***District Council 37, Locals 2507 and 3621*, 63 OCB 35 (BCB 1999) [Decision No. B-35-1999 (IP)], *appeal pending*.**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition	:	
	:	
-between-	:	
	:	
DISTRICT COUNCIL 37, AFSCME, AFL-CIO LOCALS 2507 and 3621	:	
	:	Decision No. B-35-1999
Petitioner,	:	Docket No. BCB-1970-98
	:	
-and-	:	
	:	
CITY OF NEW YORK and the NEW YORK CITY FIRE DEPARTMENT,	:	
	:	
Respondents.	:	

DECISION AND ORDER

On April 6, 1998, District Council 37, AFSCME, AFL-CIO, Locals 2507 and 3621 (hereinafter collectively referred to as "Petitioner" or "Union"), filed an improper practice petition against Respondents, the City of New York and the New York City Fire Department ("Respondent," "City" or "FDNY"), alleging violations of §§ 12-306a(1) and (4) and § 12-306(c) of the New York City Collective Bargaining Law ("NYCCBL").[1] The petition alleges that the City refused to provide

[1] Section 12-306 of the NYCCBL provides, in part:

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 § 12-305 of this chapter;

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(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. .

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petitioner with certain information it requested. On May 22, 1998, the Union filed an amended petition. On June 24, 1998, the City filed an answer to the improper practice petition, and on August 6, 1998, the Union filed its reply.

BACKGROUND

On December 8, 1997, Andy Perez, Member, Executive Board and Health & Safety Coordinator for Local 2507, sent a letter to Sherry Ann Kavaler, the Director of Personnel for the FDNY. The letter requested that the FDNY provide the Union with the names of those members who "fall into three categories--sick leave, FMLA leave, and those members who are in the pending and temporary category," so that the Union could follow up with those members and "attempt to mitigate the difficult situations they are often in." The Union requested regular updates, preferably on a monthly basis.

On February 12, 1998, Kavaler denied Perez' request in a letter, stating that the information is confidential and its release would constitute an unwarranted invasion of the privacy rights of the employees. Kavaler also stated that the FDNY is not required by the Citywide contract to release the data. She recommended that Perez reach out to his membership and advise them of the services the Union has to those who are out sick, on FMLA or without pay. The letters from December 8,

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Section 12-306(c) of the NYCCBL provides, in part:

> **c. Good faith bargaining.** The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
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> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
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> ***

1997 and February 12, 1998 comprised the additional material in the amended petition.

On February 13, 1998, Leonard Polletta, Assistant General Counsel of DC 37, sent a letter to Kavaler on behalf of Locals 2507 and 3621. The letter stated that pursuant to §§ 12-306(a)(4) and 12-306(c) of the NYCCBL, the Union would like the FDNY to provide it with complete lists of the names, addresses and social security numbers of all Emergency Medical Service employees whose employment has been terminated pursuant to §§ 71 and 73 of the Civil Service Law in the 1997 calendar year. The letter also requested copies of termination letters sent to those employees along with proof of service of such notices.

The Union stated that the request for information is made to "enable the Union to monitor and police the termination of bargaining unit employees and to guarantee the application of contractual rights to these employees." It also states that the Union is also concerned with the FDNY's "calculation of leave time in effectuating terminations, and with what appears to be non-compliance, on some occasions, with EMS's legal obligation to provide employees with a minimum leave of absence of 12 months pursuant to civil service law under CSL Section 71." The Union offered to inspect the documents in the confines of the FDNY's offices or at the Office of Labor Relations.

On March 19, 1998, Polletta called Kavaler to inquire whether the FDNY intended to provide the petitioners with the information requested in its February 13, 1998 letter. Kavaler indicated that the information was not forthcoming. The Union asks in its petition that the FDNY produce the requested information to the Union and order the FDNY to provide information and bargain in good faith in the future by honoring the Union's requests for information that are relevant and necessary.

It also asks the Board to order the FDNY to post notices to employees that it will provide the Union with relevant and necessary information requested or grant other relief that the Board deems just and proper.

POSITIONS OF THE PARTIES

Petitioner's Position

The Union argues that petitioner's requests for information explained that the requests were being made to enable the Union to monitor and police the leave status and treatment of bargaining unit employees and to guarantee the application of contractual rights and benefits to those employees. It states that the employees represented by petitioners are entitled, pursuant to §§ 5.1 and 7.0a of the Time and Leave Rules to obtain unpaid leaves of absence under certain circumstances for up to two years. It states that the information requested is necessary and relevant to the Union's efforts to monitor the FDNY's compliance with contractual leave provisions in connection with its enforcement of various provisions of the applicable collective bargaining agreements and § 71 of the Civil Service Law.[2] Thus, the Union argues that the FDNY's refusal to provide the petitioner with the information requested on December 8, 1997 and February 13, 1998, constitutes a failure to provide information and a refusal to bargain in good faith with the Union.

In its reply, the petitioners state that while CSL § 71 provides public employers with the discretion to terminate an employee who has been separated from service due to a disability for more than 12 months, nothing in CSL § 71 compels such termination. Consequently, it argues, the issue of when and under what circumstances a permanent civil service employee is to be terminated

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[2] The Union cites *AFSCME New York Council 66, Local 930 (Erie County Water Authority)*, 24 PERB ¶ 3046 (1991).

pursuant to CSL § 71 is a matter left to a public employer's discretion, and is therefore a mandatory subject of bargaining.[3] It argues that petitioner's request for information as to the identity and number of unit employees terminated pursuant to CSL §§ 71 and 73, relates to a matter which is a mandatory subject of bargaining.

In response to the City's first affirmative defense, the petitioner states that its petition seeks enforcement of respondents' obligation to provide information pursuant to specific provisions of the NYCCBL; it does not ask the Board to exercise jurisdiction over CSL §§ 71 and 73 terminations. In response to the cases cited by the City, the Union argues that this Board has never held that a public employee organization is not entitled to information concerning employees' payroll or employment status. The Union responds to the City's second affirmative defense by arguing that neither petitioner's requests for information nor this improper practice charge seeking enforcement of their requests are asking this Board to enforce the applicable collective bargaining agreements between the parties.

In response to the respondent's third affirmative defense, the Union argues that it has alleged that respondent's refusal to provide the information requested violated § 12-306(a)(1) of the NYCCBL because it interferes with the Union's and the employees' right to file grievances.[4] The petitioner states that an employer's refusal to provide relevant information to the Union upon request

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[3] The Union cites *New York State Federation of Police, Inc. (Town of Cortlandt)*, 30 PERB ¶ 3031 (1997).

[4] The Union cites *State of New York (Diaz)*, 18 PERB ¶ 3047 (1985)(where PERB allegedly held that an employer's refusal to provide information interfered with employees' statutory rights to file grievances challenging an employer's conduct and for that reason a refusal to provide information which relates to whether or not the employer has violated a collective bargaining agreement is a *per se* violation of §209a-(1)(a) of the Taylor Law.)

has been found consistently to be a *per se* violation of § 209-a(1), the equivalent Taylor Law provision to § 12-306(a)(1) of the NYCCBL. Citing numerous cases, it also argues that it is settled law that both public and private sector employers have an obligation ancillary to its continuing obligation to engage in collective bargaining, to supply a labor union upon request, with relevant information about collective bargaining and contract administration. The Union states that the standard of relevancy that has been "universally adopted by each of the jurisdictions," including the NYCCBL, has been characterized as a broad "discovery-type" standard and thus, "a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process."[5]

It argues that PERB has found that the Union is entitled to obtain information that is contained in represented employees' personnel files,[6] is entitled to the identification of unit employees who sought treatment from a dental clinic under the contractual dental plan and their dates of their treatment,[7] and is entitled to an employee's record of leave time use.[8] It states that an employer's refusal to release work records of represented employees is also regularly held to be a violation of the obligation to bargain by the NLRB and that PERB has also found that a public employer has an obligation to provide a union with the names and addresses of represented

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[5] *Proctor & Gamble Manufacturing Co. V. NLRB*, 603 F.2d 1310, 1315, 102 LRRM 2128 (8th Cir. 1979).

[6] The Union cites *Schulyer-Chemung-Tioga BOCES*, 18 PERB ¶4606 (1985)(where the Union alleges that PERB found that the union's need for information outweighs the employer's concern for confidentiality).

[7] The Union cites *City of Buffalo*, 18 PERB ¶4645 (1985).

[8] The Union cites *Schulyer-Chemung-Tioga BOCES*, 18 PERB ¶4606 (1985).

employees ancillary to the continuing obligation to engage in good faith bargaining.

It states that the City's allegations regarding § 96(1)(a) of the Personal Privacy Protection Law are completely without foundation, and there is no case law to support its "outrageous" position.

The Union argues that it is settled law that a public employer has an obligation to provide information even if the information demanded relates to nonmandatory subjects of bargaining.[9] It states that a union is entitled to information on a nonmandatory subject so it can have good faith negotiations on those mandatory subjects which may be impacted by the employer's exercise of managerial prerogative, a nonmandatory subject. It states that the instant matter is similar because the knowledge and identification of the number of unit employees terminated by respondents pursuant to §§ 71 and 73 of the CSL may lead to the formulation of bargaining proposals or the submission of grievances on behalf of those employees. The Union states that it is enough that the unions are requesting information in order to determine whether there is a factual basis for a grievance[10] and the City has the burden of proof to establish that the production of the information requested would somehow be a breach of confidentiality.[11]

The Union states that whether an employee is on paid or unpaid leave or on leave or terminated pursuant to §§ 71 and 73 relates primarily to the employee's status, and has nothing to do with the underlying medical diagnosis or disability which may have been the cause for the change in status. Moreover, it argues that if the information requested by the unions did relate to medical

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[9] The Union cites *Falconer CSD*, 6 PERB ¶3029 (1973).

[10] The Union cites *United Technologies Corp.*, 274 NLRB 504 (1985).

[11] The Union cites *Hammondsport CSD*, 14 PERB ¶4519 (1981)

documentation of employees, there is legal authority to require that this information be made accessible and provided to the Union.[12] It states that the NLRB ordered an employer to release medical information provided that the employer delete employee identifications because the Union did not need them to carry out its representational functions in that case. In the instant matter, the Union argues that even though it is seeking the names and addresses of the employees terminated from employment without regard to the underlying medical or factual basis for the employees' medical or disability status, the Union absolutely needs the identity of the employees to enable the Union to contact them to verify their status and gather further information for purposes of assessing whether there is a basis for a grievance or future collective bargaining proposals.

Finally, the Union argues that the requested information is routinely published by the Bureau of Emergency Services ("BEMS") and is not confidential. The Union produces several Extended Leave/Restriction Reports ("Reports") to attempt to support its claim. The Reports list the name of the employee, leave status, date of leave commencement, date returned, if any, social security number and relevant comments, which may include the scheduled return date among other things.

Respondent's Position

The respondent asserts that the petition must be dismissed because the Board does not have jurisdiction over alleged violations of statutes other than the NYCCBL.[13] The City states that the petitioners demand that the respondents provide it with a list of all employees separated from service under §§ 71 and 73 of the CSL so that it may police the FDNY's compliance with these sections of

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[12] *New Jersey Bell Tel. Co.*, 289 NLRB No. 55 (1989).

[13] The City cites Decision Nos. B-8-96; B-14-95 and B-43-91.

the law. However, the City argues that in previous decisions, the Board has held that because its authority is limited to the administration of the NYCCBL, an allegation that any statute other than the NYCCBL has been violated is not a matter appropriate for inclusion in a petition addressed to this Board.[14]

It states that since the Union is requesting the information to police respondent's treatment of its members and their contractual rights, the petition should be dismissed because the Board is "without authority to enforce the terms of a collective bargaining agreement and may not exercise jurisdiction over an alleged violation of an agreement unless the actions constituting such a violation would otherwise constitute an improper practice."[15] The City also states that petitioners have failed to allege facts sufficient to maintain a charge that respondent's actions were undertaken for the purpose of retaliating against, interfering with, discriminating against or frustrating the rights granted to the petitioners under § 12-305 of the NYCCBL in violation of § 12-306(a)(1) of the NYCCBL.

The City asserts that under § 12-306(c)(4) of the NYCCBL, an employer is only required to furnish information "necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." It states that in a prior case, the Board determined that the City was not required to furnish COBA with a list of employees separated from service under § 71 of the CSL because an employee's rights with respect to § 71 are not subjects on

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[14] The City cites Decision No. B-39-88.

[15] Decision No. B-14-95. The City also cites Decision Nos. B-8-96; B-45-88; B-39-88; B-24-87 and B-36-87.

which the City would be required to bargain.[16] The City states that it is also clear from the petitioner's statements that the information requested by it is not being requested for purposes of collective bargaining, but so the Union can police the Department's compliance with § 71 of the CSL.

Finally, the City argues that the disclosure of the identities of petitioners' members who have been separated from service under §§ 71 or 73 of the CSL or are out on sick leave, FMLA leave, or other medically related leave would violate the privacy rights of the Department's employees.[17] It asserts that *United Federation of Teachers* determined that personally identifying details contained in grievances must be redacted from records requested by an employee organization in order to protect the legitimate privacy rights of individual grievants. It asserts that the members of Locals 2507 and 3621 have a legitimate privacy interest in any personally identifying information that would disclose that they are either separated from service or incapable of performing their job duties because of disease or serious injury.

The City also argues that under § 96(1)(a) of the Personal Privacy Protection Law ("PPPL"), "no agency may disclose any record or personal information unless such disclosure is pursuant to a written request or the voluntary written consent of the data subject . . ." Consequently, it argues, the respondents cannot disclose to the petitioners the identities of its members unless the petitioners obtain written consent from them stating that this information can be released.

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[16] The City cites Decision No. B-39-88. It also cites Decision No. B-8-96; B-14-95 and B-41-90.

[17] The City cites *United Federation of Teachers v. New York City Health and Hospitals Corp.*, 428 N.Y.S.2d 823, 825 (1980).

The City also argues that the petitioners can also acquire this information directly from its members. It states that the member would then have the opportunity to personally decide if he or she wishes to disclose to the petitioners the reasons they no longer work for the respondents along with their social security numbers and the length of time they have been separated from employment with the respondents. Under either situation, the FDNY would not be forced to infringe on anyone's privacy rights.

DISCUSSION

Under our statute, a union may request information from a municipal employer for purposes of collective negotiations on mandatory subjects of bargaining as well as on matters necessary for the administration of the collective bargaining agreement, such as grievance administration.[18] Section 12-306(c)(4) of the NYCCBL states that a public employer's duty to bargain in good faith includes a duty to furnish the other party at its request, "data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining . . ."[19] In Decision No. B-8-85, the Board stated that the duty to provide information extends to that which is "relevant to and reasonably necessary for purposes of collective negotiations or contract administration which our

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[18] *Committee of Interns and Residents v. New York City Health and Hospitals Corporation*, Decision No. B-8-85 and *Sergeants Benevolent Association v. City of New York, et. al.*, Decision No. B-56-88.

[19] *See Civil Service Technical guild, Local 375 v. New York City, et al.*, Decision No. B-41-80.

statute and the processes of this Board are designed to protect."[20] Mandatory subjects generally include wages, hours and working conditions,[21] and any subject with a significant or material relationship to a condition of employment might be designated a mandatory subject of bargaining.[22]

The Union states that it would like the FDNY to provide it with complete lists of EMS employees who have been terminated pursuant to §§ 71 and 73 of the CSL because, among other things, it is concerned with the FDNY's calculation of leave time in effectuating terminations, and with what appears to be non-compliance with EMS's legal obligation to provide employees with a minimum leave of absence of 12 months pursuant to CSL § 71. The Union relies on *New York State Federation of Police, Inc. (Town of Cortlandt)*, which held that although CSL § 71 empowered the town to terminate an employee who was absent from work for a cumulative period of one year due to occupational disease or injury, the town was not privileged unilaterally to adopt a change in policy with regard to implementation of that section that affected terms and conditions of employment.

In contrast, the City relies on a prior Board Decision, B-39-88, that appears to be inconsistent with the PERB decision relied on by the Union, namely, *Town of Cortlandt*, for the proposition that the employer need not supply information in these circumstances. Our ruling in Decision No. B-39-88 was limited to the unique factual circumstances of that matter. In the instant matter, unlike B-39-88, there is no contractual provision asserted as the basis for the Union's improper practice claim,

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[20] *Correction Officers Benevolent Association v. New York City Department of Correction*, Decision No. B-9-1999; *Committee of Interns and Residents, supra*.

[21] *See, generally, Uniformed Firefighters Association of Greater New York v. City of New York*, Decision No. B-21-87.

[22] *Uniformed Firefighters Association of Greater New York v. City of New York and the Fire Department of the City of New York*, Decision No. B-63-91.

which would take the matter from our improper practice jurisdiction. Here, we must examine the CSL § 71 procedural issues in the context of a claim under § 12-306(a)(4) of the NYCCBL.

Utilizing an analysis similar to that employed by PERB in *Town of Cortlandt*, we find that, although the City is clearly empowered to terminate an employee under § 71 of the CSL, and able to thus fully exercise its prerogatives, the City is not privileged unilaterally to implement procedures that affect terms and conditions of employment. The procedures under which an employee is discharged from employment are necessarily mandatory subjects of bargaining because termination from employment on any ground occasions the loss of all terms and conditions incident to that employment.[23] Changes in the procedures under which employees are considered for termination from employment are mandatorily negotiable unless termination is required by law or controlling provisions of law establish a legislative intent to exempt an employer from a duty to bargain the decision to terminate.[24]

While the employer has the right to terminate the employment of individuals pursuant to § 71 of the CSL, we find that the procedures by which such terminations are implemented are terms and conditions of employment and, thus, mandatory subjects of bargaining. In this regard, the Union alleges that it requires information regarding the calculation of the time that employees are placed on unpaid leave for purposes of determining eligibility for involuntary terminations under §§ 71 and 73 of the CSL. Because this issue relates to the procedures under which an employee is discharged

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[23] *See,* 30 PERB ¶ 3031 at 3077.

[24] *See,* Id.

from employment, it necessarily involves a mandatory subject of bargaining.[25] For this reason, information about those employees placed on extended leave or whose employment was terminated in accordance with those procedures must be provided to the Union.

With respect to the City's privacy argument, the City contends that, if it were to relay the requested information directly to the Union, it would infringe on employee privacy rights. The City relies on *United Federation of Teachers* as well as the PPPL, which arguably prohibits an agency under its aegis from disclosing personal information without a written request or voluntary written consent of the individual about whom the information is sought. However, the PPPL does not apply to this agency, as the text specifically excludes units of local government.[26]

We also note that *United Federation of Teachers* is readily distinguishable from the instant matter. Unlike *United Federation of Teachers*, the records of those employees on extended leave in the instant matter appear to be regularly compiled and disseminated throughout the Bureau of Emergency Services. For those employees who have been dismissed in accordance with §§ 71 and

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[25] We note that this rationale is similar to that found in our prior decisions regarding merit pay and disciplinary cases. It is well-settled that while the actual decision to grant merit pay or to impose discipline on an employee is within an employer's discretion, the procedures and criteria to be applied in determining eligibility for the pay increases and the procedures for imposing and reviewing disciplinary actions are mandatory subjects of bargaining. *United Probation Officers Association v. Department of Correction*, Decision No. B-44-86 (merit pay); *Patrolmen's Benevolent Association of the City of New York v. City of New York and the Police Department of the City of New York*, Decision No. B-37-86 (discipline).

[26] Section 92 of the PPPL, titled "Definitions" reads, in pertinent part:

(1) Agency. The term "agency" means any state board, bureau, committee, commission, council, department, public authority, public benefit corporation, division, office or any other governmental entity performing a governmental or proprietary function for the state of New York, except the judiciary or the state legislature or any unit of local government and shall not include offices of district attorneys.

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73 of the CSL, *United Federation of Teachers* is also distinguishable. The Court held that the Union was entitled to disclosure of filed grievances from the employer, but the names had to be redacted. In reaching that conclusion, the Court utilized a test balancing the expectations of privacy of the grievants involved against the legitimate interest of the union in obtaining disclosure. In the instant matter, the interest of the Union in obtaining the names and addresses of former employees is of greater importance than any expectation of privacy under the circumstances of this case.

The City argues that to obtain the information required, the Union need only directly contact its members. However, the statutory duty to provide information is not vitiated by the possibility that the information sought is obtainable by other means.[27] Accordingly, we grant the Union's petition in its entirety and order the FDNY to provide the Union the requested information about those employees placed on extended leave or whose employment was terminated in accordance with §§ 71 and 73 procedures must be provided.

ORDER

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

ORDERED, that the improper practice petition docketed as BCB-1970-98 be, and the same hereby is, granted, as to information about those employees placed on extended leave or whose employment was terminated in accordance with §§ 71 and 73 procedures, and it is further

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[27] *Committee of Interns and Residents v. New York City Health and Hospitals Corporation*, Decision No. B-22-92 at 18; *Correction Officers Benevolent Association v. New York City Department of Correction*, Decision No. B-9-1999 at 16.

ORDERED, that the City provide the above-mentioned information to the Union on a monthly basis.

DATED: August 31, 1999
New York, N. Y.

STEVEN C. DeCOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS J. GIBLIN
MEMBER

DISSENT

For the following reasons Board members Richard Wilsker and Anthony Coles respectfully dissent.

The Fire Department did not commit an improper practice when it refused to provide the Union with the names, social security numbers and addresses of employees separated from service under Sections 71 and 72 of the Civil Service Law ("CSL"). Separations from service

under Sections 71 and 72 are not governed by the parties' collective bargaining agreement and as such do not impact on collective bargaining or the Union's ability to administer the parties' contract. Furthermore, the majority's rationale that the Department must provide the Union with the information it requests under Sections 71 and 72 because the "City is not privileged to unilaterally implement procedures that affect terms and conditions of employment" ignores the fact that the procedures at issue were mandated by the legislature, not the City, and that the City has not modified these procedures.

The majority correctly points out that under the New York City Collective Bargaining Law ("NYCCBL"), "a union may request information from a municipal employer for purposes of collective negotiations on mandatory subjects of bargaining as well as on matters necessary for the administration of the collective bargaining agreement ." (Emphasis added) See page 11 of the majority opinion. However, in the request at issue in the instant improper practice petition, the Union clearly indicated that its request for information was with regard to rights under **Sections** 71 and 72 of the CSL. and not pursuant to the NYCCBL. See page 12 of the majority opinion. Specifically, the Union seeks to "police" whether the Fire Department is in compliance with the requirements of Sections 71 and 72 of the CSL. The Union's concern that the Fire Department may have failed to follow the procedures established in a statute. separate and apart from the New York City Collective Bargaining Law, is irrelevant to the Union's ability to administer its collective bargaining agreement and is not an appropriate matter for this Board. Redress if any, must be found in the administrative or judicial forum as provided by Sections 71 and 72 which address such concerns.

The majority approached this case as if the City unilaterally changed a procedure that is a proper subject of bargaining. The problem with this approach is that the Union does not allege any such procedural change. The majority states that its rationale for requiring the City to provide the Union with the information it requests with respect to Sections 71 and 72 stem from the Board's prior decisional law regarding merit pay criteria and disciplinary procedures. The majority states that the "City is not privileged to unilaterally implement procedures that affect terms and conditions of employment." In the cases cited by the majority, Board Decision No. B-44-86, United Probation Officers and the Department of Probation and disciplinary procedures Board Decision No. B-37-86, Patrolmen's Benevolent Association and the City of New York and the Police Department, the Board determined that the City changed procedures associated with granting merit pay or disciplining an employee. There are no procedures at issue in the present case.

Unlike United Probation Officers, and Patrolmen's Benevolent Association. the instant matter involves procedures that were established by the legislature and codified in Sections 71 and 72 of the Civil Service Law. The City did not unilaterally create or even change these procedures. The City and the Union have not bargained a modification of these procedures, nor has the Union alleged a refusal to bargain over modifying them.

Furthermore, the majority's analysis and concomitant reliance on the Town of Cortlandt supports the conclusion reached in this dissent. The majority states that "changes in the procedures under which employees are considered for termination from employment are mandatorily negotiable unless termination is required by law or controlling provisions of law

which establish a legislative intent to exempt an employer from a duty to bargain the decision to terminate." (Emphasis added). Town of Cortlandt, 30 PERB 3031. The Union has not alleged that the City has unilaterally created a different procedure from that which was established by the legislature in Sections 71 and 72 of the Civil Service Law nor does it allege that it needs the information requested to negotiate a different procedure with the City. The Union wants to "police" the Fire Department. The Union's desire to police the statutory rights of its members to receive "ordinary disability leave" pursuant to Section 72 of the CSL or "disability leave" pursuant to Section 71 of the CSL is not provided by the collective bargaining agreement nor has the Union alleged that the City refused to bargain regarding such leave.

Furthermore, Section 12-307(b) of the NYCCBL establishes a legislative intent to exempt the City from a duty to bargain over the decision to terminate an employee under Section 71 or Section 72 of the CSL. Section 12-307(b) states in pertinent part that "it is the right of the City, or any other public employer, acting through its agencies [to]; . . . relieve its employees from duty because of lack of work or for other legitimate reasons. . . ." Sections 71 and 72 expand upon that management right by permitting the City to relieve an employee from work when they are no longer able to perform their duties. Sections 71 and 72 also provide rights for the employee to return to duty under specific circumstances. These rights are specific to the effected individual. The Union has no rights under Sections 71 or 72 nor has it alleged that it has any. The Union merely states that it wants to assert a "right" to "police" the department's actions. The NYCCBL does not give the Union the right to do that.

Under the NYCCBL the City must only provide the Union with information reasonably

necessary for collective bargaining and/or administration of the parties' collective bargaining agreement. Requiring the City to provide the Union with the names, social security numbers and addresses of employees separated from service under Sections 71 and 72 of the Civil Service Law ("CSL") so that the Union may "police" the City's compliance with these statutory sections is not mandated by the NYCCBL and could not have given rise to any obligation by the City to provide the information requested by the Union.

For the reasons stated above, we respectfully dissent.

Dated: August 31, 1999
New York, New York

RICHARD A. WILSKER
MEMBER

ANTHONY COLES
MEMBER