

DC 37, 6 OCB2d 29 (BCB 2013)

(IP) (Docket No. BCB-2949-11)

Summary of Decision: In *DC 37, 5 OCB2d 21 (BCB 2012)*, the Board found that the NYPD violated NYCCBL § 12-306(a)(1) and (4) by requiring employees who are not necessary for the NYPD to carry out its mission in an emergency and who are already required to provide the NYPD with a telephone number at which they can be reached when they are on an absence to disclose additional information such as the addresses at which they can be reached during an absence because requiring them to provide that additional information was a mandatory subject of bargaining. The Board ordered additional proceedings to provide the City the opportunity to develop a record establishing which titles are necessary to the NYPD to carry out its mission in an emergency and found that, on the supplemented record before it, the City had demonstrated that the 26 titles listed in the Appendix are so necessary; the NYPD could require employees in those titles to provide the additional information without bargaining. The Board ordered that the City bargain with the Union prior to requiring that employees in any title represented by the Union, except for those titles listed in the Appendix, provide the additional information. (*Official decision follows.*)

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

In the Matter of the Improper Practice Proceeding

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Petitioner,

-and-

**THE CITY OF NEW YORK and
THE NEW YORK CITY POLICE DEPARTMENT,**

Respondents.

DECISION AND ORDER

On April 15, 2011, District Council 37, AFSCME, AFL-CIO (“DC 37” or “Union”) filed a verified improper practice petition against the City of New York (“City”) and the New York

City Police Department (“NYPD” or “Department”). The Union claimed that the City and the NYPD violated § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by unilaterally changing the procedures regarding employee leave requests to require employees to complete the “Location During Absence” section (“LDA Section”) of the NYPD’s Leave of Absence Report. The Union did not challenge the NYPD’s ability to cancel scheduled absences and to call in to work from absences any and all of its employees. Moreover, the Union did not dispute that NYPD employees are required to provide the NYPD with a telephone number at which they can be reached at all times, including during absences. The LDA Section, however, requires employees to disclose additional information; specifically, the addresses at which they can be reached during an absence, the dates the employee will be reachable at those addresses, and phone numbers for those addresses (in addition to the contact number that the employees are already required to provide).

On May 29, 2012, this Board issued *DC 37*, 5 OCB2d 21 (BCB 2012), finding that the NYPD’s new requirement that all employees complete the LDA Section violated NYCCBL § 12-306(a)(1) and (4) because, for those employees not necessary to carry out the NYPD’s mission in an emergency, requiring them to complete the LDA Section and provide the additional information was mandatorily bargainable. The Board also found that, with respect to those employees who are necessary to carry out the NYPD’s mission in an emergency, the requirement of employees to complete the LDA Section is a non-mandatory subject of bargaining because the NYPD’s interest in being able to contact such employees in the event of an emergency outweighs those employees’ privacy interests. *Id.*, at 15. The Board ordered additional proceedings to provide the City with the opportunity to develop a record establishing

which civilian titles are necessary to the NYPD to carry out its mission in an emergency and, thus, could be required to complete the LDA Section and provide the additional information without bargaining. The Board now finds, on the supplemented record before it, that the City demonstrated that the 26 titles listed in the Appendix to this decision are so necessary. The Board orders that the City bargain with the Union prior to requiring that employees in any title represented by the Union, except for those titles listed in the Appendix, complete the LDA Section and provide the additional information.

BACKGROUND

The Trial Examiner held a total of three days of hearings and found that the totality of the record establishes the following facts:

The NYPD is described by the City as a law enforcement “agency of first responders with unique needs and a broad mission.” (City Brief at 2) Its mission is “to enforce the laws, preserve the peace, reduce fear and provide for a safe environment.” (City Brief, p. 5) (quoting the NYPD’s on-line mission statement) DC 37 represents over 7,400 NYPD civilian employees in over one hundred titles in multiple bargaining units that perform various duties such as “clerical work, information and technology work, communications work, laborer work[,] traffic enforcement, and motor vehicle operations work.” (Union Brief at 3)

In the interim decision, *DC 37, 5 OCB2d 21*,¹ the Board found that, separate and apart from any requirement that employees requesting leave prepare and submit the Leave of Absence Report, all NYPD employees are required to provide the NYPD with a telephone number at

¹ Familiarity with *DC 37, 5 OCB2d 21*, is presumed; only material pertinent to the instant decision is repeated here. In its brief in the instant matter, the City explicitly “acknowledge[d] the Board’s findings in *DC 37, 5 OCB2d 21*.” (City Brief at 2, n.1)

which they can be reached at all times, including when they are off duty and, for example, on vacation. *See id.*, at 4, n. 1; Tr. 92; *see also* Union Brief at 7. However, the Board also found that NYPD employees were previously not required to complete the LDA Section of the Leave of Absence Report, which requires employees to disclose additional information; specifically, the addresses where they can be reached during an absence, the dates that the employee will be reachable at those addresses, and phone numbers for those addresses (in addition to the contact number the employees are already required to provide).

The Board also found in the interim decision that some civilian employees were necessary for the NYPD to carry out its mission in an emergency. At the initial two day hearing, the City described a recent emergency—the major failure of the NYPD’s server on December 23, 2011, that impacted all of its information systems, including the 911 system. John Beirne, the NYPD’s Deputy Commissioner of Labor Relations who, in his 50 year career with the NYPD, has worked in nearly every unit of the NYPD, including the Management and Information System (“MIS”) Division, testified as to the critical nature of the work that NYPD civilian employees in its MIS Division performed in response to the December 2011 emergency. The Board found that the NYPD canceled vacations and called in to work employees who were on leave during the holidays in order to restore the NYPD’s computer systems.² *See DC 37*, 5 OCB2d 21, at 15. The record established that MIS Division employees do not work from 9 to 5, Monday through Friday, but, because the NYPD’s systems operate 24 hours a day, seven days a week, MIS Division civilian employees are scheduled to work weekends and around the clock.

Thus, in the interim decision, the Board held that while the NYPD could impose the requirement of completing the LDA Section and providing the additional information without

² In the instant action, the Union does not challenge the NYPD’s right to cancel scheduled absences, to recall employees from approved absences, or to mandate overtime.

bargaining upon civilian employees who are necessary to carry out the NYPD's mission in an emergency, it had an obligation to bargain over this requirement as it applies to employees who are not. The Board ordered additional proceedings to provide the City the opportunity "to create a record that [would] assist the Board in determining which NYPD civilian employees are necessary to carry out the NYPD's mission in the event of an emergency."³ *Id.*, at 18.

At the additional proceedings, the City explained that that the NYPD is a first responder agency; that is, whenever there is an emergency, "whether it be an injury or a major incident like September 11th," the public calls 911 and the NYPD responds. (Tr. 111-112) However, the City acknowledged that the civilian titles represented by the Union are not considered first responders and do not receive the training in emergency response that officers receive.⁴ The NYPD is operational, and has to be available to the public, 24 hours a day, seven days a week, and is only able to do so through the critical work of both uniformed police officers and civilian employees. The Deputy Commissioner testified that the NYPD needed to have its civilian employees available during an emergency so that it does not "have to take uniformed people off the street and reduce our police presence in the street." (Tr. 115) NYPD employees are informed at orientation as to the importance of them being available and this is reiterated in employee manuals and handbooks.

The City divided emergencies into two categories: (i) an incident affecting the public, which "can range from a major accident on a bridge where many people are killed or injured to . . . September 11th" and (ii) "the failure of one of our critical systems." (Tr. 121-122) An

³ The additional proceedings consisted of a hearing day and three joint exhibits. Joint Exhibits 15A and 15B consisted of job specifications for titles represented by DC 37 and employed by the NYPD; Joint Exhibit 16 was a list of DC 37 represented titles employed by the NYPD.

⁴ School Crossing Guards were described by the City as an example of a civilian title trained to respond to a specific type of incident ("an accident at their crossing") that is not otherwise trained to be part of the NYPD's emergency response. (Tr. 125)

example of the latter is the December 2011 emergency in which MIS Division civilian employees had their vacations canceled and were called in to respond to a major failure of the NYPD's systems.⁵ Without these employees, the NYPD would not have been able to deliver its services.

The City adduced testimony regarding several specific titles that were illustrative of the NYPD's use and need of civilian employees in emergencies. Police Communications Technicians ("PCTs") were described as "play[ing] probably the most critical role within the modern-day police department." (Tr. 120) Indeed, the NYPD has sent "vans to pick up PCTs to transport them during blackouts, snow emergencies." (Tr. 130) The PCT title series includes the Supervising Police Communications Technician ("SPCT") title. PCTs primarily (though not exclusively) operate the NYPD's 911 call taking system, interact with the public, taking information and relaying that information to officers on patrol, and keeping track of what resources the NYPD has available. Although the record does not include instances where PCTs were called in from a vacation, PCTs have had their vacations cancelled and it is not unusual for their regular schedules to be replaced with 12 to 16 hour shifts during emergencies. The NYPD is aware that its employees cannot function at the level demanded of them if required to work extended shifts indefinitely and that extended shifts disrupt the lives of its employees; thus, it feels that it is critical that it has the ability to recall employees from absences. The job specifications for the PCT title explicitly notes that employees in this title "may be required to

⁵ NYPD employees civilians in 16 titles represented by the Union that are responsible for technical support and/or maintenance: Certified Applications Developer; Certified Database Developer; Certified IT Administrator (Database); Certified IT Administrator (LAN); Certified IT Administrator (WAN); Certified IT Developer (Applications); Certified Local Area Network Administrator; Certified Wide Area Network Administrator; Computer Aide; Computer Associate (Operations); Computer Associate (Software); Computer Associate (Technical Support); Computer Programmer Analyst; Computer Specialist (Operations); Computer Specialist (Software); and Telecommunications Associate (Voice). (See Joint Ex. 15A)

work rotating shifts around the clock, including Saturdays, Sundays and holidays.” (Joint Ex. 15A)

The City also described as critical to NYPD operations Police Administrative Aides (“Police AAs”) who answer the switchboard, take crime complaints and accident reports, and prepare that information for the NYPD’s systems. The Police AA title series includes the Senior Police Administrative Aide title (“Senior Police AA”). Police AAs were of critical importance “[d]uring September 11th . . . and similar [smaller] events” as “the person of first contact with the public.” (Tr. 114-115) In an emergency, the public deals with Police AAs when seeking information. Police AAs are required to work rotating shifts around the clock, including Saturdays, Sundays and holidays depending on the needs of the Department. Like PCTs, if Police AAs are not available during an emergency, the NYPD would have to assign uniformed police officers to perform their duties, reducing the available uniformed presence that can be put on the streets. Another title for which the NYPD would have to assign uniformed personnel if civilians were not available in an emergency is the Police Attendant title. Police Attendants monitor people in custody, conduct searches, and attend to the needs of detainees. Police Attendants (like PCTs, SPCTs, Police AAs, and Senior Police AAs) are required to work rotating shifts around the clock, including Saturdays, Sundays and holidays.

The City described as critical to NYPD operations titles that require the employee to be “from [a] particular unique community [and be] multilingual” are these employees “have a great deal of credibility with the people from that community and are able to understand and effectively direct the citizen’s inquiry to the proper police desk or officer.”⁶ (Tr. 119) The job

⁶ While this testimony was prompted by a question referencing the Community Associates title, it is clear that the Deputy Commissioner was not referring to that title as that title does not require bi-lingual skills. (See Tr. 119; Joint Ex. 15A)

specification for the Precinct Community Relations (“PCR”) Aide explicitly notes as typical tasks that they “[f]acilitate[] the resolution of problems for members of the community through interviews and contacts among community members, police personnel and social and government agencies” and that they “[p]rovide translation[] and interpretation services for the public and personnel in the Department.” (Joint Ex. 15A) The qualification requirements for the PCR Aide title include bilingualism and “familiarity with the culture and customs of the specific ethnic community.” *Id.* The promotional titles for the PCR Aide title are the PCR Associate title and the PCR Coordinator title.

Chaplains are described as necessary in an emergency due to their counseling function when a NYPD employee is injured or killed, dealing not only with the immediate family but also with other employees who are traumatized by the incident. Chaplains had been called in when not scheduled to work, although the record does not establish if a Chaplain was ever called in from a vacation, and the NYPD often sends highway units to transport Chaplains to the scene of an emergency.

The City described Traffic Enforcement Agents (“TEA”) as necessary to the NYPD’s operations in an emergency as employees in that title can direct traffic during emergencies, and did so on September 11th and during a recent emergency caused by a steam pipe explosion in midtown Manhattan that injured several people.⁷ Tow truck operators (TEAs, Level 3) also play a role in emergencies by removing vehicles that impede emergency response routes. The TEA Job Specification notes that TEAs “enforce laws, rules and regulations”; “[r]eceive training in directing traffic”; and “ensures that . . . events do not impact upon traffic.” (Joint Ex. 15A)

⁷ This decision is limited to TEAs Levels III and IV, the two levels represented by the Union.

POSITIONS OF THE PARTIES

Union's Position

According to the Union, this case concerns requiring employees to disclose their planned whereabouts when requesting leave. The Union does not challenge the NYPD's longstanding requirement that all employees provide a phone number where they can be reached "at all times" so that the NYPD can contact them when on leave. (Union Brief at 7) In *DC 37*, 5 OCB2d 21, the Board found that disclosing the additional information required by the LDA Section is mandatorily bargainable for all employees not necessary for the NYPD to carry out its mission in an emergency, and that it was incumbent upon the City to establish that a title was so necessary. The Union argues that the City has failed to meet its burden and establish that employees in Union-represented titles (other than the certain MIS Division employees involved in the December 2011 incident) are necessary to carry out the NYPD's mission in an emergency. Rather than proving that specific titles are necessary, the NYPD states that virtually all titles are critical in an emergency. The Union contends that this conclusory allegation is insufficient to meet the City's burden. Critically, the City has failed to offer a single incident of when a Union-represented employee was contacted to work while on leave beyond the example of the MIS Division employees in December 2011.

The Union notes that the City did not offer any testimony as to how or why the "overwhelming majority" of Union-represented titles employed at the NYPD are necessary to carry out the NYPD's mission in an emergency. (Union Brief at 8) (citing as examples Criminalists, City Laborers, Motor Vehicle Operators, Bookkeepers, Psychologists, City Custodial Assistants, Associate Investigators, Radio Repair Mechanics, and Clerical Associates). Even regarding the titles for which testimony was offered, the City's sole witness was unable to

provide a single example of an instance when an employee in any of these titles was contacted to work during an emergency.

The Union submits that one incident should be the minimum for establishing that a title is necessary to carry out the NYPD's mission in an emergency. Because the City failed to offer a single example at the supplemental hearing, the Union maintains that the City has not met its burden of establishing that any additional Union-represented titles are necessary to carry out the NYPD's mission in an emergency. Thus, the Union argues that bargaining should be ordered for all Union represented titles except for those referred to in *DC 37*, 5 OCB2d 21.

City's Position

The City argues that every civilian title is necessary to carry out the NYPD's mission in an emergency. The NYPD functions 24 hours a day, seven days a week. It is a first responder agency. The nature of the emergencies it faces is constantly changing and includes everything from inclement weather to building collapses to terrorist attacks to disruptions to NYPD operations like the server collapse in December 2011. The wide range of possible future emergencies means that the NYPD cannot definitively say which particular civilian employee title will be needed. To illustrate the critical role civilians play in its operations, the City referenced several titles, including PCTs, SPCTs, TEAs, Police AAs, and Senior Police AAs. The City argues that the other civilian titles such as Secretaries, Clerical Associates, and Clerical Aides are equally critical, even if their importance is not readily apparent.

The City argues that, as a matter of public policy, the Board should determine that every civilian title is essential to the NYPD's ability to carry out its mission in an emergency. Civilian employees, while not themselves first responders, provide the support needed for the NYPD to effectively carry out its mission. When the NYPD lacks sufficient civilian personnel, it must

take a uniformed police officer off of patrol to perform the civilian's duties, reducing the available police presence and hindering its ability to preserve peace and reduce fear. According to the City, the Board should not differentiate between civilian and uniform NYPD employees because to find that any title was not essential "would curtail the NYPD's ability to marshal its personnel" and would have a "crippling effect" on the NYPD's ability to contact its employees. (City Brief at 9; 10) Such a holding "would not be an extraordinary measure because the Administrative Code [§ 14-115(a)] and the Charter [§ 434(a)] have recognized that the NYPD is not like any other agency." (*Id.*) The City also cites to Mayoral Executive Order No. 51 ("EO 51") as recognizing the NYPD's unique status as EO 51 allows it powers other agencies lack, such as the power to question all applicants about criminal records on pre-employment job applications. Thus, the City argues, the "Board should make a similar distinction, separating the NYPD from the requirements it may impose on other [C]ity agencies." (*Id.*) Further, the Board should not distinguish between civilian and uniform employees because the NYPD does not distinguish between them. Some of the NYPD's strictest rules and regulations apply to both types of employees, such as the prohibition on fraternization with criminals.

DISCUSSION

All NYPD employees are required to provide the NYPD with a telephone number at which they can be reached at all times, including when they are on a scheduled absence. *See DC 37*, 5 OCB2d 21, at 4, n. 1 (Board so finding); City Brief at n. 1 (City acknowledging the Board's findings); Union Brief at 7 (noting this "unchallenged requirement"); *see also* Tr. 92. The LDA Section requires that NYPD employees provide additional information; specifically, the addresses at which employees can be reached during an absence, the dates the employee will be

reachable at those addresses, and phone numbers for those addresses (in addition to the contact number the employees are already required to provide). In *DC 37*, 5 OCB2d 21, we found that the NYPD can require this additional information without bargaining from civilian employees in titles necessary for it to carry out its mission in an emergency. Thus, the limited issue before the Board is which titles represented by DC 37 has the City shown are necessary for the NYPD to carry out its mission in an emergency. We find, on the supplemented record before us, that the City has established that the 26 titles listed in the Appendix to this decision are necessary to the NYPD's ability to carry out its mission in an emergency and that the NYPD can require employees in those titles to complete the LDA Section and provide the additional information without bargaining. We also find that there has been an insufficient showing as to any other title represented by DC 37 and that bargaining is, therefore, necessary before the NYPD can require that employees in any DC 37 represented title, except for those listed in the Appendix, complete the LDA Section and provide the additional information.

We address the 26 titles listed in the Appendix in detail below. We are not persuaded by the Union's argument that we should limit our findings to titles previously called in an emergency as the NYPD faces a wide range of possible future emergencies. In general, by reference to specific titles, the City has demonstrated that the following characteristics of civilian titles are necessary to the NYPD's ability to carry out its mission in an emergency: skills required for the maintenance of critical systems; schedules indicating that the titles are needed to enable the NYPD to operate 24/7 every day of the year; duties that a uniformed officer would

have to perform in an emergency if civilian employees were not available; and specialized skills that enable the NYPD to address specific communities such as linguistic skills.⁸

The City has not established that every civilian title is necessary for the NYPD to carry out its mission in an emergency. Nothing in the record, for example, supports finding that Nutritionists or Fitness Instructors may be necessary to enable the NYPD to carry out its mission in a emergency or that, should Graphic Artists be unavailable, uniformed officers will have to be assigned their duties. The record does not support the City's argument that requiring the NYPD to bargain with DC 37 over a limited number of civilian titles would "curtail the NYPD's ability to marshal its personnel" or "limit the Department's ability to contact employees." (City Brief at 9, 10) Nothing in this decision or in *DC 37*, 5 OCB2d 21, limits the NYPD's undisputed authority to call in to work from absences any and all of its employees, uniformed or civilian. Nor does this decision relieve NYPD employees of their obligation to provide a telephone number at which they can be reached when they are on a scheduled absence.⁹

Further, we find unpersuasive the City's public policy argument that the Board should "separate the NYPD from the requirements it imposes on the other [C]ity agencies." (City Brief at 9). The City argues that since Charter § 434(a), Administrative Code § 14-115(a), and EO 51 treat the NYPD different from other City agencies, the Board should find that public policy requires that the NYCCBL treat the NYPD different from other City agencies. The City has cited no legal authority, nor is the Board aware of any, exempting entirely the NYPD from the NYCCBL because it is treated differently in other contexts under other laws. We do not find that

⁸ Dozens of job specifications were submitted as evidence in this matter. All were reviewed to determine if they indicated a skill or requirement necessary to the NYPD's ability to carry out its mission in an emergency.

⁹ Thus, our holding is consistent with *Local 2507, DC 37*, 63 OCB 34 (BCB 1999), cited by the City for the proposition "that management's prerogative under [NYCCBL] § 12-307(b) extends to the determination of the necessary levels of staffing." (City Brief at 9-10)

Charter § 434(a) and Administrative Code § 14–115(a) evince a public policy that the NYPD be treated differently than all other City agencies for the purpose of collective bargaining with civilian employees.¹⁰ Nor has the City provided a basis upon which a public policy, sufficient to circumscribe the operation of a statewide statute (the Taylor Law) and the explicitly authorized, substantially equivalent, local variant (the NYCCBL), can be found in the unilateral act of an Executive Order.¹¹

Titles Necessary to the NYPD’s Ability to Carry out Its Mission in an Emergency

The record establishes that titles in the MIS Division that maintain the NYPD’s systems are necessary to the NYPD’s ability to function in an emergency and we find that in December 2011, when systems critical to the NYPD’s operations crashed, many NYPD MIS Division employees worked over the holidays to restore operations. These titles are required to work weekends and around the clock and without these technical civilian personnel, the NYPD would be unable to operate 24/7, let alone in an emergency. A review of the job specifications in the

¹⁰ Any such a construction of Charter § 434(a) and Administrative Code § 14-115(a) would be inconsistent with the “strong and sweeping policy of the State to support collective bargaining under the Taylor Law,” and, thus, under the NYCCBL. *Matter of Patrolmen’s Benev. Assn. v. Pub. Empl. Relations Bd.*, 6 N.Y.3d 563, 571 (2006) (“*PBA v. PERB*”). In *PBA v. PERB*, the Court found that, as to the subject of police officer discipline, these provisions were “grandfathered” by Civil Service Law (“CSL”) § 76(4) which states that CSL §§ 75 and 76, which provide for disciplinary rights of public employees, “shall not ‘be construed to repeal or modify’ preexisting laws.” *Id.* at 573-574 (quoting CSL § 76(4)). We find unpersuasive the argument that Charter § 434(a) and Administrative Code § 14-115(a) proscribe bargaining with respect to subjects beyond police discipline. In the absence of any precedential or statutory basis to support such a broad, and potentially unlimited, elimination of bargaining rights to civilian employees, “the policy of the importance of collective bargaining” must control. *Matter of City of New York v. Bd. of Collective Bargaining*, Index No. 400177/2010 (Sup. Ct. N.Y. Co. Oct. 27, 2010) (Schlesinger, J.), *affd.*, 107 A.D.3d 612 (1st Dept. 2013).

¹¹ An Executive Order that conflicts with a duly-enacted statute would be unconstitutional and not a viable source upon which a public policy claim may be based. *See Rudder v. Pataki*, 248 A.D.2d 148 (2d Dept. 1998); *Matter of the Council of the City of N.Y. v. Bloomberg*, 6 N.Y.3d 380, 389 (2006).

record before us identifies 16 titles (listed in footnote 5, *supra*) as being responsible for system maintenance and, thus, necessary to the NYPD's ability to carry out its mission in an emergency.

While the services they perform are of a different nature, Chaplains have also been called in when not scheduled to address situations other titles are not qualified to address. The NYPD regularly dispatches NYPD vehicles to bring in Chaplains and we find that they perform a necessary role in the NYPD's ability to carry out its mission in an emergency. Similarly, employees in the PCR title series (PCR Aide, PCR Associate, and PCR Coordinator) possess skills necessary to the NYPD's ability to carry out its mission in an emergency; specifically, they have knowledge of, and contacts in, specific communities and linguistic skills. The record establishes that the TEA title is also necessary to the NYPD's ability to carry out its mission in an emergency, as illustrated by two emergencies in which TEAs played a role—September 11th and the steam pipe explosion in midtown Manhattan. The TEA Job Specification notes that TEAs “enforce laws, rules and regulations” and “ensures that . . . events do not impact upon traffic.” (Joint Ex. 15A) If these duties were not performed in an emergency by TEAs, they would have to be performed by uniformed officers.

The record also establishes that PCTs and SPCTs are necessary to the NYPD's ability to carry out its mission in an emergency. We find that these titles are critical to the 911 system. These titles take in information from the public, provide information to officers in the field, and track the NYPD's resources. These necessary duties, if not performed by employees in these titles, would have to be performed by uniformed officers. They are also necessary to the 24/7 operations of the NYPD, and their job specifications explicitly note that they may “be required to work rotating shifts around the clock, including Saturdays, Sundays and holidays.” (Joint Ex. 15A) While the City did not establish that PCTs had been called in from vacations, the record

establishes that PCTs have had vacations canceled, are regularly required to work past the ends of their shifts, and that, in emergencies, the NYPD has sent vans to deliver employees in these titles to where they are needed.

Likewise, we find that Police AAs and Senior Police AAs are necessary to the NYPD's ability to carry out its mission in an emergency. These are the NYPD titles that the public deals with in an emergency. Employees in these titles take crime complaints and accident reports as well as prepare that information for the NYPD's systems; tasks that, if Police AAs and Senior Police AAs are not available to perform during an emergency, the NYPD would have to assign to uniformed police officers. These titles are also necessary to the NYPD's 24/7 operations. The Police AA job specification explicitly states that Police AAs "will be required to work rotating shifts around the clock, including Saturdays, Sundays and holidays depending on the needs of the department." (Joint Ex. 15A) For the same reasons, we find that the Police Attendant title is necessary to the NYPD's ability to carry out its mission in an emergency. Police Attendants deal with people in custody; thus, their duties would have to be performed by uniformed officers if they are not available. The Police Attendant title also works rotating tours, weekends, and holidays.

The record before us does not establish that any other title represented by DC 37 is necessary for the NYPD to carry out its mission in an emergency. The City has not established that Clerical Associates, Clerical Aides, and Secretaries perform the same functions as Police AAs and Senior Police AAs and are necessary in an emergency. Further, the job specifications for these titles, as well as the others referred to by the City in its brief (Architect, Community Associate, and School Crossing Guard) do not indicate that these employees maintain critical systems, perform duties that a uniformed officer would have to perform in an emergency if

civilian employees were not available, or possess other specialized skills that enable the NYPD to address specific communities such as linguistic skills.¹² Notably, none of the job specifications for these titles require employees to work rotating tours, weekends, or holidays as part of the NYPD's around the clock 24/7 operations. On the record before us, we cannot find that these titles are necessary to the NYPD's ability to operate in an emergency.

Accordingly, we find on the record before us that the 26 titles listed in the Appendix to this decision have been shown to be necessary to the NYPD's ability to carry out its mission in an emergency such that the NYPD can require without bargaining that employees in those titles complete the LDA Section and provide the additional information. As the record does not establish that any other title represented by the Union is necessary to the NYPD's ability to carry out its mission in an emergency, we find that the NYPD must bargain as to all other titles represented by DC 37 before requiring that employees in those titles complete the LDA Section and provide the additional information of the addresses that they can be reached at during an absence, the dates the employee will be reachable at those addresses, and phone numbers for those addresses. We reiterate that nothing in this decision or in *DC 37*, 5 OCB2d 21, relieves NYPD employees of (nor requires the NYPD to bargain over) their obligation to provide the NYPD with a telephone number at which they can be reached during an absence or limits the NYPD's authority to call in to work from an absence any and all employees, uniformed or civilian.

¹² The record indicates that School Crossing Guards are trained how to respond to an accident at their assigned crossing but are not otherwise trained to be part of the NYPD's emergency response.

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 verified improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2949-11, is granted, in part, to the extent that the New York City Police Department is required to bargain over the requirement that employees in all titles represented by District Council 37, AFSCME, AFL-CIO, except for those titles listed in the Appendix to this decision and order, complete the Location During Absence section of its Leave of Absence Report; and it is further

ORDERED, that the verified improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2949-11, is denied, in part, to the extent that the New York City Police Department is not required to bargain over the requirement that employees in the civilian titles listed in the Appendix to this decision and order complete the Location During Absence section of its Leave of Absence Report; and it is further

ORDERED, that the City of New York and the New York City Police Department post appropriate notices detailing the above-stated violations of the New York City Collective Bargaining Law.

Dated: October 23, 2013
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

CHARLES G. MOERDLER
MEMBER

APPENDIX DC 37, 6 OCB2d 29 (BCB 2013)

Certified Applications Developer
Certified Database Developer
Certified IT Administrator (Database)
Certified IT Administrator (LAN)
Certified IT Administrator (WAN)
Certified IT Developer (Applications)
Certified Local Area Network Administrator
Certified Wide Area Network Administrator
Chaplin
Computer Aide
Computer Associate (Operations)
Computer Associate (Software)
Computer Associate (Technical Support)
Computer Programmer Analyst
Computer Specialist (Operations)
Computer Specialist (Software)
Police Administrative Aide
Police Attendant
Police Communications Technician
Precinct Community Relations Aide
Precinct Community Relations Associate
Precinct Community Relations Coordinator
Senior Police Administrative Aide
Supervising Police Communications Technician
Telecommunications Associate (Voice)
Traffic Enforcement Agent

**NOTICE
TO
ALL EMPLOYEES
PURSUANT TO
THE DECISION AND ORDER OF THE
BOARD OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK
and in order to effectuate the policies of the
NEW YORK CITY COLLECTIVE BARGAINING LAW**

We hereby notify:

That the Board of Collective Bargaining has issued 6 OCB2d 29 (BCB 2013), determining an improper practice petition between District Council 37, AFSCME, AFL-CIO, and the City of New York and the New York City Police Department.

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 verified improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2949-11, is granted, in part, to the extent that the New York City Police Department is required to bargain over the requirement that employees in all titles represented by District Council 37, AFSCME, AFL-CIO, except for those titles listed in the Appendix to 6 OCB2d 29 (BCB 2013), complete the Location During Absence section of its Leave of Absence Report; and it is further

ORDERED, that the verified improper practice petition filed by District Council 37, AFSCME, AFL-CIO, docketed as BCB-2949-11, is denied, in part, to the extent that the New York City Police Department is not required bargain over the requirement that employees in the civilian titles listed in the Appendix to 6 OCB2d 29 (BCB 2013) complete the Location During Absence section of its Leave of Absence Report; and it is further

ORDERED, that the City of New York and the New York City Police Department post appropriate notices detailing the above-stated violations of the New York City Collective Bargaining Law.

The New York City Police Department
(Department)

Dated: _____ **(Posted By)**
(Title)

This Notice must remain conspicuously posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.