practice for a public employer or its agents:
* * *
(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;

Union's Position

The Union acknowledges that arbitration of the alleged violation of Article III, § 1, arising out of the same circumstances, is proceeding in two separate proceedings, docketed with the Office of Collective Bargaining as File Nos. A-13147-09 and A-13340-09. The Union insists, however, that the rights at issue in the instant proceeding arise not out of the CBA but out of the NYCCBL, specifically, arising from the City's refusal to bargain, specifically, over procedures for the utilization of comp time, which violates, the Union claims, the duty to bargain in good faith, under § 12-307(a) of the NYCCBL. The Union asserts that forced forfeiture of comp time clearly relates to a mandatory subject of bargaining, wages, as the City's refusal to bargain forces these employees to work compulsory overtime hours without compensation, as comp time is the only means by which Deputy Wardens are compensated for overtime.

The Union denies that the matter represents an inappropriate effort to reopen an already closed contract, asking the Board to find a unilateral change took place. It supports this claim by arguing that, when Deputy Warden Wettenstein, in what the Union asserts is believed to be a case of first instance, elected not to waive his time leave balance and was entitled to remain on the books as an active employee until August 10, 2010, the City refused to allow him to do so. In so doing, the Union contends, the City for the first time implemented the overtime cap on a retiring employee without that employee's consent. The Union alleges that the City's refusal to permit Deputy Warden Wettenstein and any other similarly situated employees in the Deputy Warden title to use up all their accrued comp time prior to retirement was an event giving rise to the duty to bargain upon request, and that the City's failure to do so violated NYCCBL § 12-306(a) (4). The Union further asserts that the increasing workload of these employees has increased the amount of forfeited accrued comp

time.

Further, the Union maintains that the personnel and DOC rules and regulations cited by the City as controlling of the statutory claim are irrelevant here because the Union does not dispute any change in the cap on compensable terminal leave or even dispute the existence of the cap. Rather, it is the failure of having procedures in place to govern the employees' utilization of the accrued comp time at retirement of which the Union complains, with the result that when Wettenstein chose not to waive the excess comp time that he accrued, he stood to lose those hours. What the Union seeks is to negotiate a procedure by which Deputy Wardens would be able to utilize their comp time upon their retirement without losing the value of that comp time subject to a cap on terminal leave. The Union asserts that terminal leave is not referenced in the parties'CBA; hence, the question is not arbitrable and a statutory remedy, under the NYCCBL, must be pursued. For guidance as to a procedural scheme for dealing with the issue, the Union points to a procedure which assertedly exists for Police Captains in the New York Police Department who are also subject to limits on terminal leave time.

City's Position

The City argues that this case should be deferred to arbitration because, in its view, the case requires contract interpretation. In matters that require contract interpretation which may also involve application of the NYCCBL, the City contends that this Board has expressed a preference for deferral to arbitration first and then subsequently resolving any outstanding improper practice claims not otherwise addressed at arbitration.

The City further asserts that no breach of the duty to bargain in good faith could be made out where, as here, the City and the Union were parties to a closed contract and there has not been a

unilateral change to any policy regarding compensatory or terminal leave. Under § 12-311(a)(3) of the NYCCBL, no duty to bargain existed at the time of the labor-management meeting because the enforcement of a long-standing cap on compensatory time does not constitute a unilateral change.

In the alternative, the City asserts that it is under no duty to bargain over the limits it has set on terminal leave of retiring employees. These limits, with roots dating to 1970, are set by the DOC Rules cited above. The rules that cap compensation for terminal leave balances, including but not limited to comp time, apply to all City employees. Moreover, the City contends that this cap on terminal leave time is a proper exercise of its statutory right, under the NYCCBL, to maintain the efficiency of government operations. The City contends that, without the cap about which the Union complains, the DOC would be prevented from making personnel decisions to meet departmental demands by having to maintain retiring employees on the books for extended periods of time. This Board has recognized that accrual and use of various forms of leave time must be balanced against the City's need to maintain appropriate levels of staffing in order to maintain the efficiency of government operations. *COBA,* 63 OCB 26 (BCB 1999). Here, the DOC's ability to determine staffing and scheduling needs of its own operation is essential to its functioning. Without the ability to institute a reasonable cap on the amount of time that retiring employees spend on the payroll, while not reporting for duty, DOC would find itself in the untenable situation of being bereft of senior supervisors while being unable to fill the vacancies in fact as retirees stay on the books for longer periods of time.

The Union's reliance upon *CEA*, 75 BCB 16 (BCB 2005) is misplaced because, unlike the instant case, the earlier case dealt with the adjustment of a department-specific limit on the accrual of comp time. The issue in this case, as the City describes it, concerns the length of time that an

employee may spend on terminal leave, a subject over which the City may exercise its statutory management right. Thus, Petitioner has failed to show that the DOC has violated NYCCBL § 12-306(a)(4), and the Union's improper practice claim should be dismissed in its entirety.

DISCUSSION

As a threshold matter, we address the City's request that the Board defer the Union's petition. This Board's prior cases have made clear that 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, L. 1508*, 79 OCB 21, at 21 (BCB 2007) (internal quotations omitted). Furthermore, the Board will "defer improper practice claims where the improper practice allegations arise from and require interpretation of a collective bargaining agreement and in cases where it appears that arbitration would resolve both the claims that arise under the NYCCBL and the agreement." *DC 37*, 1 OCB2d 4, at 8-10 (BCB 2008); *see DC 37, Local 1508*, 79 OCB 11, at 10 (BCB 2007). However, where, as here, an improper practice claim exists that would in any event not be resolved by the arbitration of contractual claims arising out of the same transactions, we have held that "such statutory claims are committed to adjudication under the NYCCBL rather than the arbitral forum." *Id.* (quoting *SSEU (Abualroub),* at 8 (editing marks omitted); *see also CSBA, L. 237,* 71 OCB 24 (BCB 2003) at 11; *CWA, L. 1182,* 59 OCB 3 (BCB 1997) at 7.

In the instant case, we find that the alleged improper practice petition does not assert a contractual cause of action, but rather one which, while triggered by the same factual transaction

giving rise to the grievance, asserts as the source of the rights at issue not the contract between the parties but rather the failure to bargain over the Union's demand for a benefit outside of the CBA. *See, e.g., DC* 37, 1 OCB2d 21, at 10 (BCB 2008); *see also SSEU, L. 371*, 77 OCB 35, at 21-22 (BCB 2006) (considering on merits, over deferral claim, failure to bargain and interference claims arising out of handling grievance); *SSEU L. 371*, 79 OCB 31, at 10-11 (BCB 2007). In such circumstances, we have found that the claim of failure to bargain is properly resolved by this Board, and deferral is not warranted. *Id*.

Nor is the City's claim that the duty to bargain somehow does not extend to procedures relating to the accrual and use of comp time meritorious. As we held in *CEA*, 75 OCB 16, at 9 (BCB 2005), "[t]he duty to bargain over wages includes the duty to bargain over employee compensation for overtime, including cash or compensatory time." In that case, we found that the City was required to bargain "over any imposition of or changes in the limitation on the accrual and use of compensatory time and related procedures – including the prescription of the period during which an officer may use such time." *Id.* at 10. The City's efforts to distinguish that case are unconvincing.

The objection that the Union has sought to engage in mid-term bargaining absent a demonstration that a unilateral change has taken place is far more weighty, however. As we explained in *UFA*, 71 OCB 19, at 15-16 (BCB 2003):

> To establish that an employer is obligated to bargain, a petitioner must articulate and support the claim that the matter sought to be negotiated is a mandatory subject of bargaining. NYCCBL § 12-307(a); *Doctors Council*, 67 OCB2d 21 at 7 (BCB 2001). Wages are included in the mandatory scope of bargaining. *NYSNA*, 69 OCB 2, at 4 (BCB 2002). However, once parties have concluded collective bargaining, thus fulfilling their obligation to bargain, no duty to

> bargain arises mid-term. NYCCBL § 12-311(a)(3).[5]
>
> Before this Board will find a duty to bargain mid-term over a mandatory subject of bargaining such as wages, a petitioner must demonstrate that there has been a significant change in circumstances that could not have been anticipated by the parties, that warrants bargaining. *UFA*, 47 OCB 61, at 11 (BCB 1991) (no duty to bargain over employer decision to supplement Fire Marshals duties because of employer's unilateral right to determine the duties appropriate for the position and because the new duties implicated no change in wages, hours, or working conditions); see also, Local 1757, DC 37, 67 OCB10, at 16 (BCB 2001) (changes in the duties of the City Assessors were not mandatorily bargainable and, here, did not give rise to a duty to bargain over their wage scale); *LBA*, 49 OCB14 (BCB 1992) (employer's decision to assign police lieutenants to solo supervisory patrols did not change the essential duties and functions of lieutenants' position and was not a mandatory subject of bargaining).

Id. (citations edited).

Here, the City correctly notes that the Union's demand to negotiate a procedure by which employees may use accrued comp time prior in order avoid the forfeiture of such accrued comp time upon a prospective retiree's going on terminal leave was made during the life of an unexpired contract. Further, the City submitted concrete evidence that during the life of the CBA, and indeed prior to the CBA's term, the City's policy with respect to these issues had not changed. The City's evidence, and indeed, the Union's own pleadings establish that forfeiture of comp time the use of which would result in over a year of terminal leave was routine. The Union itself acknowledges that

[5] NYCCBL § 12-311(a)(3) provides:

Nothing herein shall authorize or require collective bargaining between parties to a collective bargaining agreement during the term thereof, except that such parties may engage in collective bargaining during such term on a matter within the scope of collective bargaining where (a) the matter was not specifically covered by the agreement or raised as an issue during the negotiations out of which such agreements arose and (b) there shall have arisen a significant change in circumstances with respect to such matter which could not reasonably have been anticipated by both parties at the time of the execution of such agreement.

Deputy Warden Wettenstein's refusal to waive his entitlement to such earned comp time presented "what is to believed to the first instance" of such a refusal. (Pet. ¶ 7; Rep. ¶ 46). The fact that the Union has never previously had a member object to the application of the policies at issue does not, of course, establish a unilateral change on the part of the City. The Union has not in either its petition or reply, identified any act on the part of the City that could even arguably constitute a unilateral change justifying mid-term bargaining.

Nor has the Union pointed to any other "change in circumstances which could not reasonably have been anticipated by both parties at the time of the execution of such agreement" giving rise to the demand for bargaining.[6] Rather, as in *UFA*, 71 OCB 19, at 16, the "Union has not alleged facts sufficient for this Board to find a demonstrable change in working conditions." Where such is the case, we are constrained to "find no refusal to bargain over wages and decline to direct mid-term bargaining over the wage scale previously negotiated to conclusion by the parties." *Id.* As was the case in *UFA*, of course, the Union remains free to raise its demand in negotiations for a successor collective bargaining agreement.

Accordingly, the petition is denied.

6

Although the Union alleges that the City has increasingly assigned Deputy mandatory overtime, it was not alleged that the overall quantity of such overtime has increased during the life of the contract. The one specific action alleged, the new requirement that Deputy Wardens review videotapes of excessive force incidents, was conclusorily alleged to have resulted in increased mandatory overtime, but no specific impact has been alleged. Moreover, the alleged new assignment was, according to the Union, promulgated in a memorandum dated February 28, 2008 (Rep. Ex. C). The CBA at issue, although covering the period from March 1, 2008 through June 30, 2012, was not executed until March 16, 2009. (Ans. Ex. 1). Similarly, the appended policy entitled "Overtime Limitations and Controls/Uniformed Employees" (Rep. Ex. D) and documents relating thereto, bear dates from 2000 through August 1, 2003, at the latest nearly six years prior to the execution and ratification of the current CBA.

ORDER

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

ORDERED, the improper practice petition filed by the Assistant Deputy Wardens/Deputy Wardens Association, docketed as BCB No. 2784-09, is hereby denied.

Dated: New York, New York
February 25, 2010

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER