***Patrolmen's Benevolent Ass'n and Sergeants Benevolent Ass'n*, 73 OCB 14 (BCB 2004) [Decision No. B-14-2004 (IP)] *aff'd as modified, Patrolmen's Benevolent Ass'n v. City of New York*, No. 113062/04 (Sup. Ct. N.Y. Co. Feb. 4, 2005), *aff'd*, 27 A.D.3d 381(1st Dept. 2007).**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

Docket No. BCB-2366-03

PATROLMEN'S BENEVOLENT ASSOCIATION, and SERGEANTS BENEVOLENT ASSOCIATION,

Decision No. B-14-2004

Petitioners,

-and-

CITY OF NEW YORK and THE NEW YORK CITY OFFICE OF LABOR RELATIONS,

Respondents.

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DECISION AND ORDER

On November 7, 2003, the Patrolmen's Benevolent Association ("PBA") and the Sergeants Benevolent Association ("SBA") (collectively "Petitioners"), filed a verified improper practice petition against the City of New York and the New York City Office of Labor Relations ("City" or "OLR").[1] Petitioners allege that the City violated § 12-306(a)(1), (2), (3) and (4) of

[1] The Detectives Endowment Association ("DEA"), Lieutenants Benevolent Association ("LBA"), Captains Endowment Association ("CEA"), Uniformed Firefighters Association

the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") when it refused to provide documents and information concerning health insurance that Petitioners requested for bargaining over health benefits. The City now seeks dismissal of the matter as moot because the parties have negotiated an agreement resolving the issue. Petitioners contend that the matter is not moot because the agreement is still subject to ratification and Petitioners need the information requested for contract administration. The Board finds that the claim is now moot because Petitioners have received certain of the information requested; in addition, by its good faith effort to obtain other information not in its possession, the City satisfied its duty to provide information under the NYCCBL. Accordingly, the petition is dismissed.

BACKGROUND

The Municipal Labor Committee ("MLC") negotiates with the City on behalf of municipal unions on the subject of health insurance.[2] One of the Vice-Chairs of the MLC is a member of the SBA. The MLC Labor Management Health Insurance Policy Committee ("MLC Health Sub-Committee") meets to address issues concerning the design, implementation, and administration of the City's health insurance program and oversees the gathering and exchange of

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("UFA") and Uniformed Fire Officers Association ("UFOA"), were parties to the petition but withdrew from this proceeding on February 3, 2004.

[2] See NYCCBL § 12-303(k), which provides:
The term "municipal labor committee" shall mean an association known by that name created pursuant to a memorandum dated March thirty-first, nineteen hundred sixty-six, as amended, signed by representatives of the city and certain employee organizations.

pertinent data. The MLC Health Sub-Committee is comprised of representatives from the MLC and the City, and includes representatives of the PBA and SBA.

The SBA is a party to the 2001 Health Benefits Agreement ("HBA"), which was negotiated by the MLC and the City, and executed on January 11, 2001, for the term July 1, 2000, through June 30, 2002. The PBA is not a party to the 2001 HBA. The PBA and the City are subject to an interest arbitration award that provides for health, hospitalization, and prescription drug benefits for PBA members for the term August 1, 2000, through July 31, 2002.

Starting in September 2002, the City and the MLC, including representatives from the SBA and PBA, met to negotiate a successor agreement to the 2001 HBA.

On May 2, 2003, to assist in bargaining, the Coalition of the Police & Fire Unions on Pension and Health ("Coalition"),[3] requested that the City provide utilization data regarding medical and hospital claims and premiums paid for fiscal years 2000, 2001, and 2002, and up to March 31, 2003, for GHI, Empire Blue Cross Blue Shield ("Empire"), HIP-HMO ("HIP"), and Aetna-HMO ("Aetna") (collectively "health carriers"), with total headcounts for each union. As a second part of its request for information, the Coalition sought data regarding psychotropic, injectible, chemotherapy, and asthma ("PICA") claims. Only the Coalition, not the MLC, participated in this request.

By letter dated May 16, 2003, the City responded to the Coalition that "[h]ealth insurance issues, including relevant utilization data, are within the domain of the Labor Management Health Insurance Policy Committee. . . . Your request therefore, should be directed to the Chair

[3] The Coalition included the SBA, PBA, DEA, LBA, CEA, UFA, and UFOA.

of the Municipal Labor Committee." A copy of this letter was sent to the MLC.

On June 6, 2003, the Coalition responded by letter that "each union represents its members with respect to bargaining over health issues" and that the City has an obligation to furnish the unions directly with the information requested. When the City again referred the Coalition to the MLC, the Coalition wrote, on July 22, 2003, that it would construe the City's response as a denial of the Coalition's request for information and would commence a proceeding to compel the City's compliance.

In September 2003, the MLC made a request to the City, similar to the Coalition's request, for PICA information, and contained a list of unions, including Petitioners, requesting the PICA data. Only the Coalition, not the MLC, made an independent request to the City for utilization data from the health carriers in May 2003. On September 8, 2003, the City stated that it was responding to both the MLC's PICA request and the Coalition's separate request for health benefits utilization data and PICA information, that all data requested were not maintained by the City, and that the utilization data and PICA information were in the possession of the health carriers and NPA/ESI respectively. The City recommended a meeting with the MLC Health Sub-Committee to discuss the parameters of the requests and the reporting format. A meeting was held on September 16, 2003 between the City and the MLC. On September 18, 2003, the Coalition reiterated its independent request for PICA information. On September 25, 2003, the City responded that the format in which the Coalition requested the PICA information did not correspond with what the parties had agreed to on September 16.

On November 7, 2003, the Coalition filed the instant verified improper practice petition requesting that the Board compel the City to comply with the request for information and documents.

On November 13, 2003, at an MLC meeting with the City, the Coalition reiterated its request for information from the separate health carriers. On that day, the City wrote to GHI, Aetna, Empire and HIP, to ascertain whether the information requested by the Coalition is normally maintained in the regular course of business and whether there was any cost in providing such data.

On November 14, 2003, the City provided the MLC with the PICA information requested. The City claims that the data were in separate packets for each union that requested the information, including the SBA and PBA.

On November 25, 2003, the City forwarded the responses from the health carriers to the MLC regarding the utilization data. The responses from the health carriers were varied. HIP and Aetna indicated that the information requested was not available. GHI and Empire stated that certain small segments of the information requested were available but that other larger segments were not maintained in the regular course of business, were not consistently maintained in the time period requested, or would violate the privacy rules under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition, GHI indicated that extracting that portion of the information available for the time period requested would be costly to produce, and would amount to approximately $ 60,000 to $ 85,000.

On December 18, 2003, the City and the MLC reached an agreement on health benefits. In December 2003, the PBA, on their website, announced that an agreement on health benefits had been reached and described the efforts the PBA had undertaken to help reach that agreement. On January 6, 2004, the Chairperson of the MLC, in a letter to OLR, requested that a final agreement be prepared for execution. On February 3, 2004, the DEA, LBA, CEA, UFA, and UFOA withdrew from this proceeding after consenting to abide by the agreement over health benefits.

As a remedy, the PBA and SBA continue to seek a determination that the City's acts have violated the NYCCBL and request the Board to direct the City to comply with the Petitioners' request for information and documents.

POSITIONS OF THE PARTIES

Petitioners' Position

Petitioners argue against the City's request to dismiss the petition as moot. That request is premature and unsupported because even after the agreement is executed, it is subject to ratification by the membership of the PBA and SBA. Even if there were a final agreement, the petition raises continuing issues regarding Petitioners' need for current information to allow them to administer responsibly collective bargaining agreements and welfare funds created by those agreements on behalf of their members. The City's continued refusal to provide the information is evidence of an existing controversy.

As to the merits, Petitioners claim that the City's refusal to provide information

concerning health benefits directly to Petitioners violated NYCCBL § 12-306(a)(1), (2), (3) and (4).[4] By insisting that all information regarding health insurance be demanded only through the MLC, and by failing to provide each union directly with the information requested, the City has interfered with Petitioners' status as bargaining representatives under NYCCBL § 12-306(a)(2), and has discriminated against Petitioners, pursuant to NYCCBL § 12-306(a)(3). In addition, since the MLC is not the exclusive bargaining representative for any member of the Petitioners' bargaining units, the City continues to have an obligation to bargain with each individual union, and failing to provide the requested information for bargaining violates NYCCBL § 12-306(a)(4).

Finally, the City failed to provide Petitioners with complete information through the MLC because Petitioners received only PICA information and did not receive information from the separate health carriers. Although a final agreement may well obviate the urgency and need for much of the information, the City's refusal to provide it violates the NYCCBL.

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[4] NYCCBL §12-306(a) provides in pertinent part:
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;
(2) to dominate or interfere with the formation or administration of any public employee organization;
(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees. . . .

NYCCBL § 12-305 provides in pertinent part:
Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. . . .

City's Position

The City argues that the petition has been rendered moot by the parties' negotiated agreement on health benefits. Five unions have already withdrawn from this proceeding "based on their intervening consent and agreement" with the City. Petitioners are also parties to this agreement. In fact, the ratification letter from the MLC lists a member of the SBA as aVice-Chair, and the PBA has emphasized its prominent role in negotiating the agreement on its website. Petitioners continue to attend meetings between the City and the MLC regarding implementation of the agreement.

On the merits, the City contends that the petition must be dismissed for failure to allege sufficient facts to make out a *prima facie* case that the City violated NYCCBL § 12-306(a)(4). The City has met its obligation to provide Petitioners information, pursuant to NYCCBL § 12-306(c)(4).[5] Moreover, there is no derivative violation of NYCCBL § 12-306(a)(1) because the City has supplied the requested information to the extent available and permitted by law. As to Petitioners' NYCCBL § 12-306(a)(2) claim, the City states that it provided the PICA information by giving the MLC individual packets for each union, submitted Petitioners' other information request to the various health carriers, and forwarded the health carriers' responses to the MLC. Finally, the City argues that Petitioners have not established discrimination in violation of

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[5] NYCCBL § 12-306(c) provides in pertinent part:
The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

* * *

(4) to furnish 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. . . .

NYCCBL §§ 12-306(a)(1) and (3). Petitioners requested information independently and through the MLC, and the City has legitimate business reasons for providing the information through the MLC and need not provide identical information multiple times.

DISCUSSION

The issue before us is whether the claim that the City breached its duty to provide information under the NYCCBL has become moot. We dismiss the petition because Petitioners have received the PICA information requested; in addition, by its good faith effort to obtain other information not in its possession, the City satisfied its duty to provide information under the NYCCBL.

The Court of Appeals has applied the doctrine of mootness when "a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy." *Matter of Dreikausen v. Zoning Bd. of Appeals of the City of Long Beach,* 98 N.Y.2d 165, 172 (2002). Both this Board and the Public Employment Relations Board ("PERB") have found issues raised in an improper practice charge moot when a change in circumstances eliminates the underlying controversy and the policies of statutory law are not served by further consideration of such a charge. *Patrolmen's Benevolent Ass'n,* Decision No. B-22-79 at 2; *City of Peekskill,* 26 PERB ¶ 3062 (1993).

In *Patrolmen's Benevolent Ass'n,* Decision No. B-22-79, the union claimed that the City failed to certify an elected delegate to the Queens Traffic Enforcement Squad. The Board found the case moot because the Squad was abolished one day before the petition was filed, and it

would not further the objective of sound labor relations to decide the issues presented when no controversy existed and when the requested relief could not be granted. *Id.* at 2. *See also Allied Building Inspectors, Local No. 211,* Decision No. B-8-72 at 5 (Board chose not to make a determination in a failure to bargain claim because subsequent to the filing of the petition, the parties entered into a contract regarding the disputed issue).

In *Greenburgh #11 Federation of Teachers,* 32 PERB 4589 (1999), an Administrative Law Judge ("ALJ") addressed an allegation that the school district refused to provide information requested in connection with a disciplinary arbitration. Following *City of Peekskill,* 26 PERB ¶ 3062, the ALJ determined that the case was moot because the school district had provided the information prior to the arbitration for which it was requested. Thus, the petitioner "suffered no harm, and there is no remedy which could be fashioned to cure the alleged violation." *Id.*

Here, concerning the PICA information, we find the claim moot because the City provided Petitioners with that information. In May 2003 Petitioners, as part of the Coalition, requested data from the City regarding PICA claims. In September 2003, the MLC made a request to the City for PICA information, similar to Petitioners' request, which contained a list of unions, including Petitioners, who were interested in receiving PICA data specific to each union. In fact, the City responded that the PICA information was in the possession of the NPA/ESI and the parties met, at the City's recommendation, to discuss the request. On November 14, 2003, the City provided the MLC with the PICA information including separate packets containing the data for each union that requested the information, including Petitioners. Thus, since the City provided the PICA information sought, the claim is moot, and determining the merits of this

matter would not further the objectives of sound labor relations where no controversy exists. *Patrolmen's Benevolent Association*, Decision No. B-22-79 at 2.

As to Petitioners' request for utilization data from the health carriers, we find that the City made a good faith effort to obtain information not in its possession. Pursuant to NYCCBL § 12-306(c)(4), a public employer has a duty to furnish necessary information in order to have "full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." This duty extends to information which is relevant to and reasonably necessary for purposes of collective negotiations or contract administration. *Correction Officers Benevolent Ass'n,* Decision No. B-9-99; *Civil Service Technical Guild,* Decision No. B-41-80. An employer that does not possess requested information must make a good faith effort to obtain the information sought. *See Board of Education v. International Union of Operating Engineers,* 36 PERB ¶ 3034 (2003).

Here, it is undisputed that the City communicated to the MLC that it did not keep the utilization data requested in the regular course of business. On November 13, 2003, the City wrote to the health carriers to ascertain whether the information requested was available and whether there was any cost to providing the data. On November 25, 2003, the City forwarded to the MLC the responses from the health carriers which indicated that the information sought was not available in the form requested or that disclosure would violate statutory law, and one health carrier stated that extracting such information that was available would be costly. As to the small segment of requested information which GHI and Empire indicated was available and not prohibited by HIPAA privacy rules, the City communicated this result to Petitioners, and nothing in the record indicates that Petitioners, who had the option to respond, attempted to address the

matter. Therefore, we find that the City satisfied its duty to provide information under the NYCCBL by stating the basis for its non-possession, requesting the information from the health carriers, and communicating the health carriers' responses. Accordingly, we dismiss the petition in its entirety.[6]

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, BCB-2366-03, filed by the Patrolmen's Benevolent Association and the Sergeants Benevolent Association, be, and the same hereby is, dismissed in its entirety.

Dated: July 29, 2004

[6] Since we dismiss the petition because the City has provided or properly attempted to provide the requested information, we do not reach the issue whether the City was required to respond to information requests from the individual unions within the MLC.

Decision No. B-14-2004

New York, New York

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

CHARLES G. MOERDLER
MEMBER

M. DAVID ZURNDORFER
MEMBER