DC37, L. 2507 & L. 3621 v. City & FD, 75 OCB 9 (BCB 2005) [Decision No. B-9-2005 (IP)], Appeal Pending

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper Practice Proceeding

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and its affiliates, LOCAL 2507 and LOCAL 3621,

Petitioners,

Decision No. B-9-2005

Docket No. BCB-2421-04

-and-

THE CITY OF NEW YORK and
THE FIRE DEPARTMENT OF NEW YORK,

Respondents.
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DECISION AND ORDER

On August 6, 2004, District Council 37, AFSCME, AFL-CIO ("Union" or "DC 37"), and its affiliates, Uniformed Emergency Medical Technicians and Paramedics of the New York City Fire Department, Local 2507, and Uniformed Emergency Medical Services Officers Union, Local 3621 ("Locals 2507 and 3621") filed an improper practice petition against the City of New York and the Fire Department of New York ("City" or "FDNY"). Petitioners allege that the City 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 failing to bargain independently with the Union concerning a bargaining unit of uniformed employees in FDNY's Bureau of Emergency Medical Service ("EMS"). The City argues that it satisfied its obligation to bargain by negotiating the 2002 DC 37 Memorandum of Economic Agreement ("2002 MEA"), which

includes EMS employees, and by meeting with Locals 2507 and 3621. In the alternative, the City argues that this proceeding should be stayed pending litigation challenging Local Law 19 of 2001 ("Local Law 19"), which amended the NYCCBL to allow EMS employees to bargain as uniformed rather than civilian employees. After the pleadings were filed in this matter, the Supreme Court, New York County, decided that Local Law 19 is valid and enforceable. In light of this decision and our statutory obligation to enforce the NYCCBL, the Board declines to stay these proceedings. We find that the City did not satisfy its duty to negotiate with the EMS bargaining unit. Accordingly, we hold that the City violated NYCCBL § 12-306(a)(1) and (4) and order it to bargain in good faith with the EMS bargaining unit.

BACKGROUND

The Union is the certified bargaining representative of approximately 3000 EMS employees in the following titles: Emergency Medical Specialist - EMT, Emergency Medical Specialist - Paramedic, Supervising Emergency Medical Services Specialist, Levels I and II, Emergency Medical Services Specialist, EMS - Cadet, and Emergency Medical Specialist - Trainee. The EMS employees were covered by the Hospital Technicians Unit Agreement, which expired on March 31, 2000, the Citywide Collective Bargaining Agreement, which expired on June 30, 2001, and the 2000 DC 37 Memorandum of Economic Agreement, which expired on June 30, 2002.

The EMS employees were considered career and salary plan personnel, civilian employees who are required to bargain at a Citywide level pursuant to NYCCBL § 12-307(a)(2), which provides:

> [M]atters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all such employees . . .

On April 25, 2001, the City Council enacted Local Laws 18 and 19 over the veto of the Mayor. Local Law 18 of 2001 ("Local Law 18") amended NYCCBL § 12-307(a)(4), which provides that "all matters . . . which affect employees in the uniformed police, fire, sanitation and correction services . . . shall be negotiated with the certified employee organizations representing the employees involved," to add:

> For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as *fire alarm dispatchers and supervisors of fire alarm dispatchers.* (Emphasis added.)

Local Law 19 amended NYCCBL § 12-307(a)(4) to add:

> For purposes of this paragraph only, employees of the uniformed fire service shall also include persons employed by the fire department of the city of New York as *emergency medical technicians and advanced emergency medical technicians, as those terms are defined in section three thousand one of the public health law, and supervisors of emergency medical technicians or advanced emergency medical technicians.* (Emphasis added.)

On August 17, 2001, the Mayor filed a lawsuit against the City Council in state court seeking a judgment declaring the amendments made by Local Laws 18 and 19 unlawful and enjoining their application and enforcement. *Mayor of New York v. Council of New York*, N.Y.L.J., Jan. 21, 2005, at 18 (Sup. Ct. N.Y. Co. Jan. 3, 2005). The Union, Locals 2507 and 3621, and two other unions subsequently intervened in the action.

On September 7, 2001, the Mayor and the City Council signed a stipulation in which they agreed that "the enforcement of Local Law 18 and 19 of 2001 shall be stayed until a final

judgment is entered in this matter in the Supreme Court, New York County." The Union was not a party to the stipulation, and the stipulation was not "so ordered" by the court.

On January 30, 2002, the Union filed a representation petition with the Office of Collective Bargaining ("OCB") seeking to remove the EMS titles from the Hospital Technicians bargaining unit and to create a separate bargaining unit for them. Among other arguments in opposition, the City contended that the representation case should be stayed pending the result of its litigation challenging Local Law 19. At no point during the representation proceeding did the City raise its stipulation with the City Council as a bar to enforcement of Local Law 19.

On December 4, 2002, collective bargaining negotiations began between the City and the Union regarding the 2002 MEA. According to the City, the Union's Executive Director stated that the Union represented over 1,000 titles and was negotiating on behalf of 125,000 active employees and 40,000 retirees. The City asserts and the Union denies that the Union's Director of Research and Negotiations ("Director of Negotiations") stated that the Union would be presenting proposals that included demands from its 56 locals.

That same day, the Director of Negotiations wrote a letter to the Commissioner of the New York City Office of Labor Relations ("Commissioner"), reserving the Union's "right to bargain with the City of New York under § 12-307(a)(4) of the [NYCCBL] on all matters . . . which effect [sic] uniformed Emergency Medical Service Employees." The letter stated that pending the resolution of the representation petition, the Union "insists upon the maintenance of all existing terms and conditions of employment" and that it "will continue to participate in on-going collective bargaining negotiations without prejudice to its right to conduct negotiations after the Union is certified pursuant to 12-307(a)(4) of the NYCCBL." The letter concluded:

> Please be advised that the presence of representatives of Locals 2507 and 3621 in negotiations for successor Agreements to the 2000-2002 Hospital Technicians Unit Agreement, the Citywide Agreement and the 2000 District Council 37 Memorandum of Economic Agreement which expired on June 30, 2002 will not constitute a waiver by the Union of its right to bargain on behalf of such employees in a uniformed bargaining unit under § 12-307(a)(4) of the New York City Collective Bargaining Law.

The City and the Union negotiated the 2002 MEA in 16 formal bargaining sessions over the course of 15 months. According to the Union, the Director of Negotiations made it "perfectly clear" throughout the negotiations that the wages and other economic terms and conditions of employment being negotiated would not extend to EMS employees and that the EMS employees' economic package would not be negotiated in the context of the DC 37 economic bargaining process. However, according to the City, the Union never advised the City that it did not consider those employees to be part of DC 37's coalition, and the City's proposals, counter-proposals and costings included the 3,000 employees in Locals 2507 and 3621. According to the Union, the City did not inform the Union that its cost proposals were based on inclusion of EMS employees.

On February 10, 2003, the Board of Certification ("BOC") issued an interim decision holding that the removal of the EMS titles from the Hospital Technicians bargaining unit was proper because "they now have the right to bargain independently from those employees who must negotiate certain terms and conditions of employment on a Citywide basis." *District Council 37*, Decision No. 1-2003 at 4. Describing the statutory levels of bargaining, the BOC explained that "[t]he effect of transferring EMS personnel from the governing provisions of NYCCBL § 12-307(a)(2) to § 12-307(a)(4) is to remove them from coverage of the Citywide Agreement and to accord them the same bargaining rights as other uniformed employees have."

Id. at 6. The BOC remanded the case to the Director of Representation to conduct proceedings so that it could determine the appropriate bargaining unit.

On May 28, 2003, the BOC issued *District Council 37*, Decision No. 4-2003, finding that a separate bargaining unit of EMS personnel was appropriate. The BOC noted:

> Although we are mindful that the City's challenge to Local Law 19 raises the possibility that the Court could overturn that legislation, we will not stay the issuance of this decision pending the outcome of that litigation. Rather, we derive our authority from the NYCCBL and are bound to follow that statute, as amended, unless or until it is overturned.

Id. at 3. The City did not appeal the BOC's decision.

In February 2004, the Mayor moved for summary judgment in the court action on the grounds that the local laws curtailed the power of the Mayor to negotiate and bargain with unions in violation of § 201(12) of the Taylor Law and in violation of § 23(2)(f) of the Municipal Home Rule Law and § 38(5) of the New York City Charter, which require a referendum. The City Council and the union intervenors opposed the motion and cross moved for summary judgment.

On April 10, 2004, the Union made a formal request to enter into collective negotiations covering the wages, hours, and other terms and conditions of employment for EMS employees.

On April 20, 2004, the Union and the City reached an agreement for the 2002 MEA. According to the City, the Union did not indicate that Locals 2507 and 3621 were not part of the final agreement.

On April 22, 2004, the Union and the City met pursuant to the Union's request. The Union presented its written collective bargaining demands on behalf of employees in the "Emergency Medical Services Collective Bargaining Unit." According to the Union, the Commissioner stated that the City was not going to bargain with the Union as the representative

for EMS employees in a separate uniformed bargaining unit because the City believed that Local Law 19 was unlawful, notwithstanding the BOC's decision in *District Council 37*, Decision No. 4-2003. When the Director of Negotiations sought to commence bargaining on matters that must be negotiated whether or not Local Law 19 is upheld, the Commissioner replied that he could not bargain if the unit is in question.

According to the City, the Commissioner stated that the parties had already reached an agreement on the 2002 MEA and that it was premature for Locals 2507 and 3621 to bargain separately because the City was appealing the legality of Local Laws 18 and 19, the Mayor and the City Council had entered into a stipulation to stay the enforcement of those laws, and the Union's certification would be invalid if the court determines that the laws are invalid. The Commissioner explained that the substantive issue must be resolved before the parties could go forward and expressed concern that if the laws are deemed invalid, any contract between the parties would be invalid, and the City would have to recoup any benefits and wages beyond the terms of the Citywide Agreement and the 2002 MEA.

Following ratification of the 2002 MEA by the Union's members, the City took steps to implement the 2002 MEA, including the preparation of payroll orders for the $1,000 lump sum payment agreed upon. On June 9, 2004, the Director of Negotiations sent a letter to the Commissioner regarding a payroll order to pay EMS employees "covered by Decision No. 4-2003" the contractual increases established by the 2002 MEA. The Union objected to the City's "unilateral extension of the terms of the economic contractual agreement to the EMS employees over the Union's explicit request that those employees not be included in that settlement."

On June 16, 2004, the Commissioner responded to the Director of Negotiations.

Referencing the litigation over Local Laws 18 and 19, his letter stated: "It is the City's position that the law is not valid and, therefore, this bargaining unit is covered by the recent economic settlement between the City and District Council 37." Nevertheless, the City granted the Union's request not to issue the payroll order because DC 37, the authorized representative for the EMS bargaining unit, made the request. The Commissioner noted that "this action does not constitute a waiver of our position in the pending litigation nor may it be used to support the union's position in the pending litigation."

On January 3, 2005, the Supreme Court, New York County, held that Local Laws 18 and 19 are "valid and enforceable." *Mayor of New York*, N.Y.L.J., Jan. 21, 2005, at 18 (denying the Mayor's motion for summary judgment and granting the cross-motions of the City Council and the intervenors). The court found that the local laws are "consistent with the stated legislative policy of the Taylor Law which explicitly grant to the City Council the authority to enact such legislation" and could be enacted without a referendum. *Id.*

In the instant improper practice proceeding, the Union seeks a declaration that the City's refusal to bargain with a separate unit of EMS employees violates NYCCBL § 12-306(a)(1) and (4).[1] The Union requests that the Board order the City to engage in good faith negotiations

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[1] NYCCBL § 12-306(a) provides, in relevant 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;
* * *
(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 relevant 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

concerning EMS bargaining unit until it reaches an agreement or impasse under the law.

POSITIONS OF THE PARTIES

Union's Position

The Union argues the City has improperly refused to engage in good faith negotiations over any of the items set forth in the Union's demands on behalf of employees in its EMS bargaining unit. According to the Union, EMS employees were excluded from the final settlement of 2002 MEA. The City was on notice of the Union's intention to bargain on behalf of EMS employees in a separate, uniformed bargaining unit through the Union's December 4, 2002, letter, the pleadings in the representation petition, and the BOC's two decisions in the representation case. The reference to a total number of employees at the commencement of negotiations should not be construed as a change in the Union's bargaining position on the EMS employees. The City did not inform the Union that its cost proposals were based on inclusion of EMS employees or that it objected to the Union's December 4, 2002, letter. Any inclusion of the EMS employees in the 2002 MEA calculations resulted in no appreciable change in the positions of the parties or the terms of the agreement. The Union asserts that the City's decision not to pay the 2002 MEA increases to the EMS employees was an acknowledgment that the EMS employees are not covered by the 2002 MEA, since the Commissioner's June 16, 2004, letter stated only that it was not a waiver of the City's position in the litigation. Even after receiving the Union's December 4, 2002, letter, the City did not raise at the bargaining table the issue of

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> of their own choosing. . . . A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

EMS employees. The Union asserts that its failure to initiate discussion on that issue at the bargaining table does not constitute a waiver of its right to enforce the City's obligation to bargain with the uniformed EMS bargaining unit.

In pleadings submitted prior to the issuance of state court decision, the Union argues that the City's failure to bargain is not justified by the legal challenge to Local Laws 18 and 19. According to the Union, it did not learn of the stipulation between the Mayor and the City Council until early 2004. The Union argues that the stipulation is not the equivalent of a legislative enactment postponing the effective date of Local Laws 18 and 19, is not binding upon third parties, and does not legally prohibit the public, the Board, or the Union from enforcing Local Law 19.

The Union asserts that any stay of this proceeding would be arbitrary and capricious, "an administrative abdication and nullification of the Board's powers and duties," a violation of § 212 of N.Y. Civil Service Law Article 14 ("Taylor Law"), and an interference with the Union's efforts to enforce the City's bargaining obligation. A stay would undermine the legitimacy of the Board's processes and hold EMS employees hostage to the Mayor's decision to file a meritless challenge to Local Laws 18 and 19 and the "vagaries" of the judicial process. Furthermore, the Union asserts, the Board's certification of a separate EMS bargaining unit would survive a court determination upholding the Mayor's challenge to Local Law 19.

City's Position

The City argues that the Union's claims must be dismissed for failure to allege facts sufficient to establish a *prima facie* claim that the City violated § 12-306(a)(1) or (4). According to the City, it did not violate § 12-306(a)(4) because it engaged in collective bargaining with DC

37, which resulted in the 2002 MEA that covers Locals 2507 and 3621. At the commencement of negotiations, the Union advised that it was bargaining for all 56 locals, which includes Locals 2507 and 3621. Throughout the negotiations, the Union never told the City of its intentions to exclude Locals 2507 and 3621 from the negotiations and final agreement. Had the City not included the EMS employees in its proposals, counter proposals and costing data, the numbers the City relied upon and presented to the Union "may have been different."

According to the City, while the Union's December 4, 2002, letter advised that it was reserving its right to bargain on behalf of the EMS employees, the Union made no affirmative request to do so. The City takes the position that the Union did not request to exclude Locals 2507 and 3621 from the 2002 MEA until April 22, 2004, after the 2002 MEA was signed.

The City contends that the Union's June 9, 2004, letter requesting the City to refrain from implementing the wage increases to EMS employees is not evidence that they were excluded from the 2002 MEA. The Union's decision not to receive the agreed-upon wage increases does not negate the fact that the City negotiated an economic agreement that included Locals 2507 and 3621. The Union presented no evidence that the City agreed to exclude EMS employees from the final settlement.

The City further argues that it did not violate NYCCBL § 12-306(a)(4) because it met its obligation to bargain with Locals 2507 and 3621. In fact, the City did meet with them on April 22, 2004. At that meeting, the City explained its position that it has an obligation to maintain the status quo because of the litigation concerning the validity of Local Law 19 and the stipulation between the Mayor and the City Council. The City stated, based upon the stipulation, that "Local Law 19 is stayed, and for purposes of enforcement is not in effect." Accordingly, the City asserts

that the Union has failed to provide evidence of bad faith on the part of the City.

The City argues that it has not violated NYCCBL § 12-306(a)(1) independently or derivatively because the City has not displayed either anti-union animus or an improper motive. Nor did the City interfere with, diminish, restrain, coerce or otherwise impair the rights of the Union.

In the alternative, the City argues, in papers filed before the decision of the Supreme Court, New York County, that these proceedings should be stayed because of the litigation and the stipulation between the Mayor and the City Council that put the local laws in abeyance until a final determination by the court. While the Board previously declined the City's request to stay the issuance of its representation decision, the Board had not been made aware of the stipulation. The litigation is inextricably intertwined with the improper practice petition. The City asserts that, if Local Law 19 is voided, the instant claim would be rendered moot, and any contracts agreed upon as a result of required bargaining would be subject to change. The difficulties with such a result would be burdensome to both the City and the Union's members and damaging to the collective bargaining process.

DISCUSSION

Pursuant to § 12-309(a)(4) of the NYCCBL and § 205.5(d) of the Taylor Law, this Board has exclusive jurisdiction to prevent and remedy violations of NYCCBL § 12-306.[2] *See*

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[2] NYCCBL § 12-309(a) provides, in relevant part:
The board of collective bargaining . . . shall have the power and duty:
* * *
(4) to prevent and remedy improper public employer and public employee organization practices, as such practices are listed in section 12-306 of this chapter. For such

Patrolmen's Benevolent Ass'n of the City of New York, Inc. v. City of New York, 293 A.D.2d 253, 253 (1st Dep't 2002); *Asst. Deputy Wardens/Deputy Wardens Ass'n*, Decision No. B-4-2003.

It is an improper practice under NYCCBL § 12-306(a)(4) 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." NYCCBL § 12-307(a) sets forth the scope of collective bargaining.[3] Pursuant to NYCCBL § 12-307(a)(2) civilian employees in the Career and Salary plan are required to bargain on a Citywide level, and NYCCBL § 12-307(a)(4) permits the uniformed forces to bargain independently.

In May 2003, the BOC certified the Union as the exclusive bargaining representative of a bargaining unit of EMS employees. *District Council 37*, Decision No. 4-2003 at 3-4. The BOC had previously held, in an interim decision, that inclusion of EMS employees in a larger civilian bargaining unit was not appropriate because the amendment to NYCCBL § 12-307(a)(4) enacted

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> purposes, the board of collective bargaining is empowered to establish procedures, make final determinations, and issue appropriate remedial orders.
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> Section 205.5 of the Taylor Law provides, in relevant part:
> [T]he [public employment relations] board shall have the following powers and functions:
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> * * *
>
> (d) to establish procedures for the prevention of improper employer and employee organization practices . . . and to issue a decision and order directing an offending party to cease and desist from any improper practice. . . . The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph . . . provided, however, that this sentence shall not apply to the city of New York. The board of collective bargaining . . . shall establish procedures for the prevention of improper employer and employee organization as provided in section 12-306 of the administrative code of the city of New York. . . .

[3] NYCCBL § 12-307(a) provides that "public employers and certified or designated employee organizations shall have the duty to bargain in good faith" on wages, hours, and working conditions.

by Local Law 19 "now allows [EMS employees] the right to bargain independently." *Id.* at 2-3; *District Council 37*, Decision No. 1-2003 at 7. The BOC rejected the City's argument that the proceedings should be stayed pending the litigation challenging Local Law 19 because "we derive our authority from the NYCCBL and are bound to follow that statute, as amended, unless and until it is overturned." *District Council 37*, Decision No. 4-2003 at 3.

In January 2005, the Supreme Court, New York County, held that Local Laws 18 and 19 are valid and enforceable. *Mayor of New York*, N.Y.L.J., Jan. 21, 2005, at 18. By its own terms, the stipulation between the Mayor and the City Council pending a decision by that court is no longer in effect. Accordingly, this Board need not address the parties' arguments regarding the effect of that stipulation on these proceedings. Similarly, the City's request to stay these proceedings pending the court's decision is now moot. To the extent that the City requests a stay for an indefinite period of time to exhaust their appellate rights, we decline to do so. In light of the court decision upholding Local Law 19 and our statutory duty under state and municipal law, we will enforce the NYCCBL as amended.

We find that the City's failure to bargain with the Union over the demands of the EMS bargaining unit violated NYCCBL § 12-306(a)(4) and, derivatively, NYCCBL § 12-306(a)(1). The City did not satisfy its obligation to bargain with the EMS bargaining unit by negotiating the 2002 MEA. The City had ample notice of the Union's intent to bargain separately for EMS employees. During negotiations, the Union sent a letter explicitly reserving the right to bargain independently on behalf of EMS employees, the BOC issued an interim decision finding that EMS employees were entitled to bargain independently, and the BOC ordered the certification of the Union as the bargaining representative of a separate bargaining unit of EMS employees.

Even assuming a misunderstanding during negotiations, it is undisputed that the Union requested separate negotiations on behalf of the EMS bargaining unit on April 10, 2004, ten days before the parties reached an agreement on the 2002 MEA. Therefore, the City could not have reasonably believed that the parties had agreed that the 2002 MEA covered EMS employees.[4]

The City did not satisfy its duty to bargain by merely meeting with the Union in April 2004 to explain its reasons for refusing to bargain with the EMS bargaining unit. *Cf. City of Fulton*, 27 PERB ¶ 4604, at 4833 (1994) (City's refusal to meet and negotiate until it could resolve fiscal problems constituted a failure to bargain in good faith); *South New Berlin Cent. Sch. Bus Drivers' Ass'n*, 20 PERB ¶ 4560, at 4657 (1987) (employer's explanations for delaying start of negotiations not a reasonable excuse). Furthermore, the City's refusal to bargain is inconsistent with its failure to appeal the BOC decision. *See Town of Brookhaven White and Blue Collar Units, Civil Service Employees Ass'n*, 19 PERB ¶ 3004, at 3008 (1986) ("[P]ublic employer may not diminish or delay its bargaining obligation on the ground that a unit is not appropriate unless it . . . makes a timely challenge to the appropriateness of the unit . . ."), *reconsideration denied*, 19 PERB ¶ 3010 (1986); *Local 810, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of American*, 19 PERB ¶ 3017, at 3043 (1986) ("[P]ublic employer should not be permitted to bring representation issues before this Board at a time when the litigation of such issues would interfere with its bargaining obligation.").

Although there is no evidence that the City's reliance upon on its stipulation with the City

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[4] As the undisputed facts provide no basis for a finding that both parties intended the 2002 MEA to include EMS employees, the Board finds that a hearing on this issue is unnecessary. As discussed above, the facts clearly establish that, prior to the execution of the 2002 MEA, City had notice of the Union's intent to bargain separately on behalf of EMS employees.

Council was in bad faith, nonetheless, the City did not satisfy its statutory duty to bargain. Therefore, we order the City to negotiate in good faith with the Union concerning the EMS bargaining unit.

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-2421-04 be, and the same hereby is, granted; and it is further

ORDERED, that the City bargain with the Union concerning the EMS bargaining unit, Certification No. 4-2003, authorized by NYCCBL § 12-307(a)(4), as amended.

Dated: March 31, 2005
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

GABRIELLE SEMEL
MEMBER

I dissent. M. DAVID ZURNDORFER
MEMBER

I dissent. ERNEST F. HART
MEMBER

DISSENTING OPINION OF
CITY MEMBERS ZURNDORFER AND HART

We dissent for two reasons. First, we believe respect for the Collective Bargaining Law requires the Board to stay its decision until the litigation surrounding the validity of Local Laws 18 and 19 is finally resolved. The purported amendments to the Collective Bargaining Law curtail and restrict the ability, and usurp and erode the power, of the Mayor to bargain with employee organizations. As such, the amendments violate the New York State Public Employees' Fair Employment Act and New York Civil Service Law § 201(12), which gives the Mayor the exclusive power and authority to bargain for, and negotiate, agreements with employee organizations. Their enactment also violates the Municipal Home Rule Law § 23(2)(f) and NYC Charter § 38(5), which prohibit curtailing and transferring the authority of the Mayor and the Mayor's appointees, without referendum.

These are issues of substantial importance. The amendments would disturb the balance in collective bargaining between the City and its Unions that has prevailed for approximately thirty years. Any decision by this Board that would order a change in that balance should await a final decision by the courts as to the legality of the amendments.

In any event, the Board should not have issued this decision without first holding a hearing to determine if in fact the 2002 DC 37 Memorandum of Economic Agreement was intended to include the EMS employee bargaining units. In particular, there are numerous factual disputes regarding representations that were made during the negotiation of that agreement. Those issues should have been resolved in a hearing.