

**Local 1182, CWA, 7 OCB2d 5 (BCB 2014)**  
(IP) (Docket No. BCB-3088-13)

**Summary of Decision:** The Union alleged that the NYPD violated NYCCBL § 12-306(a)(1) and (4) when it unilaterally required TEAs to purchase a belt whistle holder and an LED traffic wand at their own expense. Respondents argued that the NYPD has a statutorily-granted right to determine uniform and equipment requirements. They also argued that TEAs have a contractually-mandated uniform allowance that encompasses the equipment at issue and that the uniform allowance covers changes in uniform requirements occurring within the contractual time period. The Board determined that the NYPD violated NYCCBL § 12-306(a)(1) and (4) when it unilaterally mandated that TEAs purchase the belt whistle holder and the LED traffic wand at their own expense. Accordingly, the petition was granted. (*Official decision follows.*)

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

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

*-between-*

**LOCAL 1182, COMMUNICATIONS WORKERS OF AMERICA,**

*Petitioner,*

*-and-*

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

*Respondents.*

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**DECISION AND ORDER**

On July 10, 2013, Local 1182, Communications Workers of America (“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 alleges that the NYPD violated § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by unilaterally mandating that Traffic

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Enforcement Agents (“TEAs”) purchase a belt whistle holder and an LED traffic wand and accompanying batteries, at their own expense.<sup>1</sup> Respondents argue that the NYPD has a statutorily-granted managerial right to determine uniform and equipment requirements. They also argue that TEAs have a contractually-mandated uniform allowance for the purchase, update, and maintenance of uniforms and equipment that encompasses the items at issue and that the uniform allowance covers changes in uniform requirements occurring within the contractual time period. This Board finds that the NYPD violated the NYCCBL when it unilaterally mandated that TEAs purchase the belt whistle holder and LED traffic wand at their own expense. Accordingly, the Union’s petition is granted.

**BACKGROUND**

TEA is a class of positions within the NYPD Traffic Enforcement District that performs various traffic enforcement tasks. There are four assignment levels of TEAs. Each level manages different areas and elements of traffic enforcement. The Union represents TEA Levels I and II.<sup>2</sup> TEA Level Is are primarily responsible for parking regulation and enforcement. They patrol their designated zones and enforce laws and regulations involving vehicle parking by issuing summonses for violations. TEA Level IIs are primarily responsible for maintaining the safe and efficient flow of vehicles at designated intersections. They direct and control traffic and can perform the duties of TEA Level Is.

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<sup>1</sup> In its petition, the Union alleged that the NYPD unilaterally mandated that TEAs also purchase a traffic whistle at their own expense. The Union subsequently indicated that it would not pursue its claim regarding the traffic whistle. (*See* email correspondence from Union attorney K. Jaros, dated December 30, 2013). Accordingly, we will not address the Union’s claim pertaining to the traffic whistle and deem it withdrawn.

<sup>2</sup> Hereinafter, all references to TEAs in this Decision and Order refer strictly to TEA Levels I and II.

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The Union and the NYPD are parties to a collective bargaining agreement covering the period from March 10, 2008 through March 15, 2010, which remains in *status quo* pursuant to NYCCBL § 12-311(d) (“Agreement”). Article III, § 9a of the Agreement provides:

Effective as indicated a uniform allowance in the pro rata annual sum indicated below shall be paid to each covered employee required to wear a uniform.

As specified in Unit “B” (Local 1182):

...

Effective  
3/9/10  
\$808

(Ans., Ex. 5)<sup>3</sup> On December 18, 2009, the NYPD issued Administrative Guide Procedure 319-20 (“Administrative Guide 319-20”), the stated purpose of which is “[t]o prescribe uniforms/equipment for certain civilian members of the service,” including TEAs. (Ans., Ex. 3) Administrative Guide 319-20 mandates that TEAs “[w]ear and maintain” regulation uniform/equipment while performing duty, as follows:

- a. Cap. . .
- b. Shirt. . .
- c. Blazer. . .
- d. Trousers. . .
- e. Skirt (optional). . .

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<sup>3</sup> On December 20, 2012, the NYPD issued Operations Order 7-6, c.s., entitled “Payroll Procedure-Annual Uniform Allowance,” which similarly provides, in pertinent part:

[u]niform allowance payments will be provided for members of the service who will have completed six months of service during the period from July 1, 2012, to December 31, 2012, who are in the following titles:

...

Traffic Enforcement Agent I & II                      \$808

(Ans., Ex. 4)

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- f. Shoes. . .
- g. Socks . . .
- h. Optional inclement weather items:
  - (1) Raincoat. . .
  - (2) Two piece, high visibility, yellow waterproof jacket and pants with detachable hood. . . .
- i. Overcoat. . .
- j. Optional summer uniform for agents assigned to street enforcement duties for their entire tour of duty:
  - (1) Regulation medium blue, short sleeve uniform shirt.
  - (2) Cargo style shorts. . .
  - (3) Black leather uniform athletic shoes. . .
  - (4) Black cotton crew socks. . .
  - (5) Regulation eight point white uniform hat
  - (6) White cotton gloves
  - (7) Reflective safety vest, as required.
- k. Optional winter items:
  - (1) Winter hat. . .
  - (2) Turtleneck. . .
  - (3) Sweater. . .
  - (4) Ear muffs. . .
  - (5) Gloves. . .
  - (6) Jacket. . .
- l. Reflective traffic safety vest. . .
- m. Shield. . .
- n. Nameplate. . .
- o. Patches. . .
- p. Longevity bar. . .
- q. Belt. . .
- r. Tie. . .
- s. Collar brass. . .
- t. Watch. . .
- u. Other jewelry. . .

*(Id.)*

On May 31, 2013, the NYPD issued Interim Order 11, which revised Administrative Guide 319-20.<sup>4</sup> It provides:

1. The Department has recently approved traffic wand, regulation traffic whistle and belt whistle holder for civilian members of the service working in the title of [TEA] and parking

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<sup>4</sup> This document was brought to the Trial Examiner's attention at a September 9, 2013 conference and produced at that time. It was confirmed by both parties to be authentic.

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enforcement specialist. The traffic wand must be carried while performing traffic control duties between the hours of sunset and sunrise. The regulation traffic whistle and belt whistle holder are required to be carried at all times in the performance of duty.

2. Therefore, effective immediately, Administrative Guide 319-20 entitled, "Civilian Member-Uniforms/Equipment" is amended as follows:
  - a. **ADD** new subdivisions "u" and "v" following step "f", opposite actor "[TEA]/PARKING ENFORCEMENT SPECIALIST", on page "4" to read:

**"[TEA]/PARKING ENFORCEMENT SPECIALIST"**

- u.** **Regulation traffic whistle and belt whistle holder.**
- v.** **Serviceable traffic wand, light-emitting diode (LED), battery operated, 18- to 22 inches in length, push button operation, with steady and flashing red light capability.**
  - (1) **To be carried while performing traffic control duties between the hours of sunset and sunrise."**

- b. Revise current subdivision "u" following step "5", opposite actor "[TEA]/PARKING ENFORCEMENT SPECIALIST", on page "4" to read:

**"w"**

(emphasis in original) Less than two weeks later, the Commanding Officer of the Traffic Enforcement District issued a June 11, 2013 memo to Traffic Managers and other supervisory personnel. The subject of the memo was "Revision to Civilian Member-Uniforms/Equipment Traffic Wand and Traffic Whistle" ("June 11, 2013 Memo"). (Rep., Ex. A) The memo provides, in pertinent part, as follows:

1. The Department has approved a traffic wand, regulation traffic whistle and belt whistle holder for [TEAs] and Parking Control Specialists (See attached Interim Order #11).

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2. The traffic wand must be carried while performing traffic control duties between the hours of sunset and sunrise. The regulation traffic whistle and belt whistle holder are required to be carried at all times in the performance of duty.
3. Uniform members must comply with these equipment requirements by Friday, June 28, 2013. Commanding Officers will ensure that all uniform members assigned to their command are advised of the contents of Interim Order #11 and are compliant by this date.

(*Id.*) (emphasis in original)<sup>5</sup> It is undisputed that the NYPD did not negotiate with the Union over the equipment requirements set forth in Interim Order 11 and the June 11, 2013 Memo prior to issuing these directives.

The NYPD Equipment Section's Price List provides a list of uniform and equipment items and their accompanying prices. It lists the cost of a belt whistle holder as \$1.50 but does not provide the cost of the LED traffic wand. Respondents have represented that the NYPD's Equipment Section does not stock and sell the traffic wand, but that it can be purchased privately for a cost of "between \$8 to \$30." (Ans. ¶ 37, n. 4)

### **POSITIONS OF THE PARTIES**

#### **Union's Position**

The Union contends that the NYPD violated NYCCBL § 12-306(a)(1) and (4) when it issued a directive requiring that TEAs purchase and carry new lighted traffic wands and a belt whistle holder, as well as purchase replacement batteries for the wand, all at their own expense, without first bargaining with the Union over the resulting economic impact.<sup>6</sup> It asserts that, prior

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<sup>5</sup> On or about June 19, 2013, the NYPD issued a notice stating that the requirement to purchase the traffic wand had been postponed until further notice but that compliance with the requirement to purchase the belt whistle holder was still required. (Ans., Ex. 8)

<sup>6</sup> NYCCBL § 12-306(a) provides, in pertinent part:

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to the issuance of the June 11, 2013 Memo, TEAs had not been required to purchase or carry wands or belt whistle holders nor had TEAs previously used these items in executing their duties.

The Union argues that the TEAs' annual uniform allowance under the Agreement does not cover the purchase of additional equipment that was not previously agreed upon by the parties, such as the wand and belt whistle holder. It notes that Administrative Guide 319-20, which was issued by the NYPD, does not list either a holder or a wand as part of the regulation uniform and equipment items that TEAs are required to wear while on duty. It emphasizes that the new requirement mandates that TEAs spend their own money to buy the additional equipment, which has an economic impact on its members.

Citing *NYSNA*, 4 OCB2d 23 (BCB 2011), the Union contends that the Board has recognized the term "wages" to encompass uniform allowances. *Id.* at 10. It analogizes the facts in the instant matter to those in *NYSNA*, asserting that, in that case, the Board required the City to bargain where a change in the color of employees' existing uniforms was mandated. The Union contends that the Board held in *NYSNA* that it could not find that the union involved waived its right to bargain without evidence that the parties discussed the change during the last set of negotiations. *Id.* at 11-12. It asserts that, here, Respondents have submitted no evidence that the requirement to purchase new equipment was ever discussed in prior negotiations.

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It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 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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The Union strongly disagrees with Respondents' contention that the contractually negotiated uniform allowance covers the wand and belt whistle holder. The uniform allowance provision of the Agreement did not contemplate these pieces of equipment because the new equipment requirement was issued over three years after the last Agreement expired. In addition, Respondents have offered no evidence that any such issues were discussed during prior negotiations on the subject. The Union asserts that, according to Respondents' reasoning, the NYPD could require all kinds of new equipment to be purchased by employees after the negotiation of a contract without bargaining over the issue. This would negatively affect employee wages and undermine the purpose of the NYCCBL. It also takes issue with Respondents' argument that the Union agreed to the requirement that its members purchase additional equipment with their own funds by virtue of a past practice and asserts that Respondents have failed to produce any evidence of such a practice.<sup>7</sup>

**City's Position**

Respondents contend that the Board should dismiss the petition because the Union failed to allege facts sufficient to find that they violated NYCCBL § 12-306(a)(1) and (4). First, Respondents argue that the NYPD's determination of uniform requirements and its subsequent revision to Administrative Guide 319-20 fall within its statutory management rights under NYCCBL § 12-307(b).<sup>8</sup> They emphasize that this provision provides the NYPD with the

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<sup>7</sup> The Union's President represented in an affidavit that he did not recall any such agreement. (See Rep., Ex. B.)

<sup>8</sup> NYCCBL § 12-307(b) provides, in pertinent part:

It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve



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unilateral authority to determine the “methods, means and personnel by which government operations are to be conducted,” among other rights. *See* NYCCBL § 12-307(b). Respondents assert that the Board has “long held” that the “determination and prescription of authorized uniforms is a management prerogative” under NYCCBL § 12-307(b). They point out that the New York State Public Employment Relations Board (“PERB”) has similarly held that uniform requirements are a non-mandatory bargaining subject. Citing Board and PERB precedent, Respondents contend that the new equipment is “integral” to the performance of TEA duties and the furtherance of the NYPD’s mission. (Ans. ¶ 65) Thus, the designation of required uniform items is not a mandatory subject of bargaining.

Second, Respondents argue that the uniform allowance is a settled matter between the parties and the City has satisfied its bargaining obligation on this issue. They assert that the parties bargained over the uniform allowance and memorialized their agreement at Article III, § 9(a) of the Agreement in which the parties agreed that employees will receive a uniform allowance of \$808. This allowance, according to Respondents, is to be used to purchase, update, and maintain required uniforms and equipment “for the performance of their job.” (Ans. ¶ 69) They assert that cost increases as well as changes to required uniforms were contemplated by the parties and that there is nothing in Article III, § 9(a), the provision addressing the uniform

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its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work.

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allowance, to suggest that the parties intended to exclude these costs. Respondents also argue that there is no evidence that the Union requested bargaining as a result of the increased costs.

Respondents claim that *NYSNA*, 4 OCB2d 23, is distinguishable from the instant matter. Here, the NYPD simply memorialized the fact that TEAs “utilize, and are required to utilize” belt whistle holders and LED traffic wands in the performance of their duties. (Ans. ¶ 71) The NYPD did not initiate a complete overhaul of uniforms, which it asserts that HHC did in *NYSNA*. They note that while Board precedent in *NYSNA* indicates that uniform allowances are ordinarily considered to be mandatory subjects of bargaining, the City and the Union have already bargained this subject “to mutual agreement” as set forth in Article III, § 9(a) of the Agreement. (Ans. ¶ 71) Moreover, nothing in that contractual provision suggests that the parties intended to exclude any uniform item or uniform changes from the allowance, and it does not specify an increase or decrease in the allowance for any reason. Respondents emphasize that there is no evidence that the Union requested bargaining to increase the uniform allowance as a result of the increased cost of the items. They also emphasize that the new requirements mandate the expenditure of a “miniscule” amount of funds. (Ans. ¶ 52) Finally, Respondents contend that past practice indicates that the uniform allowance is intended to cover changes in uniform requirements that occur within the time period covered by the Agreement and noted that in 2008, Union members paid for a newly required traffic safety vest.<sup>9</sup>

### **DISCUSSION**

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<sup>9</sup> Respondents also argue that there is no independent violation of NYCCBL § 12-306(a)(1) because Petitioner has not alleged facts demonstrating that the NYPD’s conduct in mandating that TEAs purchase and carry the equipment at issue was inherently destructive of employee rights. However, the Union does not assert an independent violation of NYCCBL § 12-306(a)(1) in its pleadings.

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The Union argues that the NYPD unilaterally mandated that TEAs purchase a belt whistle holder and an LED traffic wand, neither of which were previously required, at their own expense. It contends that the NYPD issued this new policy without first bargaining with the Union, in violation of NYCCBL § 12-306(a)(4).

The NYCCBL requires public employers and employee organizations to “bargain over matters concerning wages, hours, and working conditions, and any subject with a significant or material relationship to a condition of employment.” *CEU, L. 237, IBT, 2 OCB2d 37*, at 11 (BCB 2009). NYCCBL § 12-306(a)(4) makes it an improper practice for a public employer or its agents “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.” *Id.* It is well-established that “[a]s a unilateral change in a term and condition of employment accomplishes the same result as a refusal to bargain in good faith, it is likewise an improper practice.” *DC 37, L. 420, 5 OCB2d 19*, at 9 (BCB 2012); *see PBA, 63 OCB 4*, at 10 (BCB 1999). To establish that a unilateral change constitutes an improper practice, “[t]he petitioner must ‘demonstrate the existence of such a change from the existing policy or practice’ [and establish] . . . that the change as to which it seeks to negotiate is or relates to a mandatory subject of bargaining.” *DC 37, 4 OCB2d 19*, at 22 (BCB 2011) (citations omitted).

We have long held that uniform allowances are encompassed within the meaning of “wages.” *See NYSNA, 4 OCB2d 23*, at 10; *CIR, 49 OCB 22*, at 13-14 (BCB 1992) (the term “wages” includes wage rates, pensions, health and welfare benefits, uniform allowances, and shift premiums). Our statute requires that parties bargain over matters concerning wages, among other issues relating to a condition of employment. Because the uniform allowance is considered part

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of a TEA's wages, we find that the Union seeks to negotiate over a matter that "relates to a mandatory subject of bargaining." *DC 37*, 4 OCB2d 19, at 22.

Here, the essence of the Union's claim is that Interim Order 11 and the June 11, 2013 Memo require its members to pay for the new equipment with a uniform allowance that did not contemplate these additional costs. Respondents contend that the determination of uniform requirements, including the NYPD's 2013 revision to Administrative Guide 319-20, falls within the NYPD's statutory managerial right to "direct its employees and to determine the methods, means and personnel by which government operations are to be conducted." NYCCBL § 12-307(b). It is well-established that "decisions regarding the selection or use of equipment involve the City's discretion over the methods, means and technology of performing its work." *LEEBA*, 3 OCB2d 29, at 43 (BCB 2010); *see also USA*, 45 OCB 68, at 21 (BCB 1990). PERB has similarly held that the selection of equipment is a management prerogative. *See County of Nassau*, 41 PERB ¶ 4552 (ALJ 2008) (citing *City of New Rochelle*, 10 PERB ¶ 3042 (1977)). However, here the Union is not challenging the NYPD's decision to require TEAs to carry new equipment.<sup>10</sup>

The issue before the Board is whether the NYPD's implementation of a new requirement that TEAs purchase, at their own expense, a belt whistle holder and LED traffic wand, is an impermissible unilateral change from the parties' existing policy or practice. It is undisputed that the belt whistle holder and LED traffic wand are new equipment. Administrative Guide 319-20

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<sup>10</sup> For this reason, Respondents' reliance on *City of Buffalo*, 14 PERB ¶ 4646 (1981), *affd.*, 15 PERB ¶ 3027 (1982), is misplaced. In that case, the union alleged that its employer unilaterally changed the color of the hatband worn by police officers without bargaining. Under the existing practice, the cost of the new hatband was to be covered by police officers out of their uniform allowance. PERB affirmed an ALJ's dismissal of the charge on the grounds that the function of the hatband is to identify police officers, a management prerogative, and that the union never alleged a claim pertaining to the hatband's cost.

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provides a detailed list of TEAs' uniform and equipment requirements. The belt whistle holder and the LED traffic wand are not on that list. The NYPD's issuance of Interim Order 11 in May 2013 specifically amended Administrative Guide 319-20 to add these two pieces of required equipment.

Moreover, the facts demonstrate that TEAs are responsible for the cost of these two new items. Respondents maintain that the requirement that TEAs purchase this additional equipment is not impermissible because the parties contemplated during negotiations that any cost increases and changes to uniform requirements would be incorporated into the negotiated uniform allowance rate. They further argue that there is nothing in the contractual uniform allowance to suggest that the parties intended to exclude these additional costs. We find that the record does not support this assertion. Administrative Guide 319-20 explicitly references specific clothing and equipment, and the failure to mention the equipment at issue here leads to the conclusion that those items were not included in the scope of the uniform allowance. *See, e.g., Local 3, IBEW*, 31 OCB 18, at 6 (1983).

Further, in *NYSNA*, we stated that we cannot find that a union waived its right to bargain or that the City exhausted its duty to bargain over a mandatory subject “[a]bsent evidence showing that the subject . . . was fully discussed or consciously explored by the parties during prior bargaining.” 4 OCB2d 23, at 11; *see CEA*, 75 OCB 16, at 10 (BCB 2005) (“a union does not waive its right to bargain unless prior negotiations indicate that the matter was fully discussed or consciously explored and the union consciously yielded or clearly and unmistakably waived its interest in the matter”) (citations and quotation marks omitted). Here, there is nothing in the Agreement or in Administrative Guide 319-20, nor is there other evidence, to indicate that the parties discussed or contemplated that the \$808 uniform allowance would cover the cost of new

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uniform and equipment requirements, particularly those arising after the Agreement's March 2010 expiration date. In the absence of such evidence, we must conclude that the parties did not intend to include the cost of equipment not listed in Administrative Guide 319-20 in the uniform allowance set forth in the Agreement.

We are also unpersuaded by Respondents' past practice argument that, in or about November 2008, the Union agreed that its members would use their own funds to pay for a new traffic safety vest. We note that the Union's President represented in an affidavit that he does not recall such an agreement.<sup>11</sup> However, even assuming the Union agreed in that instance to have employees cover the cost of the traffic safety vest from the existing uniform allowance, this does not establish a consistent practice or waiver of the Union's right to bargain here.

In light of the above, we find that Respondents violated NYCCBL § 12-306(a)(1) and (4) when the NYPD implemented Interim Order 11 and the June 11, 2013 Memo without first bargaining with the Union over the economic impact of the new equipment requirements on TEAs. *See DC 37, 77 OCB 34, at 18 (BCB 2006)* (when an employer violates its duty to bargain in good faith, there is also a derivative violation of NYCCBL § 12-306(a)(1)). Accordingly, we order the City and the NYPD to bargain with the Union on this issue and to reimburse TEAs for any expenses incurred in purchasing the belt whistle holder and/or the LED traffic wand, and batteries for the wand.

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<sup>11</sup> Respondents further contend that the expenditure required by TEAs to comply with the new requirements is "miniscule." (Ans. ¶ 52) We note that "the alleged *de minimis* impact of an action is relevant only to the remedy imposed, and not to whether a violation in fact occurred." (quoting *County of Nassau, 25 PERB ¶ 4555, at 4638 (ALJ 1992)*) (finding that employer made an improper unilateral change by discontinuing the past practice of providing unlimited free coffee to employees); *see also Ford Motor Co. v. NLRB, 441 U.S. 448, 501 (1979)* ("even minor increases in the cost of meals can amount to a substantial sum of money over time").

**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 Local 1182, Communications Workers of America, docketed as BCB-3088-13, is hereby granted; and it is further

ORDERED, that the City and the New York City Police Department bargain in good faith with Local 1182, Communications Workers of America over the economic impact of Interim Order 11 and the June 11, 2013 Memo on TEAs; and it is further

ORDERED, that the New York City Police Department reimburse all TEAs for any expenses they incurred in purchasing the belt whistle holder and/or the LED traffic wand and batteries.

Dated: February 24, 2014  
New York, New York

GEORGE NICOLAU  
MEMBER

CAROL A. WITTENBERG  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

CAROLE O'BLENES  
MEMBER

PETER PEPPER  
MEMBER