# *COBA*, 7 OCB2d 11 (BCB 2014)

(IP) (Docket No. BCB-4022-13)

***Summary of Decision:*** The Union alleged that DOC violated NYCCBL § 12-306(c)(4) by failing to respond to or comply with multiple requests for information within a reasonable period of time, and by refusing to provide correspondence between the DOC and the Bronx DA. The City argued that it satisfied all of the information requests that it was required to comply with pursuant to NYCCBL § 12-306(c)(4). It contended that the one remaining request for information is outside the scope of NYCCBL 12-306(c)(4) because it is overly broad, burdensome, vague, and unclear whether the records sought are kept in the regular course of business, and because the Union did not meet its burden to show how its request is reasonably related to contract administration. Further, the City asserted that these documents contain confidential information and may concern managerial and/or intergovernmental deliberative processes. The Board found that DOC violated the NYCCBL by failing to respond to or comply with some of the information requested within a reasonable period of time. However, it also found that the Union failed to demonstrate that DOC violated the NYCCBL by not providing information in response to the one outstanding request. Accordingly, the petition was granted, in part, and denied, in part. ***(Official decision follows.)***

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

**In the Matter of the Improper Practice Proceeding**

***-between-***

**CORRECTION OFFICERS' BENEVOLENT ASSOCIATION,**

***Petitioner,***

***-and-***

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

***Respondents.***

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## DECISION AND ORDER

On December 3, 2013, the Correction Officers' Benevolent Association, ("COBA" or

"Union"), filed an improper practice petition against the City of New York ("City") and the New York City Department of Correction ("DOC"). At a pre-hearing conference on January 27, 2014, counsel for the Union acknowledged that after the filing of the petition, all but one of the information requests raised in the petition were either satisfied by the City or were being withdrawn (without prejudice) by the Union.[1] The Union therefore amended its petition to allege that DOC violated § 12-306(c)(4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by failing to respond to or comply with multiple requests for information within a reasonable period of time, and by refusing to provide the one outstanding category of documents, which is a request for correspondence from 2010 to present between the DOC and the Bronx District Attorney ("Bronx DA") concerning the re-arrest of inmates for assaulting corrections officers.

The City argues that it satisfied all of the information requests that it was required to comply with pursuant to NYCCBL § 12-306(c)(4). It contends that the one remaining request for information is outside the scope of NYCCBL 12-306(c)(4) because it is overly broad, burdensome, and vague such that it is unclear exactly what the Union is requesting, much less whether the requested material is kept in the regular course of business; and, because the Union did not meet its burden to show how its request is reasonably related to contract administration. Further, the City asserts that the information at issue contains confidential information, and may concern managerial and/or intergovernmental deliberative processes. The Board finds that the DOC violated the NYCCBL by failing to respond to or comply with the July, September, and

[1] By letter dated January 24, 2014, the City requested the opportunity to submit a sur-reply based on new factual allegations and legal arguments raised by the Petitioner in the reply to the City's answer. At the pre-hearing conference on January 27, 2014, the City withdrew this application. In its reply, the Union acknowledged receipt of the majority of the documents it had requested, and withdrew all but one of its requests for information.

October information requests within a reasonable period of time. However, it also finds that the Union failed to demonstrate that the DOC violated the NYCCBL by not providing information in response to the one outstanding request. Accordingly, the petition is granted, in part, and denied, in part.

## BACKGROUND

The DOC is an agency of the City responsible for the operation of all jails in the five boroughs, as well as two hospital prison wards. The Union is the duly certified collective bargaining representative for the DOC employees in the civil service title Correction Officer. The City and the Union are parties to the Correction Officers Agreement, which covers the period of November 1, 2009, through October 31, 2011 ("Agreement"), the terms of which remain in effect pursuant to the *status quo* provision of the NYCCBL.

Between July and November 2013, the Union sent seven letters to the DOC requesting approximately 10 categories of information. All of the requests, with the exception of one request for correspondence between the DOC and the Bronx DA, were either satisfied by the City, albeit after the petition was filed, or withdrawn by the Union.

Information Requests Satisfied

By letter dated July 22, 2013, the Union notified the DOC Assistant Commissioner of Environmental Health that it was requesting (1) "SH 900 Log[s] of Occupational Injuries and Illnesses" and (2) "incident reports reflecting assaults on staff of every magnitude."[2] (Pet. Ex. B) (emphasis in original) By letter dated September 19, 2013, the Union notified the DOC Assistant Commissioner of Environmental Health that "in addition to prior requests outstanding,

[2] We note that the request for "incident reports reflecting assaults on staff of every magnitude," was withdrawn by the Union. (Pet. Ex. B) (emphasis in original)

we would like to also receive the Master Management Report for Security (MFMR-S) from 2009 to present." (Pet. Ex. B) The DOC Director of Labor Relations was copied on this letter. By letter dated November 8, 2013, the Union notified the DOC Deputy Chief of Department that the Union had not received a response to its previous two letters dated July 22 and September 19.

Additionally, by letter dated September 9, 2013, the Union notified the DOC Director of Labor Relations that it was requesting department-wide information pertaining to (1) uniformed post reduction/ elimination/ civilianization from January 2012 through the date of production, (2) shift reduction reports for the period December 25, 2011, through the date of production, (3) 119C forms submitted in DOC facilities for approval from January 1, 2012, through the date of production, (4) current departmental UF 53 report(s), and (5) a current table of organization for each DOC facility.[3] By letter dated October 15, 2013, the Union notified the DOC Director of Labor Relations that it was requesting "Tour Certification Sheets and Schedules for Monday, October 14, 2013" for two commands. (Pet. Ex. C) By letter dated November 8, 2013, the Union notified the DOC First Deputy Commissioner that the Union had not received a response to its previous two letters dated September 9 and October 15.

After the Petition was filed, in December 2013, and January 2014, the City produced documents in response to the seven categories of information requested.[4] It is undisputed that the Union received the documents produced; however, the Union contends that the DOC failed

[3] We note that the request for 119C forms was withdrawn by the Union. 119C forms are entitled "Authorization for Temporary Post," and are described by DOC as "a [DOC] form used by commanding officers to request management approval to operate a non-budgeted post on a temporary basis." (Ans. ¶ 26)

[4] We also note that DOC provides "24 Hour Reports" to the Union on a daily basis. These reports detail all incidents "ranging from assaults, on-site arrests, uses of force, and even accidents involving DOC vehicles," reported from 6 a.m. one day through 6 a.m. the next day. (Ans. ¶ 31-33) If any information is left out, changed, or updated, it is included in a subsequent report sent to the Union. (Ans. ¶ 33)

to respond to any of the requests in a reasonable and timely manner.

Information Request Outstanding

By letter dated November 15, 2013, the Union notified the then- Commissioner of the City Office of Labor Relations ("OLR") that:

> On behalf of [COBA] I am respectfully requesting the following information under [NYCCBL] section 12-306(c)(4) by close of business November 29, 2013. All documents maintained by [DOC] reflecting:
>
> - incidents of assaults by inmates on staff;
> - incidents of "splashing" of staff by inmates;
> - incidents of stabbings or slashings of staff by inmates;
> - all correspondence between the DOC and the [Bronx DA] or other law enforcement entities concerning re-arrest of inmates for the above incidents.
>
> This information is maintained by the DOC in the regular course of [DOC]'s business (as well as under regulations implementing the state's public employee safety law, 12 NYCRR § 801.3). Failure to provide said by November 29, 2013 will oblige COBA to pursue its legal remedies.

(Pet. Ex. D) The OLR Deputy Commissioner, the DOC Commissioner, and the DOC Director of Labor Relations were all copied on this letter. The City did not respond to this letter within the three weeks between the date the request was made and the date the petition was filed. The basis of the City's opposition to this request was set forth in its answer filed on January 13, 2014.

In its reply and at the pre-hearing conference, the Union clarified that the only information requested on November 15, 2013 that it still seeks is correspondence from 2010 to present between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers. It is undisputed that, to date, the information has not been provided to the Union.

## POSITIONS OF THE PARTIES

### Union's Position

The Union asserts that the DOC violated NYCCBL § 12-306(c)(4) by failing to respond to multiple separate requests for information in a reasonable amount of time, and by refusing to provide information that impacts the terms and conditions of the Union's members in the administration of the Agreement as well as issues of contract administration. The Union contends that the documents it requested are no different from those provided to it in the past. Further, the City admitted that the documents it produced were provided pursuant to the City's duty to the Union under the NYCCBL.

The Union argues that the City failed to respond to the earlier information requests in a reasonable period of time. Here, the City did not provide a single document, nor did the DOC's Director of Labor Relations "engage COBA as to any temporal or logistic barriers that may have delayed the production of documents," until after the petition was filed. (Rep. ¶ 11) Indeed, it was not until the City filed its answer that it claimed that the Union's requests for information were not appropriate. Thus, the Union contends that the failure to communicate or act within a reasonable time is a violation of § 12-306(c)(4) of the NYCCBL.

With respect to the sole outstanding request for information, correspondence from 2010 to present between the DOC and Bronx DA concerning the re-arrest of inmates for assaulting corrections officers, the Union emphasizes that the safety of corrections officers is part of the DOC's statutory duties. Therefore, it is "seeking to ensure that the assaults on staff by inmates at the DOC are being followed up with the appropriate authorities, since members of COBA may not re-arrest inmates absent authority granted by the Commissioner of the DOC." (Rep. ¶ 36) The DOC has many rules and regulations that involve safety and security, and these impact the

terms and conditions of Correction Officers' employment. Safety and security rules and the practical impact of decisions made by the DOC are subject to the grievance and arbitration provisions of the Agreement.

The Union asserts that it does not seek any deliberative or law enforcement information and does not object to the redaction of confidential information. In response to the City's references to "intergovernmental / managerial process" and "an argument that sounds like law enforcement privilege," the Union contends that the City is conflating defenses to a Freedom of Information Law request and the obligations that the NYCCBL places upon the City. (Rep. ¶ 37) Additionally, the Bronx DA is not an agency of the City so no "intergovernmental" privilege applies. Moreover, no authority is cited concerning "managerial process" or "law enforcement issues" on this topic. (Rep. ¶ 37) Finally, the Union asserts that there is no reason that the outstanding request should not be produced "especially given that the '24 hour reports' sent to the Union daily (and held in confidence) are far more descriptive concerning 'policing and investigative procedures' than mere referrals to the Bronx DA of inmates who have assaulted staff." (Rep. ¶ 37)

The Union requests that the City be ordered by the Board to produce the outstanding information and comply with future document requests within three weeks, and/or otherwise communicate with the Union when the rare occasion arises where the volume of documents, logistics, and schedules may warrant flexibility.

**City's Position**

The City asserts that the Union has misconstrued the NYCCBL and failed to allege how any of the requested information is reasonably related to contract administration or how the information would assist the Union in carrying out its statutorily-imposed duties. Nonetheless,

the City has complied fully with the NYCCBL § 12-306(c)(4) in that the DOC has provided the majority of the requested information, where the information sought is kept in the regular course of business and is reasonably available and necessary for the negotiation of subjects within the scope of collective bargaining.

The City alleges that the information it did not provide: (1) is outside the scope of § 12-306(c)(4) of the NYCCBL because it is not related to contract administration or collective bargaining, and the request was overly broad, burdensome, vague, and the information may not be kept in the regular course of business; and (2) this information may contain confidential information and/or concern intergovernmental deliberative processes. First, the City asserts that the Union has not established why the correspondence between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers is necessary for purposes of contract administration.[5] Second, the City asserts that it is not under any obligation to provide the Union with insight into the justifications and rationales that lead to its decisions or decisions by or in conjunction with other entities. Providing the requested correspondence to the Union "could interfere with law enforcement investigations, disclose confidential information relating to criminal investigations, and/or reveal criminal investigative techniques or procedures." (Ans. ¶ 71) Thus, the City has not violated NYCCBL § 12-306(c)(4) by refusing to provide

[5] The City asserts that in referring to the Workplace Violence Prevention Act ("WVPA"), the Union "attempts to justify its requests for information by alluding to irrelevant, alleged WVPA 'mandates' that DOC and COBA 'work together to achieve the goals of that law- to reduce violence against public employees in the workplace." (Ans. ¶ 53) However, the City argues that the WVPA is not incorporated into the Agreement, nor do disputes regarding the WVPA fall within Article XXI "Grievances and Arbitration Procedure" of the Agreement. Further, the Union fails to support its assertion that the WVPA "must be read *in pari materia* with the rules, regulations, operation orders and directives of the DOC." (Pet. ¶ 4) Thus, the City asserts that these allegations are insufficient to establish that the information requested is necessary for contract administration.

correspondence between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers, and the petition must be dismissed.

Finally, at the pre-hearing conference, the City argued that its delay may be attributed to the Union's decision to address some of the information requests to DOC employees other than the DOC Director of Labor Relations.

## DISCUSSION

Pursuant to NYCCBL § 12-306(c)(4), this Board has repeatedly held that a public employer's duty to bargain in good faith includes the obligation "to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." *DC 37*, 6 OCB2d 2, at 12 (BCB 2013) (quotation marks omitted); *see also COBA*, 63 OCB 9, at 12 (BCB 1999). A failure to comply with "NYCCBL § 12-306(c)(4) necessarily constitutes a violation of the duty to bargain in good faith pursuant to NYCCBL § 12-306(a)(4)." *Id.* Additionally, "since the denial of information to which the [u]nion is entitled renders the [u]nion less able effectively to represent the interests of the employees in the unit, the employer's failure to supply the information also interferes with the statutory right of employees to be represented, in violation of NYCCBL § 12-306(a)(1)." *Id.*; *see also PBA*, 79 OCB 6, at 17 (BCB 2007) (citations omitted). The Union's burden in justifying a request for information "requir[es] only a showing of probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NYSNA*, 3 OCB2d 36, at 13 (quoting *Comar, Inc.*, 349 NLRB 342, 354 (2007) (quotation marks omitted). In accord with this standard, we have held that this duty "extends to

information which is relevant to and reasonably necessary for purposes of collective negotiations or contract administration." *NYSNA*, 3 OCB2d 36, at 13 (quoting *DC 37, L. 2507,* 73 OCB 7, at 21 (BCB 2004)) (quotation marks omitted). Therefore, "information relevant to and reasonably necessary for consideration of a potential grievance, or to determine if an improper practice occurred, fall within the ambit of contract administration, and such information must be produced upon request." *NYSNA*, 4 OCB2d 42, at 11-12 (BCB 2011).

However, the Union's right to information does not include "requests that seek documents that are irrelevant, burdensome to provide, available elsewhere, confidential, or do not exist." *NYSNA*, 3 OCB2d 36, at 14; *see also State of N.Y. (Office of the State Comptroller)*, 35 PERB ¶ 4565, at 4717 (2002). Additionally, "public employers are not under a duty to respond to requests for specific reasons why an employer engaged in a particular action because these types of requests are not for documents which contain information that will enable the union to negotiate more effectively, but are more in the nature of conclusions to be drawn by the employer." *NYSNA*, 3 OCB2d 36, at 14 (editing and quotation marks omitted) (quoting *Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 42 PERB ¶ 4570, at 4774 (2009)).

With regard to the outstanding information request, the correspondence from 2010 to present between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers, we find that the DOC has no obligation under the NYCCBL to provide information responsive to this request as drafted.[6] This request, as drafted, is overly broad and the Union has not established that it is relevant to or reasonably necessary for collective bargaining and/or contract administration of the Agreement. Initially, we note that the request covers a four- year period. The Union did not make any argument demonstrating the necessity

[6] This Board is not opining on the employer's obligation under the Freedom of Information Law or the Workplace Violence Prevention Act.

or relevance as to why it needs information covering this large period of time. Moreover, the Union has not identified any contractual provision the administration of which could reasonably be furthered by recourse to the DOC's correspondence with an independent governmental agency that has no contractual duties to the Union. Especially where, the Union admits that they already receive "24 Hour Reports," which are more descriptive concerning assaults on staff. Accordingly, we find that the Union failed to meet its burden and, therefore, the DOC was under no obligation under the NYCCBL to disclose the information requested.[7]

Additionally, we note that this petition was filed less than three weeks after the Union requested the correspondence between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers. Given the potential scope of the documents requested in regards to both the time period and the nature of the documents, we do not find under these circumstances that the City breached its obligation to provide information as required under the NYCCBL.[8]

We also find, and the DOC does not contend otherwise, that the seven satisfied requests set forth in the July 22, September 9, September 19, and October 15 letters were for information relevant to or reasonably necessary for collective bargaining or contract administration purposes. Documents in satisfaction of these requests were produced after the petition was filed, between

[7] This decision does not foreclose the Union from submitting a narrower information request to DOC, and then, if DOC fails to respond thereto, filing another improper practice petition alleging a violation of the NYCCBL based upon this newer, narrower request. Although the contractual definition of grievance encompasses "a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of collective bargaining" (Ans, Ex. 1 Art. XXI § 1(b)), the Union has not stated any way in which the correspondence would be reasonably necessary to administration of this provision,

[8] Additionally, this request may seek documents that are confidential, related to managerial and/or intergovernmental deliberative processes, and/or covered by law enforcement privilege.

two and five months from when they were initially requested.

With regard to the information requested in the July, September, and October letters, we find that the DOC failed to respond to these requests in a reasonable period of time and therefore violated the NYCCBL. We have previously held that an "employer violated NYCCBL § 12-306(c)(4) when it failed to comply with the union's document request in a timely manner." *DC 37*, 6 OCB2d 8 (BCB 2013); *see also OSA*, 1 OCB2d 45, at 16 (BCB 2008); *New York City Transit Authority*, 41 PERB ¶ 3022, at 3102 (2008) (a party is "obligated under the [Taylor] Act, to respond to a request for information within a reasonable period of time under the facts and circumstances of each particular case"). Further, "a party cannot render moot a failure to provide information claim merely by providing the requested information in response to an improper practice petition. A contrary holding would discourage good labor relations by encouraging brinksmanship." *OSA*, 1 OCB2d 45, at 13. In *OSA*, the employer violated NYCCBL § 12-306(c)(4) because it failed or refused to provide nine out of thirteen requested functional job descriptions until after the petition was filed and still failed to provide two of the descriptions after the conclusion of the hearing in that matter. *OSA*, 1 OCB2d 45, at 16. In *DC 37*, the employer violated NYCCBL § 12-306(c)(4) because, without providing an explanation to the union, it failed to produce any information until shortly after the petition was filed, over five months after the union communicated its initial request, and then the employer only produced some of the requested information. *See DC 37*, 6 OCB2d 8, at 10-11.

Here, the DOC did not respond to the Union's requests in any way until after the petition was filed. *Cf. PBA*, 73 OCB 14, at 11 (finding that the City satisfied its NYCCBL § 12-306(c)(4) duty by, among other things, "stating the basis for its non-possession" of requested data); *see also Hampton Bays Union Free School District*, 41 PERB ¶ 3008 (2008) (encouraging

the responding party to communicate with the party seeking information rather than simply ignoring the request). Accordingly, at the time it filed the petition, the Union had no basis to believe that the City would provide the requested information. Moreover, the DOC failed to provide any responsive documents until one week after the improper practice petition was filed, and almost five months after COBA communicated its first request for the information produced. We have held that, "[t]his scenario, in which a party delays compliance with an information request, without explanation, until after [the] petition is filed, is capable of repetition. Accordingly, we find that to hold this matter to be moot would be akin to encouraging parties to avoid their responsibilities under the NYCCBL unless and until an improper practice charge is filed." *DC 37*, 6 OCB2d 8, at 13 (internal quotation marks omitted) (quoting *OSA*, 1 OCB2d 45, at 14).

Further, we are not persuaded by the defense the DOC offered for its delay in complying with the information requests. The DOC contends that the delay may be attributed to the Union's failure to address some of the information requests to the DOC Director of Labor Relations. Of the seven letters: the September 9 and October 15 Letters were addressed directly to the Director of Labor Relations; the November 15 Letter was copied to him; the September 19 Letter was copied to him and included a copy of the July 22 Letter, which had not been addressed or copied to him. Both of the November 8 Letters, which were not addressed to him, were simply reminders of the earlier outstanding requests and did not contain any new requests for documents. Moreover, in the instances when the requests were sent to the Director of Labor Relations they similarly were unanswered.

In light of the above, we find that the DOC's failure to respond to the July, September, and October information requests in a reasonably timely manner, and without any explanation to the Union until after the petition was filed, is a violation of NYCCBL § 12-306(a)(1), (a)(4), and

(c)(4). With regard to the information request outstanding, correspondence from 2010 to present between the DOC and the Bronx DA concerning the re-arrest of inmates for assaulting corrections officers, we find that the DOC did not have an obligation under the circumstances presented herein to provide information responsive to this request. Accordingly, the petition is granted, in part, and denied, in part.

**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-4022-13, filed by Correction Officers' Benevolent Association, against the City of New York and the New York City Department of Correction, be, and the same hereby is, granted to the extent that the DOC failed to respond to the July, September, and October 2013 information requests in a reasonably timely manner, and without any explanation to the Union until after the petition was filed; and it is further

ORDERED, that the remainder of the verified improper practice petition is dismissed.

Dated: April 3, 2014
New York, New York

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
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CHARLES G. MOERDLER
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