District Council 37, Local 1508, **77 OCB 23 (BCB 2006)**
[Decision No. B-23-2006] (IP) (Docket No. BCB-2489-05)

Summary of Decision: Union alleged that DPR unilaterally changed policies for advancement of Park Supervisor Level I to Level II and failed to provide requested interview grid sheets created for filling job vacancies. City claimed that it had no obligation to bargain over assignments and that interview sheets were not necessary for contract administration. Both parties recognized that deferral of the unilateral change claim was an issue. This Board deferred the unilateral change claim to a previously-scheduled arbitration and granted the petition to direct DPR to provide the interview sheets. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

DISTRICT COUNCIL 37, LOCAL 1508,

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION and NEW YORK CITY OFFICE OF LABOR RELATIONS,

Respondents.

DECISION AND ORDER

District Council 37, Local 1508 ("DC 37" or "Union"), filed a verified improper practice petition on June 24, 2005, against the New York City Department of Parks and Recreation ("DPR" or "City"). Petitioner alleges that DPR 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"), when it unilaterally changed the implementation of its promotional policies for Park

Supervisors and that DPR violated NYCCBL § 12-306(c)(4) as well as (a)(1) and (a)(4) when it refused to provide the Union with the underlying recommendation sheets for interviewed employees. The City denies that DPR unilaterally changed its promotional procedures for Park Supervisors or that the information sought is necessary for contract administration. The Union had filed a grievance on the promotional issue in May 2005, and both parties recognize that the circumstances of this case raise questions of deferral to arbitration. This Board defers to the parties' grievance process the issue whether DPR improperly altered procedures for promotions of Park Supervisors but exercises jurisdiction over the issue concerning the information request and finds that the City is required to furnish the interview sheets for the Union's use in the scheduled arbitration.

BACKGROUND

The Trial Examiner found that the totality of the record established the relevant background facts to be as follows. Park Supervisors supervise DPR maintenance employees. Prior to 2000 the direct line of promotion for the Park Supervisor ("PS") title was to the title Principal Park Supervisor ("PPS"). Both titles were competitive, and candidates for permanent appointment or promotion to either were required to take a civil service exam. According to the Union, it has for many years sought to assure that permanent PSs were not passed over for promotions by provisional employees in titles lower than PS. On May 15, 1986, the Union and DPR entered into an agreement entitled "DPR Working Conditions" ("1986 Agreement") that provides, among other things, that "Park Supervisors shall have preference in appointment to the seasonal position of Principal Park Supervisors." On October 7, 1993, the parties reached another agreement in consideration of the Union's withdrawal and settlement of an arbitration between DPR and Local 1508 ("1993

Agreement"). The agreement provides, in relevant part:

> 4. Park Supervisors will be given preference in appointment to Seasonal Principal Park Supervisor positions over all other titles who the Agency has determined to be equally qualified;
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> 5. Prior to final selection of candidates, the Agency will notify Local 1508 with the reasons why any particular Park Supervisor is not deemed qualified for a Seasonal Step-up.
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> The practical aspects of this procedure such as, but not limited to, the form of the postings, interviews, and qualification standards will be determined by a Total Quality Management Committee on which [the President of Local 1508] or two designated representatives have agreed to participate.

In the late 1990's, the Union brought a lawsuit to force the City to hold civil service examinations for the PPS title. Then, in October 2000 the City broadbanded the titles and renamed the PS title to Supervisor of Parks Maintenance and Operations ("SPMO") while keeping the PPS title the same. After years of negotiation over the SPMO title, the Union, on March 13, 2003, filed for impasse with the New York City Office of Collective Bargaining. In June 2004, the City decided to eliminate the SPMO title and instead create one civil service title with two levels so that SPMO became PS Level I ("PS I"), and PPS became PS Level II ("PS II").[1] The request for impasse was not pursued.

The parties held discussions over the new PS title. While the City states that the discussions were not serious, the Union states that its primary objective was "to continue the practice of giving permanent Park Supervisors the first opportunity to be appointed to a Level II position – thereby creating a truer promotional opportunity for the Local 1508 workforce, and avoiding favoritism. . . . This was the same procedure utilized in making 'PPS' appointments in the past." (Petition, ¶ 7.)

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[1] PPSs already in that title would keep the title, while new appointees would be PS Level II.

The Union asserts that during the discussions DPR assured the Union that DPR would continue the practice of filling promotional vacancies in the PS II level first with permanent PS I employees and of avoiding "step-up" appointments – hiring employees with lower underlying civil service titles than PS I to the PS II level. In addition, DPR, according to the Union, also assured that it would allow the Union to share interview results and monitor the selection process. In generally denying these claims, the City adds that there is no direct line of promotion from PS I to PS II.

At the same time that discussions with the Union were underway, DPR was participating in settlement discussions with the United States Department of Justice, which, in 1999, had brought an action against DPR alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, for engaging in a pattern or practice of unlawful discrimination in job appointments, promotions, and step-up appointments. In July 2004, DPR adopted a Policy for Posting and Filling Job Vacancies (Revised) ("Policy"), which the Justice Department acknowledged, in June 2005, met the criteria specified in a consent decree (*United States v. City of New York*, 02 Civ. 4699 (DC)(MHD), Consent Decree, June 8, 2005) ("Consent Decree"), resolving the case between the Justice Department and DPR. Nothing in the record indicates that the Union was consulted or took any part in these proceedings.

The Policy delineates the methods DPR would use to fill positions when no civil service list exists. Included are procedures for postings, reviews of applicants' qualifications, interviews, and decisions by a selecting official. The Policy provides, for example, that an Equal Employment Opportunity ("EEO") Advisor may observe interviews but not participate in the interview panel's deliberations; that all members of the recommending panel must fill out their own individual rating sheets for all candidates; and that at the conclusion of the interviews, the recommending panel must

meet to discuss the interview ratings and make a final recommendation as to which applicant is best qualified for the job vacancy. Following the recommendations, the selecting official is permitted to use the "1 in 3" rule as used in interviews for candidates on a civil service list. *See* Civil Service Law, Article 14 (Taylor Law) ("CSL"), § 61.

In the fall of 2004, DPR posted a job vacancy notice and began interviews of then-current year-round employees for 25 permanent PS II positions. Panelists scored applicants on an interview matrix sheet that included qualifications such as educational background, leadership/supervision ability, administrative skills, creativity, and interpersonal/communication skills. The record is silent as to the exact process that followed the completion of the interviews, but it appears that a selecting panel then chose appointees by employing the "1 in 3" rule either after further interviews or based on documents. On about April 10, 2005, DPR sent the Union a list of the applicants, the average rating of their initial interviews, and the outcome of the selection process. The Union discovered that six of the appointees were not in the permanent PS I position and had scored lower in the interview rating system than some permanent PS I employees. Thus, six applicants with high scores were not selected because of DPR's application of the "1 in 3" rule.

On May 5, 2005, the Union sent DPR a request for the individual score sheets used during the interviews for PS II. DPR did not respond.

On May 6, 2005, the Union filed a grievance claiming that DPR violated Article VI, § 1(b), of the Blue Collar Agreement ("CBA") by failing to follow the Policy's procedures for posting and filling job vacancies for the position of PS II.[2] The grievance alleges that the violations of the Policy

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[2] Article VI, § 1(b), of the CBA defines "grievance" as:
A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the

include, but are not limited to:

> Section 1 (DPR failed to implement a fair and consistent process that allows all Parks employees to compete on merit for promotional opportunities); Section XIII, insofar as the EEO Officer questioned applicants during the interview; and Article XVI, insofar as the appropriate candidates who had the highest rating were not selected.[3]

On June 7, 2005, the grievance was denied at Step II. The Step III hearing decision, dated August 25, 2005, indicates that the Union argued, among other things, that prior to the commencement of the interview process, DPR had assured the Union that employees in the PS I level would be given preference, but several were not advanced to the PS II level. The Union also sought the interview grid sheets to review the interview process. The City claimed that it had no

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> grievant affecting terms and conditions of employment. . . .

[3] Section I of the Policy provides:

> The purpose of this Policy is to set forth the process by which the Department of Parks and Recreation ("Parks") fills vacant job positions. Parks is committed to implementing a fair and consistent process that allows all Parks employees to learn of job vacancies and to compete on merit for promotional opportunities.

Section XIII of the Policy provides, in relevant part:

> For each Job Vacancy, the Director of Personnel in conjunction with the EEO Officer will designate someone from Parks' EEO Personnel to serve as "EEO Advisor" for that particular Job Vacancy. . . . The EEO Advisor may observe Panel interviews, but will not participate in the Panel's deliberations.

Section XVI of the Policy provides, in relevant part:

> At the conclusion of the interviews, the Recommending Panel will meet to discuss the applicants, their interview ratings, and to make a final recommendation to the Selecting Official as to which applicant is best qualified for the Job Vacancy. In the case of multiple positions to be filled, a sufficient number of applicants will be ranked in order to allow for a "1 in 3" selection, as used in interviews of persons on a certified civil service list.
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> The Panel's ratings will then be listed in the VAT [Vacancy Approval and Tracking form] (Part H), ranking the Panel's top three choices by order of their ratings (or a "1 in 3" group) to fill the Job Vacancy. . . .

contractual obligation to provide the sheets. The hearing officer agreed with DPR that there were no documents supporting a claim of a promise for preferential treatment to individuals in the PS I level. Nor did the hearing officer find any violation of the CBA or Policy. The Union filed its request for arbitration, and that case (A-11395-05) is scheduled to be heard in August 2006.

As a remedy, the Union asks this Board to order DPR to cease and desist from unilaterally changing the long-standing procedure by which promotions for employees in the PS I level are made; to promote the individuals in PS I level who were by-passed by DPR; to comply with the Union's information request; and to post notices of the order.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that DPR committed an improper practice under NYCCBL § 12-306(a)(1) and (4) by unilaterally changing the procedures used to promote members of Local 1508 to higher supervisory positions.[4] Promotional procedures, the Union says, are mandatory subjects of bargaining. According to the Union, DPR had a long-standing procedure for promotions to the

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[4] 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. . . .

§ 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 of their own choosing . . . .

original PPS title, and when in 2004 DPR reverted from the SPMO title to PS I, DPR assured the Union that it would continue its earlier procedures in filling vacancies for the new PS II level. These procedures, as embodied in the 1986 Agreement and 1993 Agreement, ensured fairness to permanent PSs, who would not be passed over in favor of provisional PSs with lower underlying civil service titles.

The Union contends that the Consent Decree does not serve as a defense in the instant proceeding. The goals of the Consent Decree to implement a "fair and consistent process" so that employees of DPR could "compete on merit for promotional opportunities" are similarly the Union's goals. DPR could have been fully compliant with the Consent Decree by selecting those employees who scored highest on the interview matrix. The City's use of the "1 in 3" rule is inappropriate for the PS II level because the interview questions already covered those areas that the "1 in 3" rule is meant to cover – such as interpersonal relations, experience, creativity, and ability to perform the specific job in question. The result here is that, in violation of the duty to bargain over the procedures for promotion, several permanent PSs were passed over for provisional PSs who had lower underlying civil service titles and whose interview scores were lower than those of permanent PS employees. The Union recognizes that this issue, as presented in this case, raises questions of deferral to arbitration.

Finally, having access to the completed individual score sheets, not just the average scores, is necessary for the Union to prosecute its grievance concerning DPR's failure to follow its own written procedures for advancement to PS II. The requested information is reasonably necessary for the Union to administer the CBA, and failure to provide the interview sheets demonstrates bad faith

bargaining under NYCCBL § 12-306(c)(4).[5]

City's Position

The City recognizes that the issue concerning the alleged unilateral change in procedures for advancements to PS II warrants deferral to the arbitration proceeding previously scheduled.

The City also argues that the Union has failed to establish a *prima facie* case that the City has not bargained in good faith. Under NYCCBL § 12-307(b), the City says, it has a right to assign personnel, including assignments to higher levels, without bargaining.[6] Assignment to PS II is merely to a higher level within the PS title and is not a promotion.

Furthermore, the City claims, it has adopted the procedures in the Policy, which was found to satisfy the Consent Decree negotiated with the federal government. The City writes: "Pursuant to the Consent Decree, the Department followed the procedures which means employees in titles other than permanent Park Supervisor Level I can be given the Park Supervisor Level II positions." (Answer ¶ 39.) DPR argues that it has strictly adhered to these procedures, for failure to do so

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[5] NYCCBL § 12-306(c) provides, in relevant 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.

[6] NYCCBL § 12-307(b) provides, in relevant 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 it agencies; determine the standards of selection for employment; direct its employees; take disciplinary action . . . ; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted . . . ; and exercise complete control and discretion over its organization and the technology of performing its work. . . .

exposes it to contempt proceedings.

According to the City, the parties have no binding agreement that requires negotiation over departure from its terms. Both the 1986 and 1993 Agreements concern selection of PSs for the seasonal positions of PPS and do not extend to full-time appointments.

In addition, the City contends that there has been no showing of interference, in violation of NYCCBL § 12-306(a)(1), since the procedures did not impede employees in the PS I level from being assigned to the PS II level.

As to the information request, DPR provided the Union with a compilation of the names and average scores of the interviewed applicants for PS II. The City asserts that no other information is relevant to or reasonably necessary for contract administration or negotiations, especially since there is no obligation to bargain over the procedures for selecting PS II employees.

DISCUSSION

Two issues are presented in this case. The first concerns DPR's alleged unilateral change in policies on promotion. Since this issue has a basis in the parties' CBA or negotiated policies and is the subject of a pending grievance, we defer the issue to the arbitrator. As to the Union's request for information, we find that DPR must provide the individual interview sheets because they are reasonably necessary for contract administration.

This Board, like the Public Employment Relations Board ("PERB"), must comply with Section 205.5(d) of the CSL, which provides in pertinent part:

> . . . the board shall not have the authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an

improper employer or employee organization practice.

Thus, while this Board has exclusive jurisdiction under NYCCBL § 12-309(a)(4) to prevent and remedy improper public employer practices, we have declined to exercise jurisdiction over improper practices "when the basis of the claimed statutory violation is derived from a provision of the collective bargaining agreement" or mutually agreed-upon policies. *Civil Serv. Bar Ass'n, Local 237, Int'l Bhd. of Teamsters*, Decision No. B-24-2003 at 10-11; *see District Council 37, Local 3621*, Decision No. B-6-2006; *District Council 37*, Decision No. B-36-2001.[7] For example, it is an improper practice under NYCCBL § 12-306(a)(4) for a public employer to refuse to bargain in good faith on matters within the scope of collective bargaining. *See District Council 37, AFSCME*, Decision No. B-8-2006. However, when, as here, a claim under § 12-306(a)(4) that a public employer changed a policy on a mandatory subject without bargaining also involves a matter that is arguably covered by a negotiated agreement and the claim under the NYCCBL could be resolved in the arbitral process, this Board will defer to arbitration. *See Civil Serv. Bar Ass'n, Local 237*, Decision No. B-24-2003 at 11.

In *District Council 37, Local 3621*, Decision No. B-6-2006, the union and the public employer had negotiated a policy and procedures on the equitable distribution of overtime. When several years later, the agency allegedly changed that policy unilaterally, the union filed both an

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[7] NYCCBL § 12-309(a) provides, in relevant part:

> The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:
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> * * *
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> (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 . . . .

improper practice petition and a grievance. This Board found that the union's claims concerning the alleged unilateral changes to the negotiated policy were encompassed by the union's requests for arbitration and deferred the claims to arbitration. *Id*. at 12, 13.

Similarly, in *Local 3, International Brotherhood of Electrical Workers*, Decision No. B-45-86, the union, covered by § 220 of the New York State Labor Law, filed a petition arguing that a city agency made changes in the formula that the Comptroller, 25 years previously, had determined in calculating terminal leave payments for communications electricians. The union also filed a grievance raising the same issues under Executive Order 83, § 5(b)(A), which defined grievance as a "dispute concerning the application or interpretation of the terms of . . . a determination under Section 220 of the Labor Law. . . ." *Id*. at 4. The Board deferred the improper practice claim to arbitration since the grievance concerned "an issue specifically included within the definition of a grievance under the procedure applicable to the parties," and since the grievance concerned the same issues raised in the petition. *Id*.

In the instant case, the Union filed a grievance on May 6, 2005, requesting resolution of the issue whether DPR failed to follow the Policy's procedures to fill the PS II positions. Besides citing to the Policy's statement of purpose (Section I) and the role of the EEO advisor (Section XIII), the Union focused on DPR's use of the "1 in 3" rule following an extensive interview process. In addition, the Step III decision indicates that the Union argued that the City failed to implement prior procedures for giving preferential treatment to PS I employees for advancement to PS II.

The pivotal issue in both the improper practice and the arbitration is whether the City utilized procedures for filling job vacancies for PS II differently from the way the procedures are written. The basis of the Union's unilateral change claim – that DPR failed to implement policies granting

preference to PS I employees seeking advancement to the PS II level – is derived from Article VI, § 1(b), of the CBA, which defines grievance as, among other things, a misinterpretation of an employer's written policy, and from the parties' 1986 and 1993 negotiated policies. As in *Local 3, International Brotherhood of Electrical Workers*, Decision No. B-45-86, it is for an arbitrator to determine whether DPR misinterpreted the Policy. Furthermore, we leave to an arbitrator the interpretation of the negotiated 1986 and 1993 Agreements, *see District Council 37, Local 3621*, Decision No. B-6-2006, and the appropriate construction of these Agreements along with the Policy.

Accordingly, we defer to the arbitration process that part of the § 12-306(a)(1) and (a)(4) failure to bargain claim that relies on the interpretation of the Policy and the parties' agreements. The deferral is without prejudice to reopen the charge should the City raise during the arbitration any argument that forecloses a determination on the merits of the grievance or should any award be repugnant to rights under the NYCCBL. *See Comm. of Interns and Residents, SEIU*, Decision No. B-40-2001 at 7.

As to the information request, this Board will exercise jurisdiction. The parties have pointed to no provision in the CBA that addresses this claim. *See District Council 37, Locals 2507 and 3621*, Decision No. B-35-1999 at 12, *aff'd sub nom. City of New York v. DeCosta*, No. 404122/99 (Sup. Ct. N.Y. Co. Nov. 1, 2005), *appeal filed*, Dec. 2, 2005. Under NYCCBL § 12-306(c)(4) and § 12-306(a)(1) and (4), public employers and public employee organizations have a mutual obligation, as part of the duty to bargain in good faith, to furnish, upon request, "data normally maintained in the regular course business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." This duty extends to information relevant to and reasonably necessary for the administration of the

parties' agreements, such as processing grievances, and/or for collective negotiations on mandatory subjects of bargaining. *See Corr. Officers Benevolent Ass'n*, Decision No. B-9-1999 at 11-12. Thus, contract administration constitutes an independent basis for the obligation to supply information under NYCCBL § 12-306(c)(4). *See Corr. Officers Benevolent Ass'n,* Decision No. B-17-2005 at 6, 7.

Similarly, with regard to contract administration, PERB has stated:

> [T]he obligation of an employer to negotiate in good faith is not discharged upon the execution of a negotiated agreement. The obligation of the employer to negotiate continues in the administration of the agreement to deal with representation of its employees as to grievances which may arise under the agreement.
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> . . . . Generally stated, an employee organization may request, and is entitled to receive, information which is necessary for the preparation for collective negotiations, for example, number of job titles, salary schedules, and information necessary for the administration of a contract including the investigation of grievances.

City of Albany, 6 PERB ¶ 3012, at 3030 (1973); *see State of New York (Office of Mental Retardation and Developmental Disabilities)*, 38 PERB ¶ 3036 (2005).

In *District Council 37, Locals 2507 and 3621*, Decision No. B-35-1999, the union requested that the Fire Department ("FDNY") provide it with the names of members on various leaves of absence so that the union could follow up with members who were in "difficult situations." *Id*. at 2. The union also requested that FDNY provide the names, addresses, and social security numbers of employees who had been terminated pursuant to CSL §§ 71 and 73 to "enable the union to monitor and police the termination of bargaining unit employees and to guarantee the application of contractual rights to these employees." *Id*. at 3. This Board found that the union had a right to receive the information sought to enable it to investigate grievances and rejected FDNY's defense, under the circumstances of that case, of privacy for those on leave. *Id*. at 14. In confirming this

determination, the Supreme Court also directed the Board to consider imposing the condition that the information be made available to the union solely for its "confidential, exclusive use in conjunction with its performance of its rights and duties" under the NYCCBL. *See City of New York,* No. 404122/99 at 7 (citation omitted).

We have decided other cases similarly. In *Correction Officers Benevolent Ass'n*, Decision No. B-9-1999, we held that the employer had a duty to furnish the names and commands of members on indefinite sick leave so that the union could administer the contract. We rejected the City's defense that the issue concerning sick leave was a non-mandatory subject over which the City was not required to bargain because the information was relevant for contract administration, not negotiation. *Id*. at 14, 15. In *Correction Officers Benevolent Ass'n*, Decision No. B-17-2005 at 7, 8, we determined that the employer violated § 12-306(a)(1), (a)(4), and (c)(4) when it refused to supply information concerning members' assignments to preferential/special units or commands. The question whether the topic concerned a mandatory subject of bargaining was inapplicable because the union's request was solely for contract administration. *See also County of Erie (Sheriff)*, 36 PERB ¶ 3021 (2003), *aff'd*, 14 A.D.3d 14 (3d Dep't 2004), *enforced*, 789 N.Y.S.2d 453 (3d Dep't 2005) (to enable union to investigate disciplinary grievance, employer ordered to provide files including a list of persons interviewed and Equal Employment Opportunity investigator's summary of interviews, investigator's findings, and letters issued to complainants); *Town of Evans*, 37 PERB ¶ 3016 (2004) (to enable union to investigate disciplinary grievance, employer ordered to provide, among other information, the identity of individuals who allegedly had knowledge of the grievant's working for another employer during times he was paid by the town, the identities and job titles of employees whom grievant allegedly misused for improper employment, and the personnel files of

all town employees anticipated to be called as witnesses). In *Town of Evans, id.* at 3050, PERB explained: "It is fundamental to the Act that an employer's denial of a reasonable demand for information which is relevant to the adjustment of grievances interferes with a union's ability to represent the interests of the employees within its unit . . . ."

In this case, we find that the individual score sheets created by the DPR panel to advance employees to the PS II level are relevant and reasonably necessary for the Union to administer the contract. Although the City provided a list of the average scores of each employee interviewed, several permanent PS I employees were not offered advancement to the PS II level, despite their higher scores. This issue of advancement is the subject of a scheduled arbitration, and the Union's request to have access to the underlying results of the interviews is in furtherance of its investigation into the grievance.

Further, we are not persuaded by the City's contention that since there is no obligation to bargain over the procedures for selecting PS II employees, the information need not be disclosed. The question whether an issue is a mandatory subject of bargaining is not dispositive when, as here, the Union seeks the information for contract administration, not negotiation.[8]

Accordingly, we find that DPR violated NYCCBL § 12-306(a)(1), (a)(4), and (c)(4) when it failed to respond to the Union's information request for the individual interview matrix sheets. We direct that DPR furnish the information within 21 days from the date of this decision with the proviso that the Union use the interview sheets solely for its "confidential, exclusive use in conjunction with its performance of its rights and duties" under the NYCCBL. *See City of New York,* No. 404122/99 at 7.

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[8] Because the City did not raise the defense of privacy of the employees or confidentiality of the individual interview sheets, we do not address that issue.

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 failure to bargain claim concerning the alleged unilateral change of procedures in violation of NYCCBL § 12-306(a)(1) and (4) as stated in the improper practice petition, BCB-2489-05, filed by District Council 37, Local 1508, be, and the same hereby is, deferred until such time as an arbitrator renders a determination and issues an opinion and award upon which this Board may further determine whether an improper practice was committed by the New York City Department of Parks and Recreation; and it is further

DETERMINED, that the New York City Department of Parks and Recreation violated NYCCBL § 12-306(a)(1), (a)(4), and (c)(4) when it failed to provide information requested by District Council 37, Local 1508; and it is further

ORDERED, that the New York City Department of Parks and Recreation furnish District Council 37, Local 1508, within 21 days from the date of this decision, with the individual interview score sheets created by the panel to advance employees to the Park Supervisor, Level II, position; and it is further

ORDERED, that the New York City Department of Parks and Recreation post the attached notice for no less than thirty days at all locations used by the Department for written communications with employees represented by District Council 37, Local 1508.

Dated: July 6, 2006
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

CHARLES G. MOERDLER
MEMBER

ERNEST F. HART
MEMBER

NOTICE
TO
ALL EMPLOYEES
PURSUANT TO
THE DECISION AND ORDER OF THE
BOARD OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK

and in order to effectuate the policies of the NEW YORK CITY COLLECTIVE BARGAINING LAW

We hereby notify:

That the Board of Collective Bargaining has issued Decision No. B-23-2006, determining an improper practice petition between District Council 37, Local 1508, and the New York City Department of Parks and Recreation and the New York City Office of Labor Relations.

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, filed as BCB-2489-05, be, and the same hereby is, granted as to the City's refusal, in violation of NYCCBL § 12-306(a)(1), (a)(4), and (c)(4), to provide District Council 37 with the individual interview matrix sheets of employees who sought advancement to the title Principal Park Supervisor; and it is further

ORDERED, that the Department of Parks and Recreation furnish within 21 days from the date of this decision, July 6, 2006, the individual interview matrix sheets for District Council 37 for its exclusive use solely in conjunction with its performance of its rights and duties under the NYCCBL; and it is further

ORDERED, that the failure to bargain claim concerning the alleged unilateral change of promotional procedures to the title Park Supervisor, Level II, in violation of NYCCBL § 12-306(a)(1) and (4), be deferred until an arbitrator renders a determination and issues an opinion and award upon which the Board, upon request, may further determine whether an improper practice was committed by the City; and it is further

ORDERED, that the Department of Parks and Recreation post the appropriate notices; and it is further

ORDERED, that the petition is dismissed in all other respects.

The New York City Department of Parks and Recreation (Department)

Dated: _____ **(Posted By)**

(Title)

This Notice must remain conspicuously posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.