

Local 30, IOUE, 8 OCB2d 5 (BCB 2015)

(IP) (Docket No. BCB-3020-12)

Summary of Decision: The Union filed a verified improper practice petition alleging that HHC violated § 12-306(a)(1) and (3) of the NYCCBL by retaliating against Oilers for filing and pursuing an out-of-title grievance when it removed them from the evening, overnight, weekend, and holiday shifts, which negatively impacted their pay. HHC argued that its actions were taken for legitimate business reasons and that it had the managerial right to reassign the Oilers. The Board found that the Union established a *prima facie* case of retaliation. The Board further found that the business reasons proffered by HHC were not legitimate and were instead a pretext for retaliation. Accordingly, the petition was granted. (*Official decision follows.*)

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

In the Matter of the Improper Practice

-between-

LOCAL 30, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

-and-

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent.

DECISION AND ORDER

On May 30, 2012, Local 30 of the International Union of Operating Engineers (“Local 30” or “Union”) filed a verified improper practice petition against the New York City Health and Hospitals Corporation (“HHC”). The Union alleges that HHC violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by retaliating against Oilers employed at the Kings County Hospital Center (“Hospital”) for engaging in protected union activity. Specifically, the Union

alleges that, in retaliation for filing and pursuing an out-of-title grievance, the Hospital removed Oilers from the evening, overnight, weekend, and holiday shifts (collectively, the “off-watches”), which negatively impacted the Oilers’ pay. HHC argues that the Hospital’s actions were taken for legitimate business reasons and that it had the managerial right to reassign the Oilers. This Board finds that the Union has established a *prima facie* case of retaliation. The Board further finds that the business reasons proffered by HHC are not legitimate and are instead a pretext for retaliation. Accordingly, the petition is granted.

BACKGROUND

The Trial Examiner held four days of hearings and found that the totality of the record established the following relevant facts.

Local 30 represents individuals in engineering titles, including those of Senior Stationary Engineer, Stationary Engineer, and Oiler. The Union and HHC are parties to a collective bargaining agreement, which covers the period of April 1, 1999 through June 30, 1999, and currently remains in *status quo* pursuant to NYCCBL § 12-311(d).

Oiler and Maintenance Worker Duties

Oilers and Engineers work in the Facilities Management Department (“Department”) of the Hospital. According to the job description, Oilers are responsible for “the lubrication of power plant, pumping and/or construction equipment,” and related work. (Union Ex. 2)

Examples of typical tasks listed in the job description are:

Lubricates and cleans pumps, engines, blowers, compressors, motors, gears, ejectors and other operating equipment.

Assists in the operation, maintenance and repair of this equipment.

Reads meters, gauges and other operating equipment.

Keeps logs.

Operates lubricant filtering and purifying equipment; maintains lubricant inventory.

May operate a motor vehicle in the performance of assigned duties.

(Id.) Prior to 2010, the Department also employed a number of Maintenance Workers who responded to service calls and performed duties such as plunging toilets, fixing call bell cords, and opening locks.

Mike Graffeo, a Stationary Engineer and a Union shop steward, testified regarding the work of the Oilers and Maintenance Workers. As an Engineer, he supervises employees in the Oiler, Firemen, and Maintenance Worker titles. He generally works the 7:00 a.m. to 3:00 p.m. shift (“Tour 2”), but he has also worked overtime on the 11:00 p.m. to 7:00 a.m. shift (“Tour 1”) and the 3:00 p.m. to 11:00 p.m. shift (“Tour 3”).

Graffeo testified that, prior to 2010, there were generally two Maintenance Workers assigned to each Tour. On Tours 1 and 3, the Maintenance Workers were assigned to unclog toilets, replace lightbulbs, clean mechanical areas, respond to calls reporting that someone had been locked out of a building, and other similar work. While they were doing this, the Oilers were doing installations, repairs, and maintenance of equipment, completing their rounds to check the readings of numerous pieces of equipment, responding to calls requesting that the temperature in a particular area be adjusted, and responding to emergency calls. Graffeo explained that when a call would come in to the control room reporting an emergency, the Engineer or his assistant would dispatch one of the Oilers to the scene, and the Oiler may or may not take a Maintenance Worker with him. The Oiler would then make an assessment of the job, and he and the Maintenance Worker would do what they needed to in order to make the area

safe. If necessary, the Oiler would call an Engineer to assist him. If the emergency was something that the Oiler or the Maintenance Worker could not fix, the Engineer would contact the Hospital's Administrator on Duty, who would determine whether or not a Carpenter or other tradesperson would need to be called in to fix the situation. These emergencies or service calls are recorded in emergency call logs, which are maintained separately for every tour.

2010 Layoffs

In 2010, HHC underwent a restructuring, and approximately 50% of its trades employees were laid off at every facility. The layoff included titles such as Carpenters, Electricians, Painters, Locksmiths, and Plumbers. No Engineers or Oilers were laid off because HHC determined that staffing in these titles needed to be "specifically maintained" in order to safely operate the power plants, which run 24 hours a day, seven days a week ("24/7"). (Union Ex. 6, p. 392) However, all of the Maintenance Workers in the Department were laid off.¹

After the layoffs, Robert Cummings, the Hospital's Senior Associate Director for Facilities Operations, wrote a memo addressed to all Oilers and Engineers. It is dated September 14, 2010, and states:

Effective September 17, 2010 Oilers will be required to respond [to] service calls. This is necessary due to the impending layoff of the Maintenance Workers who work in the Power [plant].

Your cooperation in this matter is anticipated.

(Union Ex. 18). On September 28, 2010, Jevan Seepaul, the Hospital's acting Senior Stationary Engineer, wrote a memo addressed to the Stationary Engineers clarifying Cummings' directive.

It states:

¹ While it is not entirely clear from the record, it appears that at some point after the initial layoff, two Maintenance Workers were transferred back into the Department on Tour 2 from other departments.

It has come to my attention that a written clarification is needed as to how the Plant Maintainer Oilers are to be used on campus:

1. During the off shift the Boiler Room Engineer will be in charge to assign calls to Oilers at his discretion. There will be no defined locations, the calls will be evenly assigned throughout the hospital complex.
2. The Campus Engineer will assist the Oilers if they are not familiar with the locations or equipment.
3. When there are no calls, they will make their rounds and complete all rounds sheets. However, if the calls are overwhelming the rounds will be done in the day tour. This decision will be made by Boiler Room Engineer upon reviewing the call sheets.
4. Emergencies such as floods, fire, fire alarms leaks etc. will be attended to by the Campus Engineer and one or both Oilers.
5. Chiller readings for D chillers and adjustments on the BMS for same building will be made by the Boiler Room Personnel. However if there is an emergency in the Boiler Room the Campus Engineer will handle these responsibilities until everything is back to normal.
6. The Engineers in the S & R building will answer heating and cooling calls in their respective buildings, record their chiller readings, assist the Oilers when possible and handle any routine maintenance while making rounds.

Further clarification will be given as any unanticipated problems arise.

(Union Ex. 19) (reprinted verbatim)

Graffeo testified that these directives meant that, after the layoffs, in addition to now responding to emergency calls on their own, the Oilers were also assigned to do the Maintenance Worker's duties. The Oilers went along with the directives and performed the Maintenance

Worker duties until December 2011, when Graffeo and another shop steward, Richard Bess, filed a grievance alleging that the Oilers were being forced to perform out-of-title duties.²

December 2011 Grievance and Step IA Hearing

A number of Union witnesses testified regarding the grievance. John Donohoe is a Senior Stationary Engineer and Acting Deputy Director of Engineering for the City's Human Resources Administration. He also served as a field representative for Local 30 from November 2000 until the end of 2012. In this capacity, he handled grievances and disciplinary actions, and negotiated contracts for over 900 Union members. Donohoe testified that in January 2012, a Step 1A hearing was held to address the grievance. The hearing was attended by Donohoe and Bess, as well as by Colin Copeland, an Associate Director in the Hospital's Labor Relations Department, Joseph Mulchan, then the Associate Director of Engineering, and Andy Malonzo, the Superintendent of Buildings and Grounds. Donohoe testified that, as a result of the hearing, the Union came to an agreement with the Hospital. This agreement was memorialized in a signed letter from Copeland to Donohoe ("Copeland Agreement"), which was dated February 1, 2012, and states:

In response to the Step 1A Conference held on January 17, 2012, the following is a description of our understanding reached on your grievance raised regarding the Oilers being directed to perform work outside their job duties (i.e. plunging toilets, fixing call bell cords and opening locks).

We have agreed that the Oilers will respond to areas calling with these types of emergencies to assess conditions and evaluate the need for follow-up action, but they will not be expected to complete tasks if they determine that another Tradesman is required for such repairs.

We do thank you for your cooperation and consider this matter to be resolved.

² Bess is a Stationary Engineer and an assistant shop steward at the Hospital. Like Graffeo, he generally works Tour 2, but sometimes works Tours 1 and 3 on overtime.

(Union Ex. 3)

Aftermath of Copeland Agreement

Bess testified that immediately after the Step IA hearing concluded, he went to the boiler room where he witnessed Malonzo relaying to Seepaul what had happened at the hearing. According to Bess, Malonzo said: “We are going to move these fucking oilers and put them on days so when Johnson Control comes . . . they could see these oilers on days trampling each other.” (Tr. at 467) (internal quotation marks omitted) Graffeo similarly testified that after the Copeland Agreement was made, Seepaul told him that if the Oilers did not continue doing the Maintenance Worker’s duties on the off-watches, he and Malonzo would move the Oilers off those shifts and onto the day shift, so that “when Johnson Control comes in, [the Oilers are] stumbling and bumbling over each other.” (Tr. at 121) Graffeo explained that Johnson Controls is a company that, at that time, was negotiating a contract with the City to take over the management of plant maintenance for HHC hospitals.³ Graffeo relayed these conversations to Donohoe.

Donohoe testified that, after hearing this, he called Malonzo on his cell phone. He stated that Malonzo became “heated” towards him, stating: “This is garbage. You guys are useless. I’m going to look to get rid of you guys You guys started a fucking war by filing this grievance. If you want a fucking war, this is what you fucking got.”⁴ (Tr. at 27) Malonzo also

³ During his opening statement, counsel for the Union explained that Malonzo’s “threats” meant that “Johnson control is going to lay [the Oilers] off because there’s no need for [them] to be all on that one tour. So play ball or else.” (Tr. at 10-11)

⁴ Bess and Graffeo both testified that Donohoe informed them of this conversation. Specifically, Graffeo testified that Donohoe informed him that he and Malonzo had a “shouting match,” in which Malonzo stated, “if you want an f’ing war, I’ll give you an f’ing war.” (Tr. at 137) Bess testified that Donohoe told him that Malonzo said that if the Oilers did not continue to do the work at issue “[t]here would be a fucking war with the union.” (Tr. at 446) (internal quotation marks omitted)

told Donohoe that once the Oilers were moved to the day shifts, they would no longer work weekends or holidays. Malonzo did not testify.⁵

Alleged Retaliatory Acts

Graffeo testified that after the grievance was filed, the Union began experiencing various other acts of retaliation. Specifically, he stated that Seepaul directed the person who writes the overtime schedule to remove the Oilers from a regularly-scheduled overtime shift that they had shared equally with the Firemen for the past two years. Additionally, the Oilers' yearly evaluations were changed to state that a Stationary Engineer's license was required for the Oilers' position and Seepaul posted an altered job description on the bulletin board stating the same thing. (*See* Union Ex. 20) Graffeo stated that, in fact, Seepaul was aware that the Stationary Engineer's license is not required for the Oilers' position.⁶ Graffeo also testified that Seepaul threatened to not sign for the Oilers' "high pressure time," which would make it more difficult for Oilers to be promoted to Engineer, since the Senior Engineer must verify that Oilers who are candidates for promotion have completed five years of this type of work. (Tr. at 121-122) Graffeo believed that these tactics were taken as a form of intimidation to try and keep the Oilers in line and to have them back off from the grievance. Graffeo explained that although these actions were taken by Seepaul, Seepaul stated that his orders were coming directly from Malonzo.

⁵ Malonzo is no longer employed by HHC.

⁶ Graffeo testified that DCAS sets these requirements and has never required that Oilers have a Stationary Engineer's license. Indeed, the Notice of Examination put out by DCAS does not state that this license is required for the position, nor does the job description itself. (*See* Union Exs. 2, 4) Additionally, Graffeo testified that since he had been at the Hospital, 15-18 Oilers had been hired, and none of them had this license.

February 10, 2012 Memo Ordering Reassignment

Subsequent to the phone call in which Malonzo allegedly threatened war on the Oilers, Malonzo authored a memo to Seepaul, dated February 10, 2012. The subject of the memo is “Maintenance Men Re-Assignment.” It states, in pertinent part:

Effective March 4, 2012, you are hereby instructed to schedule the three Maintenance Men assigned to your Department to handle all calls that are not in the Oilers’ job description. They will also answer any calls as directed by the Desk Engineer or Campus Engineer and will assist the Oilers to keep all Engineering space clean when there are no calls to be answered.

As a result of adding a Maintenance Man on each shift, one Oiler will be taken off the weekend shift and the 3-11 and 11-7 shifts. If any emergency(s) should occur please contact myself or Mr. Joseph Mulchan and we will address it.

All Oilers removed from the shifts affected will be assigned in the 7-3 shift from Monday to Friday and will be given days off on Holidays and weekends. Also, one of the Oilers will be used as vacation relief for all Oilers on the 7-3 shift and can be rotated to cover the vacation relief.

(Union Ex. 5)

Donohoe testified that Graffeo forwarded him this memo immediately after it was posted on the bulletin board in the Engineer’s control room. Donohoe then called Mulchan to discuss the memo and the threats Malonzo was making. According to Donohoe, Mulchan said: “You know, John, this is off the record, if this is done, if the guys just continue to do their work, nothing will happen. I’ll make sure nothing happens from this. The oilers won’t be moved.” (Tr. at 32) (internal quotation marks omitted) Donohoe then replied, referring to Malonzo’s February 10 memo: “You know, Joe, all due respect, but there’s a letter posted down in the engineer’s control room. It seems that Mr. Malonzo is moving forward.” (*Id.*)

February 17, 2012 Meeting

Graffeo testified that sometime in mid-February, he and Bess had a meeting with

Mulchan.⁷ Graffeo stated that at this meeting, Mulchan “told us straight out if you leave the oilers on their shifts to do [the Maintenance Worker’s duties], I’ll leave them alone, I won’t move them” (Tr. at 139) Bess similarly testified that Mulchan made this statement. (*See* Tr. at 468) Graffeo responded that the Copeland Agreement “allows the oilers to do what they were hired to do, not the maintenance man’s work, there’s nothing in this decision about moving the oilers.” (*Id.*) According to Graffeo, Mulchan then stated that the Oilers were being removed from Tours 1 and 3 because they weren’t doing their job. Graffeo told Mulchan that, as a shop steward, he would know if this was true, because if an Oiler wasn’t doing his job he would be written up or verbally reprimanded and that had never happened. At the hearing, Graffeo elaborated that “these oilers were on these shifts for years and years and years. There was never a problem with the amount of work they were doing All of a sudden the grievance happens, we get a favorable decision and now there’s a problem with the work the oilers are doing.” (Tr. at 144)

Mulchan testified regarding his version of events at this meeting. He explained that after Graffeo and Bess stated their position regarding the grievance and the Copeland Agreement, he questioned them as to why this was an issue because, since he had been working in the Department, he had never gotten any complaints about the Oilers having to respond to certain types of calls. He testified that, although he listened to Graffeo and Bess and respected their opinions, he told them that he disagreed with them and had to ensure that the hospital was being safely operated. When questioned as to whether he threatened to remove Oilers from the off-watches, Mulchan responded: “At that point, no. It was a discussion that I left with Andy

⁷ Mulchan testified that this meeting occurred on February 17, 2012.

Malonzo. Again, Andy Malonzo was part of the team and Jay Seepaul.”⁸ (Tr. at 272) Mulchan also stated that he did not, at a later point in time, tell Graffeo and Bess that the Oilers would be moved if they didn’t do the work at issue. However, he said that Malonzo might have had such a conversation without him.

The Decision to Reassign Oilers

Mulchan and Seepaul both testified regarding how the decision was made to reassign Oilers from the off-watches to Tour 2. Mulchan testified that after the Union filed the grievance he conferred with Robert Cummings, then the Director of Engineering, as well as with his administrators, and the decision was made that they needed to place Maintenance Workers back in the power plant to ensure that all emergencies and service calls for issues such as clogged toilets would be handled. Mulchan explained that the additional step of removing Oilers from the off-watches was taken because Seepaul recommended that these Oilers be moved to Tour 2 so that they could perform “preventative maintenance with supervision.”⁹ (Tr. at 265) He stated that he agreed with Seepaul’s recommendation, along with Cummings. Initially, Mulchan only stated that Cummings and Seepaul were involved in the discussions concerning reassigning Oilers to Tour 2. However, when asked to reconcile Malonzo’s February 10 memo directing Seepaul to remove an Oiler from the off-watches, with his prior testimony that Seepaul made that recommendation, Mulchan stated that the decision was a “coordinated effort” between Malonzo and Seepaul. (Tr. at 323)

⁸ This was the first time during his testimony that Mulchan mentioned Malonzo’s involvement in the decision to reassign the Oilers.

⁹ Preventative maintenance refers to work that is scheduled ahead of time to be done on equipment to ensure that it remains in proper working order.

Seepaul's testimony was initially vague about how the decision was reached to reassign the Oilers, stating that "[Mulchan] was involved with the conversation with Mr. Malonzo and Mr. Cummings from the time we had the first conversation, and then when we had to come up with a solution, I was called by Mr. Malonzo and asked . . . how to handle it." (Tr. at 373) However, during cross-examination, and again on re-direct, Seepaul admitted that Malonzo actually made the decision and directed him to remove an Oiler from the off-watches. (*See* Tr. at 411-12; 421, 425, 427)

Both Mulchan and Seepaul further elaborated on the reasoning behind the reassignment of Oilers to Tour 2. Regarding preventative maintenance, Mulchan explained that because the Hospital runs 24/7, no tour is better than the other to complete this work, but Tour 2 was when there was adequate supervision and "supplemental equipment in place to handle if a system is going down." (Tr. at 266) When asked whether there had ever been issues with preventative maintenance getting done prior to the Oilers' reassignment, Mulchan replied that there "could have been" (Tr. at 350) However, he admitted that he was not aware of any Oilers ever being written up for not performing their job. During cross-examination, Mulchan stated that the reassignment was made because Oilers were not responding to emergencies that he characterized as consisting of a combination of Maintenance Worker and Oiler work. Mulchan was also questioned about whether HHC had to undertake additional expenses to add Maintenance Workers to the off-tours. He testified that, contrary to what was stated in HHC's answer, there was nominal, if any, additional expense involved in moving Maintenance Workers back into the power plant, since they were simply reassigned from another department.¹⁰

¹⁰ HHC's answer to the improper practice petition stated that:

In March 2012, it became apparent to management that HCHC had

Seepaul testified that, after Malonzo directed him to remove Oilers from the off-watches, he told Malonzo that if the Oilers were going to be reassigned he wanted them moved to the day shift because he could “safely use these oilers during the course of the day when I’m here to handle the maintenance that I have left over” (Tr. at 427) Seepaul explained that it is easier to get preventative maintenance done during Tour 2 because he can confer with the nurses in the areas that he needs to work on and make sure that he has supplemental equipment put into place. He said he cannot get this done at night if the patients are sleeping. Seepaul also testified that since adding additional Oilers to the preventative maintenance crew everything was running very efficiently, and he no longer had to call in contractors to do certain jobs.

Seepaul testified that another reason for the reassignment was that the Oilers “weren’t doing anything” on Tours 1 and 3. (Tr. at 374) He elaborated:

All [the Oilers] were doing was taking the readings for the engineer, the reading on the chiller, which is supposed to be done by . . . a licensed operating engineer and not by the oiler, and do the rounds, which was also logged in all the logs that the engineer do the rounds and the engineer assigned that to them for lack of them not doing anything.

(*Id.*) During cross-examination, Seepaul clarified that he believed it was not the Oilers’ job to complete rounds because the Notice of Examination for the Oiler position states only that they “may” do so.¹¹ (Tr. at 397) He said that Oilers were only doing the rounds because the

undertaken the additional expense associated with having an additional employee – a Maintenance Worker – on both the night and evening tours, and that the presence of said Maintenance Worker significantly reduced the amount of work for the Oilers assigned to respond to service calls on the night and evening shifts.

(Ans. ¶ 50)

¹¹ The Notice of Examination for the Oiler position states, in part, that Oilers “may inspect, maintain, repair and/or tend equipment used in heating, ventilating, refrigeration, air conditioning and related mechanical systems; inspect and read meters, gauges and other controls

Engineers did not want to, and that the rounds sheets were designed to be completed by the Engineers. However, he acknowledged that Engineers cannot leave the boiler rooms they are assigned to, because they must be “within sound and sight of the equipment that’s operating.” (Tr. at 400). Seepaul also acknowledged that if the Engineer assigned the Oiler to complete the rounds, “that’s fine.” (Tr. at 399)

Bess, the Union’s assistant shop steward, testified that, contrary to Seepaul’s claims, rounds are completed by the Oilers. He pointed out that the rounds sheets for the S building floors and for the S building negative pressure isolation rooms are completed by the Oilers, and that both contain a signature line labeled “Oiler.”¹² (See Union Exs. 13, 14) He also stated that the Engineer has never completed these rounds sheets. While the Oilers are doing the rounds, the Engineer is manning the central plant, which he cannot leave. The rounds cover multiple buildings, which have multiple floors and are scattered across the 45-acre complex.¹³ Bess testified that it would take approximately two to four hours for the Oiler to complete the rounds sheets without any interruptions from emergency calls.¹⁴ He stated that after the Maintenance Workers were laid off, Oilers were not always able to complete the rounds on Tours 1 and 3 because they were overwhelmed by the number of emergency calls.¹⁵

of operating equipment” (Union Ex. 4)

¹² Seepaul admitted that the Oilers complete negative pressure rounds sheets. (See Tr. at 406) The documentary evidence demonstrates that there are negative pressure rounds sheets for multiple buildings, which consist of multiple floors. (See Union Exs. 14, 15, 16)

¹³ Graffeo also testified extensively regarding the size of the campus and the types of tests and readings the rounds entail in each building.

¹⁴ Graffeo similarly testified that it could take an hour and a half, or possibly two hours just to complete the rounds sheet for the D building. (See Tr. at 106)

¹⁵ Bess and Graffeo both testified that this could have negative safety consequences, because if

Regarding emergencies and service calls, Seepaul testified that although he generally doesn't work Tours 1 and 3, he is aware of what occurs during these tours because he reviews the emergency call logs every morning when he reports to work. These call logs tell him what types of emergencies occurred, what actions were taken to solve them, and whether he needs to call in another type of trade worker to handle the problem.¹⁶ Seepaul testified that the emergency call logs were not relied upon in making the decision to remove an Oiler from Tours 1 and 3. However, his general assessment of how many calls were for Maintenance Worker duties was that, "[o]n the off-tours you have about three calls." (Tr. at 418-419) Seepaul conceded that after the Copeland Agreement, when the Oilers stopped doing the Maintenance Worker duties, their other duties remained the same as they had been prior to the layoffs in 2010. However, he said that after the Oilers' reassignment, since there was now only one Oiler to answer service calls, any mechanical problems that arose during the off-tours would have to wait to be addressed on Tour 2.

the negative pressure rooms were not checked and they contained positive air, airborne diseases could spread throughout the entire floor. There was also extensive testimony from Graffeo regarding other alleged negative impacts on safety resulting from the number of Oilers on Tours 1 and 3 being reduced. For example, he testified that now that there is only one Oiler responding to calls on the off-watches, the Oilers' response time to fires is delayed, and it could possibly take 10 to 20 minutes for the Oiler to respond if the fire occurred on the opposite end of the campus. (See Tr. at 223) We note, however, that the petition alleges only retaliation, and is not a scope of bargaining petition alleging a safety impact. Consequently, we have only detailed the portions of this testimony that are directly relevant to the Union's allegations of retaliation.

¹⁶ HHC submitted the emergency call logs for most months during the period of time between January 2010 and July 2012. A review of the emergency call logs shows that they include calls for issues that would be the responsibility of Oilers or Engineers, such as calls to adjust the temperature, as well as for issues that would be the responsibility of the Maintenance Workers, such as clogged toilets. They also include calls for issues that required work orders to other shops, such as the Plumbing shop, be written up. (See HHC Ex. 1)

POSITIONS OF THE PARTIES

Union's Position

The Union argues that HHC violated NYCCBL § 12-306(a)(1) and (3) by removing Oilers from Tours 1 and 3 in retaliation for the Union filing an out-of-title grievance.¹⁷ It asserts that it is undisputed that HHC had knowledge of the protected activity. Further, the evidence demonstrates that retaliation for this protected activity was the sole motivating factor behind HHC's actions.

The Union argues that there is strong evidence of anti-union animus. The Union contends that Malonzo made the decision to move the Oilers from Tours 1 and 3, and he was clearly motivated by anti-union animus. Specifically, Malonzo stated that the Oilers started a "fucking war" by filing the grievance. (Union Br. at 17) (citing Tr. at 27) HHC did not attempt to refute that Malonzo made these comments. Malonzo and Seepaul then made a number of threats to Donohoe, Graffeo, and Bess, that were carried out within approximately one week. The Union contends that Mulchan's statements that nothing would happen to the Oilers if they continued to do the out-of-title work, and his testimony that he disagreed with the Union's position that the Copeland Agreement needed to be abided by, "reveals his complete disdain for

¹⁷NYCCBL § 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;

(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[.]

unions and the oilers' contractual rights" and, thus, "he is complicit in a violation of the NYCCBL." (*Id.*)

The Union contends that Mulchan and Seepaul are not reliable witnesses. During Mulchan's testimony, he initially attempted to describe the decision as being a coordinated effort between himself, Cummings, and Seepaul. However, he eventually admitted that Malonzo was involved. Thus, the Union argues that Mulchan's testimony that he relied on Seepaul's recommendation is unreliable because he specifically attempted to omit Malonzo. Further, Seepaul "testified and repeatedly confirmed that Mr. Malonzo directed him to remove the oilers from the off watches and that it was Mr. Malonzo's decision." (*Id.* at 12) Consequently, Seepaul's version of the decision making process does not align with Mulchan's. Regarding the rest of Seepaul's testimony, the Union argues that it is not credible because it was fraught with contradictions and he lied about his civil service qualifications. According to the Union, this demonstrates that Seepaul was willing to lie to preserve his reputation.

The Union asserts that HHC's improper motivation is further revealed through its "hasty and insufficiently considered decision to strike back against the oilers" (*Id.* at 6) The evidence demonstrates that the decision was made only nine days after the Copeland Agreement was executed. Thus, there is undeniable temporal proximity. Further, the Union contends that the "alleged 'decision making process' . . . lacked any research, critical analysis or legitimacy." (Union Br. at 14) Consequently, the Union argues that it has met its burden of establishing a *prima facie* case of unlawful retaliation.

The Union argues that HHC has not established that it had a legitimate business reason for its decision to remove Oilers from Tours 1 and 3. HHC has admitted that the Union's pursuit of its out-of-title grievance was the impetus behind the decision. Further, HHC has offered only

“inconsistent and unsupportable *post hoc* reasons” as its purported legitimate business reasons. (*Id.* at 23) While Seepaul attempted to maintain that there was a lack of work for the Oilers on Tours 1 and 3, Mulchan testified that Seepaul recommended that the Oilers be moved so that they could perform preventative maintenance with supervision.

The Union asserts that HHC’s argument regarding a lack of work is inconsistent and unsupported by the testimony and documentary evidence. The Oilers are still responsible, under the Copeland Agreement, for assessing the areas where service calls originate and attending to disasters and emergencies that arise. This takes the Oilers’ time and attention away from their many other assigned engineering duties. The Copeland Agreement only relieved the Oilers from plunging toilets, fixing call bell cords, and opening locks. The Union also argues that, despite HHC’s introduction into evidence of “stacks upon stacks of emergency call logs,” Seepaul best summed up the contents of these logs when he testified that there are “about three calls” per tour for emergency response on Tours 1 and 3. (*Id.* at 31) (citing Tr. at 418)

Furthermore, the Union contends that the removal of Oilers disturbed a “long established and required manpower model.” (*Id.* at 27) Significantly, there is a sharp contrast between the nine-month decision-making process regarding layoffs in 2010, and the “snap” decision made in 2012 to reassign the Oilers, which was made “through a single recommendation and without analysis or inquiry into the requirements to keep the Hospital safe.” (*Id.* at 27-28)

Consequently, the Union argues that HHC’s proffered legitimate business reason for removing an Oiler from Tours 1 and 3 was merely a pretext for retaliation. As a remedy, the Union requests that the Board order HHC to restore affected Oilers to Tours 1 and 3 and to make them whole for lost compensation and/or differentials, with interest. The Union also requests that the Board order HHC to post appropriate notices.

HHC's position

HHC argues that, assuming *arguendo* that the Union has demonstrated a *prima facie* case of retaliation, this does not establish a violation of the NYCCBL because the Hospital was motivated by legitimate business reasons when it reassigned Oilers from the overnight tours to the day tour. Specifically, this decision was made due to an overabundance of Maintenance Worker tasks and a relative shortage of Oiler work. Thus, the decision was based upon HHC's well-recognized managerial right to "direct its employees[;] . . . relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; [and] determine the methods, means and personnel by which governmental operations are to be conducted." (HHC Br. at 10) (citing NYCCBL § 12-307(b)) (internal quotation marks omitted)

HHC contends that Mulchan and Seepaul testified consistently regarding a "perceived lack of work for Oilers on the off-hour tours." (*Id.* at 10) It argues that Cummings and Mulchan made the decision to reassign the Oilers in reliance on Seepaul's recommendation that the Hospital could better utilize the Oilers by coordinating preventative maintenance on Tour 2 because there was less work after they ceased responding to "Maintenance Worker calls." (*Id.* at 10) According to HHC, an analysis of the logs shows, "as an example only, that of 536 recorded emergency calls in January 2012, over 450 of these calls were clearly responsive to 'Maintenance Worker jobs' such as lockouts, clogged toilets, and broken lights." (*Id.* at 10) Thus, according to HHC, over 80% of the calls the month prior to the reassignment were not the type of emergency calls that an Oiler would respond to. HHC acknowledges that this specific analysis was not done before the decision to reassign the Oilers was made but argues that

Seepaul's recommendation was made based on his familiarity with the logs and his belief that the majority of the emergency calls were for Maintenance Worker jobs.

Furthermore, HHC argues that its witnesses testified credibly as to the current state of the Hospital and agreed that the addition of two Oilers as part of the preventative maintenance crew on Tour 2 has been beneficial. According to HHC, Graffeo's testimony that Oilers can only perform certain functions when an Engineer is present supports HHC's position that more supervisors on Tour 2 means that the Oilers can perform additional tasks on that tour.

Consequently, HHC argues that it has provided credible and legitimate business reasons for the reassignment of Oilers from the off-watches to Tour 2 and that the Union has not proved that these reasons are pretextual. Thus, the petition must be dismissed.

DISCUSSION

The Union claims that HHC retaliated against Oilers for filing and pursuing an out-of-title grievance in violation of NYCCBL § 12-306(a)(1) and (3). To determine whether an action violates NYCCBL § 12-306(a)(1) and (3), this Board applies the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and adopted by the Board in *Bowman*, 39 OCB 51 (BCB 1987), and its progeny. This test states that, in order to establish a *prima facie* claim of retaliation, a petitioner must demonstrate that:

1. the employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and
2. the employee's union activity was a motivating factor in the employer's decision.

Bowman, 39 OCB 51, at 18-19; *see also Feder*, 4 OCB2d 46, at 42 (BCB 2011).

Regarding the first prong, this Board has held that the filing of contractual grievances constitutes protected union activity. *See Local 621, SEIU*, 5 OCB2d 38, at 12 (BCB 2012) (citing *Colella*, 79 OCB 27, at 53 (BCB 2007); *Fabbricante*, 61 OCB 38 (BCB 1998)). Here, we find that the Union has clearly established the first prong of the *Salamanca* test since the Union filed an out-of-title grievance on behalf of the Oilers and HHC does not dispute that it had knowledge of this grievance. *See also Colella*, 79 OCB 27, at 53 (citing *City Employees Union, Local 237*, 77 OCB 3, at 11 (BCB 2006)) (“[A]n employer’s participation in those proceedings is sufficient to establish its knowledge of the employee’s protected activity.”)

As to the second prong, “a petitioner must demonstrate a causal connection between the protected activity and the motivation behind management’s actions which are the subject of the complaint.” *OSA*, 7 OCB2d 20, at 19 (BCB 2014) (quoting *DC 37, L. 376*, 79 OCB 38, at 16 (BCB 2007)) (internal quotation marks omitted). “[T]ypically, motivation is proven through the use of circumstantial evidence, absent an outright admission.” *Colella*, 7 OCB2d 13, at 22 (BCB 2014) (internal quotation and editing marks omitted) (quoting *Burton*, 77 OCB 15, at 26 (BCB 2006)). Consequently, the Board considers “whether the temporal proximity between the protected union activity and the retaliatory action, in conjunction with other facts, supports a finding of improper motivation. *Id.* (citing *DC 37, L. 376*, 6 OCB2d 39, at 19 (BCB 2013)). Furthermore, claims of improper motivation must be based on statements of probative facts, rather than speculative or conclusory allegations. *See DC 37, L. 983*, 6 OCB2d 10, at 29 (BCB 2013) (citing *Morris*, 3 OCB2d 19, at 15 (BCB 2010)).

Regarding a causal connection, we find that this is a rare case where there is direct evidence of the employer’s improper motivation. The Union presented evidence that immediately after the Copeland Agreement was reached, Malonzo informed Seepaul of his plan

to reassign the Oilers to Tour 2 so that when an outside management company took over it would believe that there were more Oilers employed than was necessary and it would recommend that some of them be laid off. Malonzo then threatened Donohoe directly with this plan, stating that he would move the Oilers to Tour 2 and would “look to get rid of [them]” if the Union did not back off from attempting to enforce the Copeland Agreement. (Tr. at 27) Malonzo also told Donohoe that he “started a fucking war” by filing the grievance. (*Id.*) Shortly after this phone call, and only nine days after the Copeland Agreement was reached, Malonzo directed Seepaul to implement exactly what he had threatened to do. This evidence was not rebutted by any HHC witness. Thus, we find that Malonzo was improperly motivated by anti-union animus.

Further, there is unrebutted evidence that Seepaul repeated Malonzo’s threats to Graffeo and took other actions against the Oilers after the Union attempted to enforce the Copeland Agreement. For example, Graffeo testified that Seepaul ordered that the Oilers be removed from an overtime shift they had been regularly covering for the prior two years, and he altered the Oilers’ job description and evaluations to incorrectly state that a Stationary Engineers’ license was required for their position. Graffeo’s testimony was corroborated by documentation. (*See* Union Exs. 2, 4) Seepaul’s testimony did not address or explain these actions, and we credit Graffeo’s testimony in this regard. *See Colella*, 79 OCB 27, at 57 (BCB 2007) (“[F]ailure to adduce testimony contravening [petitioner’s] account from the very witnesses whose actions are at issue, and who were present to be asked, is telling, and we find that it enhances the credibility of [petitioner’s] account.”). In addition, the evidence demonstrates that Seepaul was acting under Malonzo’s direction. Since Seepaul acted at the behest of a supervisor who harbored anti-union animus, we conclude that Seepaul’s actions were also tainted by this animus. *See DC 37*, L. 983, 6 OCB2d 10, at 30 (citing *Town of Gates*, 15 PERB ¶ 3079 (1982)).

Moreover, Donohoe, Graffeo, and Bess all testified consistently and credibly that after the Copeland Agreement was made Mulchan told them that if the Oilers continued to do the work at issue, he would ensure that they would not be removed from the off-watches. On the other hand, when Mulchan was questioned as to whether he threatened to remove the Oilers from the off-tours at this meeting he replied: “At that point, no. It was a discussion that I left with Andy Malonzo.” (Tr. at 272) We find that Mulchan’s testimony is not only vague, but it does not rebut the testimony of the Union’s witnesses. Their testimony was not that Mulchan threatened them, but rather that he offered to ensure that Malonzo’s threats were not carried out if the Union did not attempt to enforce the Copeland Agreement. The Union did not back down and, consequently, it is clear that Mulchan allowed Malonzo’s plan to move forward. In light of all the above, we find that the Union has presented sufficient evidence to establish a *prima facie* case of retaliation.

Once a union has established a *prima facie* case, “the employer may attempt to refute this showing on one or both elements or demonstrate that legitimate business reasons would have caused the employer to take the action complained of even in the absence of protected conduct.” *DC 37, L. 1113, 77 OCB 33, at 25 (BCB 2006)* (quoting *Local 237, CEU, 77 OCB 24 (BCB 2006)*). When examining the employer’s proffered legitimate business reasons, “this Board will look to whether the record supports their contentions. When the reasons provided are unsupported and/or inconsistent with the record, this Board will find that the employer committed an improper practice.” *SBA, 75 OCB 22, at 24 (BCB 2005)* (citing *Local 1182, CWA, 57 OCB 1, at 23 (BCB 1996)*; *PBA, 71 OCB 25, at 13 (BCB 2003)*). Here, we find that HHC’s attempts to refute the *prima facie* case and to demonstrate that it would have reassigned the Oilers even in the absence of the Union filing and pursuing an out-of-title grievance must fail

because HHC's arguments are inconsistent with record evidence and based on testimony that we do not find to be credible.

As an initial matter, we note that although NYCCBL § 12-307 (b) authorizes the City to direct its employees and to determine the methods, means, and personnel by which its operations are to be conducted, nevertheless, "[a]ctions taken within an employer's managerial prerogative . . . may not be taken for a retaliatory purpose." *Local 1757, DC 37*, 6 OCB2d 13, at 15 (BCB 2013) (quoting *SBA*, 4 OCB2d 50, at 25 (BCB 2011)) (internal quotation marks omitted). Thus, the NYCCBL "does not provide [the Employer] unlimited protection from claims that its decisions violate the NYCCBL." *CTSG, L. 375*, 4 OCB2d 61, at 23 (BCB 2011); *see also Feder*, 4 OCB2d 46, at 41.

In attempting to rebut the Union's *prima facie* case, HHC argues that Cummings and Mulchan made the decision to reassign the Oilers, not Malonzo, and this decision was made in reliance upon Seepaul's recommendation. HHC further argues that Cummings and Mulchan were motivated by a "perceived lack of work for Oilers" and a belief that the Hospital could better use the Oilers for preventative maintenance during Tour 2, both of which it asserts are legitimate business reasons. (HHC Br. at 10)

The Board finds that HHC's assertion that Cummings and Mulchan made the decision to reassign the Oilers is not supported by the evidence or the testimony of HHC's own witnesses. On February 10, 2012, Malonzo authored a memo to Seepaul directing him to reassign Oilers from the off-watches to Tour 2. Further, Seepaul's testimony, although initially confusing and vague, eventually confirmed that Malonzo made the decision to reassign the Oilers. Similarly, Mulchan's testimony initially omitted Malonzo from the decision-making process, but he later stated that the decision to reassign the Oilers was a "coordinated effort" between Malonzo and

Seepaul and that he and Cummings supported the decision. (Tr. at 323) Indeed, the evidence demonstrates that Malonzo made the decision to remove Oilers from the off-watches and Seepaul then made a recommendation as to their duties once they were reassigned to Tour 2. However, to the extent that Mulchan and Cummings were involved, it appears as though they merely approved of the plan. In fact, Mulchan testified that he approved Seepaul's recommendation and that he did not do any independent analysis into the decision to reassign Oilers. Thus, the Board finds that Malonzo was primarily responsible for the decision to reassign the Oilers.

We further find that there is insufficient evidence to establish that Malonzo reassigned the Oilers due to an overabundance of Maintenance Worker tasks or a shortage of Oiler work. Here, the timing of the decision to reassign the Oilers is once again instructive. Malonzo formulated his plan to reassign the Oilers immediately after the Copeland Agreement was reached. This plan became a reality nine days later, when Malonzo ordered the reassignment to occur simultaneously with the addition of a Maintenance Worker to the off-tours. (*See* Union Ex. 5) (stating that, effective March 4, 2012, Maintenance Workers would be scheduled to handle service calls and an Oiler would be removed from the off-watches). Thus, the evidence demonstrates that the decision to reassign the Oilers was made before it could have been either observed or established that the addition of a Maintenance Worker to the off-tours led to a lack of work for the Oilers on these tours. Consequently, we find that HHC has not rebutted the Union's *prima facie* case of retaliation.

We also are not persuaded that there actually existed a lack of work for Oilers on the off-watches that could have explained the reassignment even in the absence of protected activity. Rather, we find that this asserted business reason is merely pretextual. First, Mulchan never

testified that a lack of work was the reason behind the Oilers' reassignment. He initially testified that Seepaul made the recommendation based on a need for preventative maintenance. However, during cross-examination he stated that the decision was made because the Oilers were no longer willing to respond to service calls for duties that they believed to be out-of-title. Where, as here, the employer offers "shifting and inconsistent rationales for challenged behavior[, this] strongly raises the question that [the] explanation [offered] constitutes a self-serving *post hoc* justification for retaliatory conduct, and does not warrant belief." *DC 37*, 1 OCB2d 6, at 31 (BCB 2008), *affd.*, *Matter of Roberts v. Board of Collective Bargaining*, Index No. 104695/08 (Sup. Ct. N.Y. Co. Feb. 16, 2010) (Lehner, J.), *affd.*, 90 A.D.3d 440 (1st Dept. 2011) (citing *SSEU*, 77 OCB 35, at 20).

Further, we do not find Seepaul's testimony regarding an alleged lack of work for Oilers to be credible, as it was inconsistent and contained several misrepresentations. *See COBA*, 2 OCB2d 7, at 53 (BCB 2009) (citing *DC 37*, 1 OCB2d 5, at 66-67(BCB 2008)) (witnesses found to be "incredible because their testimony contained inconsistencies with the existing evidence as well as several outright misrepresentations"). Seepaul's testimony was also directly rebutted by both documentary evidence and the testimony of the Union's witnesses. Seepaul testified during his direct examination, in vague and general terms, that the Oilers "weren't doing anything" on the off-watches. (Tr. at 374) When asked to elaborate, he stated that all they were doing was taking readings for the chillers and doing rounds, both of which were duties to be done by the Engineer. During cross-examination, Seepaul's testimony was mostly evasive, as he refused to answer many questions directly and answered others with questions of his own. When confronted with the job description in the Notice of Examination for the Oilers position, which states that Oilers "inspect and read meters, gauges, and related equipment," Seepaul continued to

insist that completing rounds was not part of the Oilers' job because the description began with the word "may." (Tr. at 397) However, he later said that it is "fine" if the Engineer assigns the Oiler to do the rounds, and he acknowledged that Engineers often cannot leave their assigned building. (*Id.* at 399) Indeed, a memo written by Seepaul states that when Oilers are not responding to service calls they "will make their rounds and complete all rounds sheets." (Union Ex. 19) Additionally, the Oilers job description clearly states that Oilers "[r]ead[] meters, gauges and other operating equipment" and "keep[] logs."¹⁸ (Union Ex. 2) Furthermore, Graffeo and Bess testified extensively regarding the job duties of Engineers and Oilers. Their testimonies were detailed, specific, and consistent with one another, and we find them to be credible. Specifically, Graffeo testified that completing rounds requires that readings be taken from numerous pieces of equipment that are located in multiple buildings with multiple floors, which are scattered across the 45-acre complex. Bess himself is an Engineer, and he stated that the Engineers "never" complete the rounds. Consequently, the evidence indicates that the Oilers had plenty of work to do on the off-tours.

We also find persuasive the fact that, prior to the layoffs in 2010, there had always been at least two Oilers assigned to Tours 1 and 3, working alongside Maintenance Workers. There is nothing in the record to indicate that the Oilers' workload somehow decreased between the time of the layoff and the time of the Oilers' reassignment. In fact, Seepaul admitted that it did not. Rather, it appears as though the only thing that changed was that the Union filed and pursued a grievance on behalf of the Oilers.

Furthermore, we are not convinced that the emergency call logs demonstrate an

¹⁸ We do not find that the use of the term "may" in the job description contained in the Notice of Examination holds the significance that Seepaul attributes to it.

“overabundance” of Maintenance Worker tasks in relation to a shortage of Oiler work. HHC admits that these logs were never reviewed prior to the decision being made to reassign the Oilers, but argues that the decision was made in part based on Seepaul’s familiarity with these logs. However, Seepaul stated that he believed there were only “about three calls” on Tours 1 and 3 for tasks that would be considered the responsibility of Maintenance Workers. (Tr. at 419) Regardless of this testimony, HHC contends that an analysis of the logs shows that, as an example, in January 2012, over 450 of 536 calls were for Maintenance Worker jobs. However, we find the logs from this period show that HHC included in the 450 calls approximately 214 calls for temperature adjustments, which are actually completed by the Engineers and Oilers. (See Union Ex. 19; Tr. at 106, 408, 486) Thus, even accepting the remainder of HHC’s analysis as true, the logs demonstrate that, at the very most, 236 of 536 calls were for Maintenance Worker tasks.¹⁹ We do not find that this represents an “overabundance” of the service and emergency calls, nor does it establish that there was a lack of work for Oilers on the off-watches.

Finally, we cannot find on this record that there existed a need for additional preventative maintenance on Tour 2 that would have resulted in the reassignment of Oilers even in the absence of the protected union activity. There is insufficient evidence in the record to demonstrate that there were any problems or issues with the preventative maintenance being completed prior to the Oilers’ reassignment. Thus, while HHC may believe that the addition of two Oilers to the preventative maintenance team has been beneficial, this *post hoc* observation does not constitute a legitimate business reason for the Oilers’ reassignment.

¹⁹ We note that the Trial Examiner counted approximately 140 total calls during this period that were clearly for Maintenance Worker tasks, as they were described in the hearing, such as clogged toilets, broken call bells, and responding to lockouts. Regarding the remaining calls which did not fit into that category or the category of temperature adjustments that are completed by an Engineer or Oiler, there was not enough evidence contained in the record for the Trial Examiner to make a definitive determination as to how to categorize these calls.

In light of all of the above, we find that HHC's proffered reasons for reassigning Oilers are not legitimate and are instead pretextual. We cannot conclude based on the evidence that the Oilers would have been reassigned were it not for the Union's filing and pursuing an out-of-title grievance on their behalf. Consequently, we find that HHC violated NYCCBL § 12-306(a)(1) and (3) when it reassigned the Oilers in retaliation for protected Union activity.

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 filed by Local 30 of the International Union of Operating Engineers, docketed as BCB-3020-12, be, and the same hereby is, granted; and it is further

ORDERED, that HHC restore Oilers who were removed from Tours 1 and 3, and weekend and holiday shifts, to their prior shifts; and it is further

ORDERED, that HHC make whole any Oiler adversely affected by the reassignment for lost compensation and/or differentials, if any; and it is further

ORDERED, that HHC post appropriate notices detailing the above-stated violation of the New York City Collective Bargaining Law.

Dated: February 2, 2015
New York, New York

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLNES
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER B. PEPPER
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 8 OCB2d 5 (BCB 2015), determining an improper practice petition between Local 30 of the International Union of Operating Engineers and the New York City Health and Hospitals Corporation.

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-3020-12, be, and the same hereby is, granted as to claim that the Health and Hospitals Corporation violated NYCCBL § 12-306(a)(1) and (3) by reassigning Oilers in retaliation for the Union filing and pursuing an out-of-title grievance on their behalf; and it is further

ORDERED, that the Health and Hospitals Corporation restore Oilers who were removed from Tours 1 and 3, and weekend and holiday shifts, to their prior shifts; and it is further

ORDERED, that the Health and Hospitals Corporation make whole any Oiler adversely affected by the reassignment for lost compensation and/or differentials, if any; and it is further

ORDERED, that the Health and Hospitals Corporation post appropriate notices detailing the above-stated violation of the New York City Collective Bargaining Law.

The New York City Police Department
(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.