OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper
Practice Proceeding

-between-

DECISION No. B-25-89

LOCAL 1549, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO an behalf of
VERONICA HEISWALD and
MARY McLAURIN,
Petitioners,
-and-

DOCKET No. BCB-1081-88

CAPTAIN JESSE E. PETERMAN,
LT. STEVEN D'ANTONIO, and the
NEW YORK CITY POLICE DEPARTMENT,

Respondents.
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DECISION AND ORDER

On August 26, 1988, Local 1549, District Council 37, AFSCME, AFL-CIO ("the Union"), in behalf of Veronica Heiswald and Mary McLaurin, filed an improper practice petition against the New York City Police Department and against the Commanding officer and the Administrative Officer of the 71st Precinct ("the Department" or "the Respondent"). The petition alleges that the Department, in reassigning Petitioner Heiswald from the day shift

to the midnight shift, in disclosing petitioner McLaurin's home telephone number, transferring her to another precinct and refusing to hear her grievance, and in taking disciplinary action against both, committed a number of improper practices in violation of Sections 12-306a.(I), 12-306a.(3), and 12-306a.(4) [formerly §§1173-4.2a.(I), (3) and (4)] of the New York City Collective Bargaining Law ("NYCCBL").[1] The Union asks that the Petitioners be reassigned to their former positions, that all references to transfers and command disciplines be expunged, and that the Respondent be ordered to bargain in good faith with Police Administrative Aides.

The Respondents, appearing by the City of New York Office of

[1]NYCCBL §§12-306a.(1), (3) and (4) provide as follows:

Improper practices; good faith bargaining.

a. Improper public employer practices. 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 1173-4.1 (now renumbered as section 12-306) of this chapter; (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization; (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

Municipal Labor Relations ("the City") filed an answer to the improper practice petition on October 14, 1988. The Petitioners filed a reply and an amendment to their original petition on December 2, 1988. The City filed an answer to the amendment on December 19, 1988.

BACKGROUND

The Petitioners are civilian employees of the Police Department. Before July of 1988, they we~e both assigned to the 71st Precinct, where part of their job duties involved roll call roster compilation and computer data entry. Petitioner McLaurin is a Senior Police Administrative Aide and she first began working at the 71st Precinct in October of 1986. She remained there until July 17, 1988, when she was reassigned to another precinct at the request of her commanding officer. Petitioner Heiswald is a Police Administrative Aide and she has been assigned to the 71st Precinct since aid-1973. Before being transferred, Petitioner McLaurin was Petitioner Heiswald's supervisor.

The Roll Call Unit of the 71st Precinct establishes the roster of officers available for duty. The roster allows the Precinct Commander to assign officers to their posts according to their ability and experience. It also provides the commander

with the manpower information necessary to make judgments on requests for leaves and for tour changes. Before their reassignments, Petitioners McLaurin and Heiswald, and a third civilian employee, had primary responsibility for the clerical work of the Roll Call Unit.

In June of 1987, the Roll Call Unit installed a computerized personnel roster system referred to as "ARCS," and the Petitioners received training at the police academy in its operation. To function effectively, the ARCS system requires that the precinct's "Employee Master File" (personnel roster) be kept up to date.

Between June and October of 1987, there were numerous reassignments and transfers among the precinct's officers. In October, the Administrative Officer of the precinct determined that the ARCS system was not functioning properly due to delayed updating of the Employee Master File. He proposed making a temporary assignment of a police officer to the Roll Call Unit in order to help update the file. For reasons which are in dispute, the Administrative Officer's proposal was not acted upon until February of 1988, when an officer volunteered and was assigned to the unit. After a short period of time, the officer requested to be relieved of his Roll Call Unit duty, and he was replaced by a second officer.

Disciplinary Action
and Reassignment
of Petitioner HeiAwald

On or about February 8, 1988, Petitioner Heiswald was issued a command discipline for allegedly improperly preparing a Sick Leave Report form. on or about February 11, 1988, she was issued a second command discipline for allegedly refusing to sign a memorandum issued by the Commanding officer of the 71st Precinct to all roll call personnel concerning new ARCS system procedures and proof reading of the roll call (71 Precinct Memo #8/88 or "Memorandum #811). On or about February 12, 1988, the Petitioner was issued a third command discipline for allegedly failing to notify a police officer "to cancel his scheduled RDO court appearance." On March 22, 1988, she accepted the recommended penalty of "warning and admonition" in satisfaction of the first charge. The Command Discipline Report/Election records for the second and third charges indicate that both were found to be "substantiated" by the Precinct Commanding officer, and the Petitioner was penalized “2 hours” for each one.

On or about May 10, 1988, Petitioner Heiswald was reassigned from the Roll Call Unit to duty as station house clerk.

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Disciplinary Action
and Reassignment
of Petitioner McLaurin

On or about February 9, 1988, Petitioner McLaurin was issued a command discipline for her alleged failure to properly supervise the roll call "finalizations" between January 1 and February 8, 1988. On or about February 11, 1988, the Petitioner was issued a second command discipline for her alleged failure to provide a manpower availability list to the Brooklyn Borough Command in a timely fashion. On or about that same date, she was issued a third command discipline for allegedly violating a direct order to sign Memorandum #8, and also for failing to have her subordinates sign it. On March 22, 1988, she accepted the penalty of "warning and admonition" for the first two charges. The disposition of the third charge is not reported.

On or about March 9, 1988, by memorandum addressed to the Commanding officer of Patrol Borough Brooklyn South, the Commanding Officer of the 71st Precinct requested the "administrative transfer" of Petitioner McLaurin. The memorandum reads as follows:

1. The undersigned requests that S.P.A.A. Mary McLaurin be administratively transferred from the 71 Precinct to a less demanding precinct in a position of less responsibility.

2. S.P.A.A. Mary McLaurin was appointed to the Department on 05/21/73. She was promoted and assigned to the 71 Precinct on 10/31/86.Her position in the 71

Precinct is lead roll call.

3. This request stems from recent occurrences involving roll call. S.P.A.A. McLaurin has failed to properly supervise and conduct the roll call function causing extensive problems with the roll call product. The historical background and specifies are as follows:

In the beginning of the fall 1987 as a result of numerous errors consistently noted on the roll calls a reassignment was suggested whereby a Police officer would be assigned in roll call to assist in preparation of the roll call. When this was proposed S.P.A.A. McLaurin felt that the assignment of a Police Officer was unnecessary and devised a plan whereby roll call inaccuracies indicated on a consistent basis would be alleviated. Her plan was accepted and S.P.A.A. McLaurin was afforded the opportunity to correct the problems in roll call. By early January 1988 it became apparent that the same problems were prevalent on a consistent basis. It was also apparent that these consistent inaccuracies were effecting the morale level of this command as they affected the police officers on a regular basis. In order to correct these problemsand restore morale it was apparent that additional assistance was needed in roll call. A police officer experienced in the roll call function (not the same police officer previously suggested) was re-assigned for the purpose of providing assistance. His reassignment was met with unacceptable conduct. This officer was treated without respect or even common human courtesy by S.P.A.A. McLaurin. Her response to this reassignment was an uncooperative attitude which in effect exacerbated the situation and created extensive problems in roll call. It should be noted that S.P.A.A. McLaurin received an above standards evaluation for 1987 indicating an above average ability. The problem here does not involve her ability but rather a deliberate poor attitude affecting the good order of this command.

S.P.A.A. McLaurin failed to fulfill her assigned tasks i.e, provide manpower levels to the boro, provide and organized production of the roll call, effect changes in the master file; in an apparent effort to further her objection to this needed change. It has since been discovered that a basic part of the problem was S.P.A.A. McLaurin's unwillingness or inability to update the master file on the ARCs system. The disorganized condition of the master file causes the need for extensive changes on each roll call. This in

turn causes a delay in the final product production as well as the ability to inform police officers who are requesting specific excusals whether they are granted or denied within any reasonable time prior to the requested excusal date.

4. On February 10, 1988 a memo was circulated outlining the procedures to be followed in roll call. The intention of this memo was to standardize roll call procedures which would ensure a correct roll call product. On February 11, 1988 at 1200 hours S.P.A.A. McLaurin was given specific instructions to ensure that the other Police Administrative Aides understood the memo and complied with its contents. At 1510 hours the memo was discovered under a pile of papers in a disorganized manner unsigned by S.P.A.A. McLaurin. To this date the procedures outlined in this memo have not been fully complied with.

5. It is requested that S.P.A.A. McLaurin be re assigned out of the 71 precinct due to her unwillingness to perform her assigned task in a professional manner. It is further recommended that S.P.A.A. McLaurin be re-assigned to a position of lesser responsibility.

While the Commanding Officer's transfer request was pending, Petitioner McLaurin, by memorandum dated April 27, 1988, received a "below standards" interim performance evaluation covering the period October 15, 1987 through April 15, 1988. On July 17, 1988, she was involuntarily transferred out of the 71st Precinct.

On July 28, 1988, the Union, in behalf of Petitioner McL,aurin, filed a grievance alleging that the Police Department took wrongful disciplinary action against her when it administratively transferred her to a distant precinct "causing her to incur a travel hardship," and when it served her with written charges of incompetence and misconduct "which affected

her permanent status." In its Step 11 decision, dated October 12, 1988, the Department denied the grievance by finding that "[s]ince SPAA McLaurin has filed an improper practice petition before the Board of Collective Bargaining on these as well as other issues, she is precluded from filing a grievance." The record indicates that the Step II decision was not appealed to the next step.

POSITIONS OF THE PARTIES

Petitioner's Position

Improper Practice Charges
Involving Both Petitioners

On the matter of the improper practices allegedly committed against Petitioners McLaurin and Heiswald, the Union contends that the Respondent violated Section 12-306a.(4) of the NYCCBL because it made unilateral changes in their working conditions, and it violated various other provisions of Section 12-306a., when it unreasonably disciplined the Petitioners.

In support of its first charge, the Union refers to a Labor Management meeting that was held on February 9, 1988, attended by the Petitioners, their Union representatives, and the Precinct's ranking officer# among others. Issues allegedly discussed but

not resolved during the meeting included scheduling changes, claimed reassignment of work to uniformed personnel, discipline and "the inherent unfairness of continuing to be held strictly accountable for the errors committed by the less experienced uniformed officers performing the duties of PAA's and SPAA's." The Union asserts that §12-306a. (4) was, therefore, violated, because the Respondent did not bargain in good faith on matters "concerning discipline, evaluations and personnel folders, changes in job specifications, and adjustments of disputes [because they) are governed by the city wide contract of 1980 1982 and thus [are] subject to negotiations."

The Union goes on to allege that the Respondent committed a second improper practice against both Petitioners when disciplinary penalties were imposed upon then due to their refusal to sign Memorandum #8. According to the Union, the Petitioners had good reason not to sign the memorandum, for it would have held them "strictly accountable" for errors in roll call, whether committed by them or not. In the Union's view, because the Respondent failed to offer the Petitioners the opportunity to confer with their union representatives concerning the memorandum, failed to give the Petitioners sufficient time to read and interpret it, failed to notify them of any deadline for its return, and failed to advise them that a refusal to sign would lead to disciplinary action, the Petitioners should not

have been disciplined when they did not sign the memorandum. The Union further contends that Petitioner McLaurin did not even have the opportunity to refuse to sign the memorandum because it was not given to her until the end of her shift, and the Union claims that the memorandum itself violates 'the KYCCBL because it constitutes a unilateral change in working conditions.

Finally, the Union maintains that the remaining command disciplines instituted against both Petitioners were based upon "grounds not normally used as a basis for such disciplinary action," and were allegedly instituted solely in retaliation for the Petitioners' exercise of their rights granted by the NYCCBL.

Improper Practice Charges
Involving Petitioner McLaurin

The Union contends that the Respondent committed four separate improper practices against Petitioner McLaurin, by giving out her home telephone number to unauthorized persons; by reassigning some of her job duties to a uniformed officer; by transferring her and giving her a poor performance evaluation, allegedly in retaliation for having engaged in union-related activities; and by refusing to hear a grievance that had been filed by her.

With regard to the first charge, the Union asserts that on or about January 17,1988, the Administrative Officer of the 71st

Precinct disclosed the Petitioner's home telephone number to several police officers, allegedly resulting in at least nine telephone calls being made to bar home during late night and early morning hours from police personnel who were seeking roll call information about their tours. The Union contends that the release of the Petitioner's telephone number constitutes a violation of Section 12-306a.(I) of the NYCCBL, because it was allegedly disclosed in retaliation for her complaint concerning her working conditions and was done in an effort to intimidate her.

The Union reaches this conclusion by noting that the Petitioner's grievance representative was contacted on January 4, and again on January 6, 1988, about scheduling changes and reassignment of duties. The Administrative Officer allegedly learned of the union contact made by Petitioner Heiswald on Petitioner McLaurin's behalf, and he then retaliated against her by disclosing her home telephone number to a number of unauthorized persons.

The second improper practice involving Petitioner McLaurin concerns the allegation that some of her duties were reassigned to a uniformed officer. According to the Union, the reassignment was designed to undermine McLaurin's performance as Senior Police Administrative Aide. The Union asserts that her eventual transfer was a consequence of this improper reassignment of work,

and it concludes that the transfer was implemented as a disciplinary measure rather than as an administrative expedient.

The Union disputes the City's contention that the reassignment of Jobs was necessary because the work of the Roll Call Unit was falling behind. The Union admits that roll call was "in a state of chaos," but it contends that the problem resulted from last minute changes that were made in the roll call by the precinct commanders, which allegedly caused dissent among the officers and "a protest" by one officer. Furthermore, the Union notes, Petitioner McLaurin was out sick, followed by vacation, during the period from about December 30, 1987, through February 3, 1988, implying that she could not be responsible for events that occurred during this period.

The third improper practice charge alleges that Petitioner McLaurin was given a poor performance evaluation and that she was eventually transferred in retaliation for exercising rights granted under the NYCCBL

The fourth improper practice charge filed in behalf of Petitioner McLaurin alleges that the Department refused to hear a grievance filed by bar at the step II level on July 28, 1988 concerning her transfer. According to the Union, the explanation given for the refusal was that the Petitioner had already filed the instant improper practice petition concerning the same incident. The Union contends that this response was improper

because the issue raised in the grievance concerns the alleged wrongful disciplinary action taken by the Department against the Petitioner, which is separate and distinct form the issue raised in the improper practice petition. The Union reaches the conclusion that the refusal to process the grievance was in retaliation for the Petitioner's having filed an improper practice petition.

Improper Practice Charge
Involving Petitioner Heiswald

The Union claims that Petitioner Heiswald's shift was changed from a weekday schedule to a Saturday through Friday schedule from midnight to 8 a.m. in retaliation for her union related activities. The Union contends that the Department "again violated Sec. 1173-4.2(1) and (3) considering that Petitioner Heiswald had satisfactorily performed her duties in roll call during the 8 AM to 4 PM shift for the last fifteen years."

Respondent's Position

The City initially argues that the petition is untimely and should be dismissed. It cites Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining (as amended),[2] and it notes that the improper practice petition was filed with the Board on August 26, 1988. Therefore, according to the City, because all of the complaints referred to in the original petition concerned events that occurred between January 17, 1988, and April 27, 1988, the petition violates Section 7.4 and must be dismissed in its entirety.

The City then goes on to assert that, even if the petition is determined not to be untimely, the Department did nothing more than it was authorized to do under Section 12-307b. of the NYCCBL

[2] 7.4 Improper Practices. A petition alleging that a public employer or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 [now Section 12-3063 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order.

(the statutory management rights clause).[3] Specifically, it notes that the Department is being accused of violating the NYCCBL for presenting a memorandum to the Petitioners to sign, yet, according to the City, the issuance of Memorandum #8 was well within the Department's managerial right under §307b. of the Law. The City points out that, although the Union complains of the two command disciplines given to the Petitioners, §307b. specifically authorizes management "to take disciplinary action." Similarly, the City argues that the Department had the authority to issue a poor performance evaluation to Petitioner McLaurin as part of its managerial discretion. Finally, it argues that the Department had the managerial right to change Petitioner Heiswald's shift under §307b.

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[3]NYCCBL §12-307b. reads, in pertinent part, as follows:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which governmental operations are to be conducted; determine the content of 30b classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The City next contends that the improper practice petition is defective because the pleadings do not allege sufficient facts to support the Union's underlying theory of the case. The City specifically points to the complaint concerning the Petitioners' refusal to sign Memorandum #8, and Petitioner McLaurin's performance evaluation complaint, as two examples in support of its claim that the Union fails to allege any supporting facts to establish the charges as more than mere conclusory allegations.

The City then argues that the improper practice charge concerning Petitioner McLaurin's transfer cannot properly be brought before this Board because it involves an alleged violation of the collective bargaining agreement. The City notes that the Petitioner filed a grievance opposing the transfer, and it refers to a provision in the parties' agreement which provides a remedy for an alleged improper transfer. Therefore, according to the City, Section 205.5.(d) of the Taylor Law prevents this Board from exercising jurisdiction over such an alleged contractual violation.[4]

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[4]Section 205.5.(d) of the Public Employees, Fair Employment Act (Taylor Law) reads, in pertinent part, as follows:

> [T]he board shall not have authority to enforce an agreement between an 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.

Finally, with respect to the allegation that the Department refused to process Petitioner's McLaurin's grievance, the City notes that the grievance was, in fact, heard by the Police Department's Office of Labor Policy on October 27, 1988, and it was denied. Moreover, according to the City, even if it had not been heard, the appropriate remedy would have been for Petitioner McLaurin or her union to invoke the next step of the grievance procedure. The City points out that the contract provides that a grievant who is not satisfied with the determination of the agency may appeal to the Director of Municipal Labor Relations in writing within 10 days of the determination. Therefore, the City argues, there exists a clear contractual means for an appeal of a grievance that has not been satisfactorily settled at the lower step, and this Board should not consider claims of contract breach which have been raised in the context of an improper practice proceeding.

DISCUSSION

This inultifaceted improper practice petition involves two Police Administrative Aides, one of whom worked in a supervisory position over the other, and it encompasses numerous incidents which took place during a time span covering approximately sixteen months. Some of the allegations involve both Petitioners

and some involve only one of them; some of the alleged incidents occurred in isolation while others logically derived from previous acts. We shall address the issue of timeliness first, and then we shall discuss the substantive allegations approximately in the order in which they were presented.

Timeliness

Standing alone, any event referred to in an improper practice petition filed an August 26, 1988, that occurred before April 26, 1988, would be untimely because the four-month statute of limitations would have run. Thus, ordinarily the City would be correct in its assertion that most of the charges alleged in Union's petition herein should be dismissed as being time-barred. Upon closer examination, however, we find that many of the events referred to arguably contributed to the involuntary transfer of one of the Petitioners and the rescheduling of tours of the other. Inasmuch as both of these personnel actions occurred and were complained of within four months of each other, we will consider all of the allegations as if they were parts of an ongoing and continuous course of conduct, and we shall discuss and rule upon the charges in this light.

It must be clearly understood, however, that this ruling is one of limitation. We will not rule on the specifics of each individual event cited in the petition. Rather, we limit our

inquiry to the question of whether a connection exists between any of the events that occurred between June of 1987 and April 26, 1988, and the Petitioners' ultimate reassignments in the Summer of 1988. The charges that the Petitioners' reassignments were made in retaliation for union activity are not time barred. The events alleged to have occurred between June 1987 and April 26, 1988, insofar as they are alleged to constitute a continuum leading to the reassignments are admissible. As separate charges, however, they are untimely since their timeliness in this regard must be measured from their respective dates of occurrence.[5]

Thus, we will consider the parties' course of conduct as background information, but we will not evaluate the merits of the following individual charges: that the Department made a unilateral change in the Petitioners' job specifications when they were assigned to work on the ARCS system in the early Fall of 1987; that it allegedly assigned unit work.to police officers in February of 1988; and that it allegedly failed to bargain in good faith during and immediately after the Labor-Management meeting held on February 9, 1988. These individual complaints are all untimely and will not be considered as separate and timely charges of violations of the NYCCBL. Similarly, we will

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[5] See Decision Nos. B-25-84; B-7-84; B-27-83; B-2-82; and B-20-81

not rule on the merits of the disciplinary action taken against the Petitioners, not only because these complaints are untimely, but also because Section 205.5(d) of the Taylor Law precludes us from exercising jurisdiction over a claim subject to the parties' contractual grievance-arbitration procedure that does not otherwise constitute an improper practice.[6]

Improper Employer Practice Charges

All of the remaining improper practice charges contained within this petition fall under the rubric of alleged retaliatory acts by the employer for union activity. As a threshold matter, we find that personnel actions, including transfers and reassignments, generally are within management's statutory prerogative to direct its employees and to maintain the efficiency of its operations. As such, they are not normally reviewable in the improper practice forum. However, transfers and reassignments may give rise to an improper practice finding if they can be shown to have been used as a pretext for interference with an employee's statutory organizational rights.[7]

The mere assertion of interference, however, will not effect the automatic reversal of an unpopular or undesired managerial action. Rather, we require that a petitioner, when making a

[6] Decision Nos. B-46-88; B-45-88; B-39-68; and B-24-87.

[7] Decision Nos. B-59-88; B-46-88; and B-43-82.

claim involving alleged violations of Sections 12-306a.(I) and (3) of the New York City Collective Bargaining Law (improper public employer practices), must show that the employee's union activity was the motivating factor behind the alleged discriminatory act[8]. In order to support such a retaliation for union activity charge, a complaint must set forth more than mere conclusary allegations based upon speculation and conjecture. It must, at a minimum, demonstrate the following:

1. The employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity.

2. The employee's union activity was a motivating factor in the employer's decision.

If both parts of this test are satisfied, the burden will shift to the employer to show that the same action would have taken place even in the absence of the protected conduct.[9]

At the same time, we are not unaware of the difficulties inherent in proving employer knowledge and motivation. Thus, just as we have allocated the burden of proof to the petitioner, if we find that a petitioner has demonstrated a "sufficient causal connection between the management act complained of and union activity," we will permit an inference of improper motive

[8]Decision No. B-51-87.

[9]Decision Nos. B-51-87; B-12-88; B-46-88; and B-17-89.

to be raised by the petitioner, shifting the burden to the City to show that it would have taken the same action in the absence of protected conduct.[10]

From the facts presented in the instant case, however, we find insufficient evidence to lead us to infer that the personnel actions involving either Petitioner McLaurin or Petitioner Heiswald were the consequences of anything other than legitimate business decisions. In the Petitioners' own words, "roll-call was in a state chaos," and it is undisputed that certain work integral to the operation of the precinct that they were responsible for was not being accomplished in a satisfactory manner.

We cannot infer that Petitioner McLaurin was disciplined because she sought assistance from her union, for it appears that she was disciplined because she allegedly failed to perform her job adequately. She was not given a below standard evaluation because of her union activity, but because her commanding officer evidently considered her work performance unacceptable. The Petitioner's home telephone number was not given out to retaliate against her, but because, at the time, many people were uncertain as to when and where they were supposed to report for duty, and

[10]Decision No. B-7-89 at 8. See also, Wright Line. a Division of Wright Line. Inc., 251 NLRB 1083, 105 LRRM 1169; enforced 662 F2d 899, 108 LRM 2513 (1st Cir. 1981) ; cart. denied 455 U.S. 989, 209 LRRM 277 (1982).

it was reasonable to assume that, as the person responsible for such matters, she would have the needed information. Petitioner McLaurin's transfer was not requested because of her involvement with her union, it was requested because her commanding officer had decided that she was either unwilling or unable to perform her work without consistent inaccuracies, and that the inaccuracies had affected the morale and good order of the entire precinct.

We are likewise unpersuaded that Petitioner Heiswald was disciplined because, as shop steward, she made a complaint to the Union's grievance representative in behalf of Petitioner McLaurin. We find, rather, that she was disciplined for her alleged failure to follow certain departmental procedures. She was not reassigned to clerical duties because of her union activity, but in response to her expressed attitude of being "totally annoyed by this job!!!"[11]

Based upon all of the evidence, we are satisfied that the reassignments of the Petitioners would have occurred regardless of whether they attended a labor management meeting, or whether Petitioner McLaurin sought union intervention for real or perceived inequities in her working conditions. Accordingly, we dismiss the allegations that their reassignments were in

[11]Statement written by Petitioner Heiswald on a Civilian Sick Leave Report form describing the reason for her incapacity following an absence on February I and 2, 1988.

violation of either 512-306a.(I), (3) or (4) of the NYCCBL

Finally, with regard to Petitioner McLaurin's charge that the Department refused to bear a grievance filed by her, we reiterate our decision in an earlier case in which we said that the alleged failure to timely respond to grievances cannot be said, on its face, to constitute a refusal to bargain in good faith, where, as here, the contract expressly permits the grievant or the union to invoke the next step of the grievance procedure up to and including arbitration if the employer exceeds any time limit prescribed therein.[12]

Article VI, Section 9 of the parties' collective bargaining agreement provides that "[i]f the Employer exceeds any time limit prescribed at any step in the Grievance Procedure, the grievant and/or the Union may invoke the next step of the procedure, except that only the Union may invoke impartial arbitration under STEP IV." Inasmuch as this contractual remedy was available to Petitioner McLaurin if she believed that the Department exceeded the time allowed for it to respond to a Step 11 grievance filing, we find that the matter may not be dealt with in an improper practice context.[13]

In this connection we note that the Petitioner's reply contains an appended exhibit which seems to indicate that a Step

[12]Decision No. B-8-85.

[13]Section 205.5(d) of the Taylor Law

IIdecision was issued by the Department on October 27, 1988. If such a decision was, in fact, rendered, this portion of the improper practice petition, even if not barred under Section 205.5(d) of the Taylor Law, would have become moot.

In view of the above, we conclude that the Petitioners have failed to meet their burden of establishing that the Police Department or any of its agents harbored anti-union animus, or that it discriminated against then due to their having engaged in protected activity. Accordingly, we find that no violation of the New York City Collective Bargaining Law has been stated and we shall dismiss the petition herein in its entirety.

ORDER

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

ORDERED, that the improper practice petition of Local 1549, District council 37, AFSCME, AFL-CIO, in behalf of Veronica Heiswald and Mary McLaurin in Docket No. BCB-1081-88 be, and the

same hereby is, dismissed.

DATED: New York, N.Y.
May 23, l989

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

JEROME E. JOSEPH
MEMBER

EDWARD F. GRAY
MEMBER

DEAN L. SILVERBERG
MEMBER

EDWARD SILVER
MEMBER