Patrolmen's Benevolent Association, 79 OCB 6 (BCB 2007)

[Decision No. B-06-2007] (IP) (Docket No. BCB-2366-03).

Summary of Decision: Unions claimed that the City violated its duty to provide information by insisting that requests for health benefit information be made through the Municipal Labor Committee ("MLC") and by not providing its responses to such requests directly to the requesting unions. The City argued that it reasonably coordinated all such requests through the MLC as agent for the unions. The Board found that the City had a duty to supply the information directly to each requesting union, and granted the petition in part. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

PATROLMEN'S BENEVOLENT ASSOCIATION, and SERGEANTS BENEVOLENT ASSOCIATION,

Petitioners,

- and -

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

Respondents.

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 the New York

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

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 Board addressed these claims in its prior decision in this matter, *Patrolmen's Benevolent Ass'n*, Decision No. B-14-2004.

PROCEDURAL BACKGROUND

A. Prior Proceedings Before the Board

After the pleadings in this improper practice proceeding were complete, the City moved to dismiss the matter as moot on the ground that the parties had, by then, negotiated an agreement resolving the health benefits issue. Petitioners opposed the motion, contending that the matter was not moot because the agreement was subject to ratification and because they needed the information for contract administration.

After due consideration, the Board rendered a unanimous decision dismissing the Unions' petition as moot on the grounds that the City had satisfied its duty to provide information under the NYCCBL. First, the Board found that the record showed that the SBA and PBA had received certain information that they had requested. Second, the Board held that the City had made a good faith effort to obtain the remaining information, which was not in its possession and which the Board found to be either unavailable, too costly to produce, or its production violative of privacy laws. Since the Board concluded that the City had satisfied its duty, and Petitioners had received the information to which they were entitled, it declined to issue an advisory opinion on the method of

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

the City's distribution of health benefits information. *Patrolmen's Benevolent Ass'n*, Decision No. B-14-2004 at 12, footnote 6.

B. Partial Affirmance and Remand in the Courts

Petitioners appealed the Board's determination to the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules. The Supreme Court affirmed that portion of the decision finding that the City had fulfilled its statutory obligation by providing the requested information that was within its possession and making a good faith effort to provide the rest. However, the Court found that a further issue was not moot, and remanded to the Board the question whether the City properly responded to the document requests by providing the information through the Municipal Labor Committee ("MLC")[2] rather than directly to each union. *Patrolmen's Benevolent Ass'n v. City of New York*, No. 113062/04 (Sup. Ct. N.Y. Co. Feb. 4, 2005). The City appealed the decision partially remanding the stated issue. The Appellate Division, First Department affirmed the lower court's rulings, finding that there was a "viable controversy" concerning the City's actions, and remanding to the Board:

> the issue of whether the City can direct petitioners to request certain documents and information through the Municipal Labor Committee.

Patrolmen's Benevolent Ass'n v. City of New York, 27 A.D.3d 381 (1st Dep't 2006). It is that issue that this Board will consider in this decision.

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[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.

C. Further Submissions After Remand

Upon remand, the parties were given the opportunity to submit supplemental briefs addressing the remanded issue. In the context of the facts found to exist in this case, and in order to assist the Board in determining the issue remanded by the courts, the Board asked the parties to state their positions on:

> whether the City has a duty to respond individually to requests by a certified representative of uniformed police service employees for health benefits information needed for collective bargaining.

At the direction of the Board, the MLC, though not a party in this proceeding, also was given the opportunity to submit a written statement of its position on this issue. The parties, as well as the MLC, simultaneously filed submissions responsive to this issue. Thereafter, Petitioners submitted a letter brief, attaching two affidavits from a 1981 federal court action,[3] in response to the statement of the MLC. The City filed a short supplemental memorandum addressing these affidavits.

FACTUAL BACKGROUND

The facts found by this Board in our previous determination in this matter, Decision No. B-14-2004, as affirmed by the courts, are hereby incorporated by reference and will not be repeated at length below. In summary, the most pertinent facts are as follows:

The PBA and SBA are the certified bargaining representatives of members of the uniformed police service employed in the New York City Police Department in the titles Police Officer and

[3] Petitioners attached copies of the affidavits of James Hanley, then Assistant Director of Municipal Labor Relations of the City of New York, and Arvid Anderson, then Director of the Office of Collective Bargaining ("OCB"), submitted by defendants City and OCB in 1982 in the case of *Brennan v. Koch*, No. 81 Civ. 4770 (SDNY).

Sergeant.[4] The Unions represent the members of their bargaining units with respect to those matters stated to be within the scope of collective bargaining pursuant to NYCCBL § 12-307(a).[5]

Historically, the MLC, on behalf of its member unions, has negotiated with the City on the subject of health insurance for municipal employees.[6] One of the Vice-Chairs of the MLC is the President 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 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.

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

On May 2, 2003, to assist in bargaining, an *ad hoc* coalition comprised of seven uniformed force unions, calling themselves the Coalition of the Police & Fire Unions on Pension and Health

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[4] Certification No. 54-68 (PBA); Certification No. 5 NYCDL # 85 (SBA).

[5] The pertinent provisions of NYCCBL § 12-307(a) provide:

> Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions . . . .
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> * * *
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> (4) all matters, including but not limited to pensions, overtime and time and leave rules which affect employees in the uniformed police, fire, sanitation and correction services, . . . shall be negotiated with the certified employee organizations representing the employees involved. . . .

[6] The parties, as well as the MLC, have characterized the role of the MLC in health benefits bargaining in several different ways, as indicated in their Positions, *infra*.

("Coalition"),[7] 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, with total headcounts for each union. As a second part of its request for information, the Coalition sought data regarding psychotropic, injectable, chemotherapy, and asthma ("PICA") claims. The MLC was not a party to 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 of the Municipal Labor Committee." A copy of this letter was sent to the MLC. On June 6, 2003, the Coalition replied to the City 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 information requested directly to the requesting unions.

In October 2003, the MLC made a request to the City, similar to the Coalition's May 2, 2003 request, seeking PICA utilization information, and containing a list of 20 unions, including the PBA and SBA, that were requesting the PICA data.

After discussions with Petitioners and the MLC, on November 14, 2003, the City provided the MLC with the PICA utilization information requested. The City claims that the data were enclosed in separate envelopes labeled for each union that requested the information, including the SBA and PBA. In addition, on November 25, 2003, the City forwarded the responses from the health carriers to the MLC regarding the utilization data sought by all the Unions.

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

On December 18, 2003, the City and the MLC reached an agreement on health benefits. In December 2003, the PBA, on its website, announced that an agreement on health benefits had been reached and described the efforts the PBA had undertaken to help reach that agreement.

POSITIONS OF THE PARTIES

Petitioners' Position

Petitioners argue that the City's insistence that it would provide information only through the MLC, rather than directly to the PBA and the SBA, constituted an attempt to control who the PBA and SBA's representative for collective bargaining would be, in violation of NYCCBL § 12-306(a)(1), (2), (3) and (4).[8] By insisting that all information regarding health insurance be requested and provided 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 them, pursuant to NYCCBL § 12-

[8] 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. . . .

306(a)(3). In addition, since the MLC is not the exclusive bargaining representative for any member of the PBA and SBA's 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 the City's duty to bargain under NYCCBL § 12-306(a)(4).

Petitioners contend that historically the City and the Unions have, intermittently, and by consent, bargained over health insurance issues using the MLC as an entity by which to achieve agreement on health, hospitalization, and prescription drug issues. In these negotiations, the MLC has served as a spokesperson for a coalition of unions and not as their bargaining representative. The existence of the MLC does not change the legal status of the PBA and the SBA as the exclusive bargaining agents for their separate bargaining units. The information requested in this case was and is necessary to allow Petitioners to adequately represent the members of their bargaining units, both to allow the Unions to administer their collective bargaining agreements and to represent their members in negotiations for a successor agreement.

Petitioners note that the duty to supply information on demand is explicitly set forth in NYCCBL § 12-306(c)(4).[9] This duty is also recognized in the decisions of the Public Employment Relations Board ("PERB"). Petitioners argue that this obligation springs from their status as certified bargaining representatives. Since it is the bargaining representative that has the right and duty to negotiate on behalf of the members of the bargaining unit, the statute imposes an obligation

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[9] 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. . . .

to provide the bargaining representative with information necessary to negotiate. To refuse is a violation of the City's duty to negotiate in good faith and also constitutes unlawful interference in violation of NYCCBL §12-306(a)(1).

Petitioners submit that the record is clear that neither the PBA nor the SBA consented to having the MLC serve as their representative for information demands or to receive information. In this regard, the City has no right to pick who an exclusive bargaining agent selects as its representative.

In response to the statement submitted by the MLC, Petitioners assert that, contrary to the MLC's contention, the MLC has not negotiated with the City over terms and conditions of employment. It has merely, on occasion, served as a spokesperson for varying coalitions of unions, by the consent of those unions. It is not the entity with which, by law, the City is required to negotiate. This fact is confirmed in the affidavits of James Hanley and Arvid Anderson submitted by the City and OCB in an earlier court proceeding. The MLC is not the bargaining representative for the PBA and the SBA. Moreover, Petitioners made it abundantly clear to the City in this case that the MLC did not have the consent of the Unions to act as their spokesperson concerning the information each needed for negotiations and contract administration. Accordingly, Petitioners' improper practice petition should be granted.

City's Position

The City observes that this case is not about whether the City is required to provide information concerning health benefits – the City never refused to provide such information, and the sufficiency of its response has already been upheld by the Board and the courts. The remaining issues are (i) whether the NYCCBL prohibits the City from coordinating through the MLC multiple

requests for information concerning health insurance issues that are of interest to many unions, where the unions have historically bargained over health insurance issues through the MLC and where bargaining at the MLC had already commenced with the participation of the PBA and SBA; and (ii) whether the City's action in sending the requested information to the MLC for distribution to all of the interested unions, instead of sending it directly to the PBA and SBA, constituted an improper practice.

The City contends that, historically, the MLC has negotiated with the City on behalf of the municipal unions with respect to health insurance. In the negotiations that gave rise to the petition herein, the SBA was represented on the MLC's Steering Committee, and both the PBA and SBA were represented on the MLC's Technical Sub-Committee. In the course of negotiations, both the *ad hoc* Coalition[10] of police and fire unions and 16 other unions also participating in the MLC requested information about PICA benefit utilization and costs.

The City submits that where multiple unions have an interest in similar information, and where, as here, providing that information involves complex arrangements with third-party health insurance providers to retrieve thousands of pages of computerized data, it is entirely reasonable for the City to coordinate those requests so that the demands of the various unions can be satisfied at one time, with a single request to the providers. Indeed, with over 150 separate City bargaining units, coordination is imperative. Coordinating requests for information simply is not a refusal to bargain.

The City asserts that the MLC functioned as an agent of Petitioners to deal with the City concerning requests for information about health benefits, and the City committed no improper

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[10] The City notes that the Coalition, like the MLC, is not a certified collective bargaining representative of any employees.

practice by sending the information in sealed envelopes to the MLC for distribution to the individual unions that had requested such information.

The City argues that the decisions of PERB recognize that the duty to provide information is circumscribed by the "rules of reasonableness," which include consideration of the burden upon the employer to provide the information. In addition, under these principles, the information need not be provided in the form requested, as long as it satisfies a demonstrated need. Here, the City was well within the "rules of reasonableness" when it sought to coordinate the requests and its responses through the MLC. There is no suggestion (or claim) in the record that Petitioners were in any way harmed by the City's actions. In the absence of any real harm, the City's reasonable efforts to achieve a modicum of coordination and efficiency cannot be considered a refusal to negotiate in good faith.

Petitioners' argument that the MLC was not the exclusive bargaining representative of the members of the PBA's and SBA's bargaining units is irrelevant. The issue presented here is the production of information, not the conduct of collective negotiations. PERB has held that where an employer provides the requested information to an agent of the union, it does not commit an improper practice, even if the agent fails to inform his union principals. The same holding should apply here. The MLC functioned as an agent of Petitioners in gathering and distributing information concerning utilization of PICA and other health benefits. That the MLC was not the exclusive bargaining representative of the employees is simply not pertinent. The City's transmittal of information to the MLC as agent for distribution to the Unions was not an improper practice.

Finally, the City argues that while the precise duties of the MLC are not specified in the statute, the City and many of the unions have used the MLC for decades to address issues of health

benefits. Stability in labor relations dictates that settled expectations and historical relationships be maintained, absent special circumstances. In the present case, Petitioners continued to participate in the MLC and its Technical Sub-Committee during the period of negotiations in which the instant information requests arose. In these circumstances, the City would have been within its rights to insist that all bargaining over health issues remain within the MLC. In analogous circumstances in the private sector, the National Labor Relations Board has held that participants in multi-employer or multi-union bargaining may not withdraw unilaterally after bargaining has commenced, absent special circumstances. In the instant matter, the destabilizing impact of permitting the PBA and SBA to bargain both within and outside the MLC framework is manifest. Allowing these Unions to manipulate the City and the other municipal unions in this fashion serves no statutory purpose, and the Board should not give them such an advantage.

MLC's Position

The MLC states that its submission is limited to a historical perspective on the MLC's role in negotiating health benefits. It reviews the historical formation and present structure of the MLC. The statement further describes the activity of the MLC in negotiations with the City over health benefits from 1969 through the present. It asserts that since the late 1960s the MLC:

> . . . has represented all municipal employees when meeting with the City on health benefits, when negotiating with the City on health benefits, and when reaching an agreement with the City on health benefits.

It alleges that it has requested health benefit information from the City for the purpose of preparing for collective bargaining and dissemination to the MLC member unions since the early 1970s. It was instrumental in getting the City to agree to equalize "HIP" and "GHI" rates in 1983 to address the erosion of members' medical benefits, and to establish a "Health Stabilization Fund" in 1986 to fund

health insurance benefits for all City employees and to give the unions an equal role with the City in selecting insurance carriers, setting policy and designing programs for all City employees, retirees, and their dependents. In the 1990s the MLC and City agreed to programmatic changes that achieved savings that were allocated two-thirds to the health benefits Stabilization Reserve and Account and one-third to the City's General Fund. Pursuant to agreement, other savings were credited to the Labor Reserve (*i.e.*, earmarked for collective bargaining) or placed in the Stabilization Fund. In the 2000s the MLC has addressed such issues as retiree health insurance, drug premium subsidies, and the creation and modification of the PICA drug benefit. Numerous documents are annexed as exhibits to the MLC's statement in support of the allegations set forth in that submission, including copies of various health benefit agreements executed by the City and the MLC.

The MLC's statement concludes:

> Because of the complex nature of health care benefits and the uniform needs of its members, the MLC has the expertise, sophistication and infrastructure to represent all of its members at the bargaining table to insure they get the best health coverage.

DISCUSSION

The precise issue remanded to this Board by the courts requires that we determine "whether the City can direct petitioners to request certain documents and information through the Municipal Labor Committee." *Patrolmen's Benevolent Ass'n v. City of New York*, 27 A.D.3d 381 (1st Dep't 2006). In the context of the specific facts alleged in the petition in this case, we understand this remand to equate to the question whether the City has a duty to respond directly to a separate request by a certified representative of uniformed police service employees for health benefits information needed for collective bargaining. This is the question we addressed to the parties, and to which

Petitioners, the City, and the MLC responded in their supplemental submissions. For the reasons stated below, we find that on the facts of this case the City had such a duty.

Under NYCCBL § 12-306(c)(4) and § 12-306(a)(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. *District Council 37*, Decision No. B-23-2006 at 13-14; *Captains Endowment Ass'n*, Decision No. B-22-2006 at 12-13; *accord*, *Board of Educ., City Sch. Dist. of Albany*, 6 PERB ¶ 3012 at 3030 (1973); *see State of New York (Office of Mental Retardation and Developmental Disabilities)*, 38 PERB ¶ 3036 (2005).

The City has never disputed Petitioners' entitlement to the health benefit information requested in this matter. In fact, this Board has previously held that the City acted in good faith to obtain and produce the requested information. *Patrolmen's Benevolent Ass'n*, Decision No. B-14-2004 at 10-11. The Supreme Court expressly affirmed that finding. *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 Dep't 2006). The dispute, here, concerns the manner of production – the fact that the City insisted that requests be processed through the MLC, and that it turned over the information to the MLC, in

envelopes labeled for the individual unions, rather than providing the information directly to the requesting Unions.[11]

The parties agree that the duty to supply information needed for collective bargaining and/or contract administration is circumscribed by "rules of reasonableness." *Schyler-Chemung-Tioga Board of Cooperative Educational Services,* 34 PERB ¶ 4521 (2001), *citing Board of Educ., City Sch. Dist. of Albany*, 6 PERB ¶ 3012 (1973). On the record of this case, we find the City's expressed desire to "coordinate" multiple requests from numerous unions seeking similar health benefit information so that the demands of the various unions could be satisfied at one time, with a single request by the City to the third-party health insurance providers, to be entirely reasonable. However, we believe that such "coordination" properly relates to the internal process by which the City reviews the scope of the unions' requests, compiles and/or obtains the requested information, and prepares the form of its responses. The NYCCBL does not authorize the City's desire to "coordinate" to override the lawful entitlement of each certified representative to a separate response from the employer. Pursuant to NYCCBL § 12-306(c)(4) and § 12-306(a)(4), the City has a duty to provide relevant and reasonably necessary information to each certified representative that requests it. Therefore, absent consent, the City's response to and through the MLC does not satisfy its duty owed to individual certified employee organizations that have made requests for information outside the MLC.

The City's contention that the MLC served as agent for the PBA and SBA for purposes of receiving the City's response, though understandable, is also unavailing. The record shows that for

[11] We note that despite the City's insistence, the PBA and SBA did not comply, but reiterated their separate request made through the Coalition; and that, nevertheless, the City conveyed the information to the PBA and SBA through the MLC.

over 35 years the MLC, on behalf of its member unions, has engaged in health benefits bargaining with the City, during which time numerous agreements and modifications have been negotiated successfully. All City employees, their dependents, and retirees, have been the beneficiaries of the health benefits negotiated by the City and the MLC. Throughout that period,[12] the PBA and SBA have participated in health benefits bargaining through the MLC. Nevertheless, we find that at about the time the request for information was made, Petitioners placed the City on notice, in writing, that they were seeking the information themselves, as the certified bargaining representatives, and that the MLC did not stand in that capacity. *See* Petition, Exhibit C (letter dated June 6, 2003 from the Unions to Labor Commissioner James Hanley). Thereafter, and despite Petitioners' continued participation in the meetings of the MLC Health Sub-Committee, the City had reason to know that there was at least a serious question whether the MLC was an agent for the PBA and SBA with regard to their request for information. We hold that, having been placed on notice concerning Petitioners' position concerning the status of the MLC *vis a vis* the information request, the City reasonably should not have assumed that the MLC was acting as the agent of the PBA and SBA for that purpose. In view of the notice given by Petitioners, we find that the City's "agency" argument does not excuse its decision not to provide the requested information directly to the PBA and SBA. Accordingly, the City's actions in transmitting its responses to the PBA and SBA's request for information to the MLC was in violation of the City's duty under NYCCBL § 12-306(c)(4).

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[12] The only exception reflected in the record is in the 2002 round of bargaining, during which the PBA's overall bargaining dispute with the City, including a health-related demand, was resolved through impasse arbitration under the Taylor Law, N.Y. Civil Service Law, Article 14. *See Patrolmen's Benevolent Ass'n*, 35 PERB ¶ 6603 at 6619 (2002). The SBA did participate in health benefits bargaining within the MLC during the 2002 round.

NYCCBL § 12-306(c)(4) defines the duty to supply information as being included in the duty to bargain in good faith; consequently, a failure to comply with the requirements of § 12-306(c)(4) necessarily constitutes a violation of the duty to bargain in good faith pursuant to NYCCBL § 12-306(a)(4). *Correction Officers Benevolent Ass'n*, Decision No. B-17-2005 at 8; *Correction Officers Benevolent Ass'n*, Decision No. B-9-99 at 15; *see also Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers*, 36 PERB ¶ 3021 (2003). Since the employer's failure to supply the information directly to the Unions interferes with the statutory right of employees to be represented, it also constitutes a violation of NYCCBL § 12-306(a)(1). *See Schyler-Chemung-Tioga Board of Cooperative Educational Services*, 34 PERB ¶ 4521 (2001); *see also Greenburgh No. 11 Union Free Sch. Dist.*, 33 PERB ¶ 3059 (2000).

Petitioners' further claims that the City's actions had the effect of interfering with the administration of the Unions or that they were intended to discriminate against Petitioners are not supported by the record. There are no factual allegations that, if proven, would demonstrate that the City has dominated or interfered with the formation or administration of the PBA and SBA within the meaning of the law; nor that any protected activity engaged in by the PBA and SBA was a motivating factor in the City's decision to send its responses to Petitioners through the MLC; *See District Council 37*, Decision No. B-36 2000 at 14-15 (standard of § 12-306(a)(2) violation); *Social Serv. Employees Union, Local 371*, Decision No. B-28-2006 at13-14, citing *Bowman*, Decision No. B-51-87 (standard of § 12-306(a)(3) violation). Therefore, we dismiss Petitioners' claims under NYCCBL § 12-306(a)(2) and (3).

This decision resolves the issue remanded to the Board by the courts. To the extent both parties advanced additional arguments concerning matters beyond the scope of the remand, they are not decided herein.

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, Docket No. BCB-2366-03, filed by the Patrolmen's Benevolent Association and the Sergeants Benevolent Association against the City of New York and the New York City Office of Labor Relations, be, and the same hereby is, granted, in part, to the extent indicated in this decision; and it is further

DETERMINED, that in the circumstances of this case the City of New York violated NYCCBL § 12-306(c)(4) and § 12-306(a)(1) and (4) by supplying requested health benefit information through the Municipal Labor Committee rather than directly to the Patrolmen's Benevolent Association and the Sergeants Benevolent Association; and it is further

ORDERED, that the City of New York cease and desist from requiring in such circumstances that requests for health benefit information be submitted only through the Municipal Labor Committee, and from failing to provide its responses to such requests directly to the requesting Petitioners.

Dated: February 26, 2007
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

GABRIELLE SEMEL
MEMBER

I concur. CHARLES G. MOERDLER
MEMBER

I dissent. ERNEST F. HART
MEMBER

Note: City Member M. David Zurndorfer recused himself and did not participate in the decision in this case.

CONCURRING OPINION OF LABOR MEMBER CHARLES G. MOERDLER

On remand from the Appellate Division, First Department, the Board is faced with an extremely narrow tendered issue. The Board majority carefully and correctly circumscribes its response. The practical effect thereof is that little, if any, precedential effect attaches. Accordingly, I concur. I am constrained to note, however, that limited public and non-public resources could be devoted to a better purpose than appears to have been the case here.

February 26, 2007

CHARLES G. MOERDLER
MEMBER