PBA, 9 OCB2d 32 (BCB 2016)

(IP) (Docket No. BCB-4176-16)

Summary of Decision: The PBA moved to defer or alternatively to dismiss the City's petition alleging that the PBA violated NYCCBL §§ 12-306(b)(2), (c)(1), and (c)(5) by challenging the implementation of the 2016 health benefits agreements between the City and the MLC. The PBA argued that the petition should be dismissed on the grounds that it is untimely, that it fails to state a claim, and/or because it cannot obtain due process before the Board. It further argued that the Board should defer consideration of the petition pending the outcome of a grievance and lawsuit that it filed. The City and the MLC opposed the deferral and the dismissal of the petition. The Board determined that the petition was timely filed and that it states a cause of action, that deferral of the petition is not appropriate, and that the PBA has not demonstrated that it is unable to obtain due process before the Board. Accordingly, the motion was denied. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

THE CITY OF NEW YORK,
Petitioner,

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. and MUNICIPAL LABOR COMMITTEE,

Respondents.

INTERIM DECISION AND ORDER

On July 15, 2016, the City of New York ("City") filed a verified improper practice petition against the Patrolmen's Benevolent Association of the City of New York, Inc. ("PBA") and the

Municipal Labor Committee ("MLC").[1] The City alleges that the PBA violated §§ 12-306(b)(2), (c)(1), and (c)(5) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), when it challenged the implementation of the 2016 health benefits agreement between the City and the MLC. The PBA filed a motion to defer or dismiss the petition ("Motion") and argues that the Board should dismiss the petition on the grounds that it is untimely, that it fails to state a cause of action, and/or because the PBA cannot obtain due process. In the alternative, the PBA argues that the Board should defer consideration of the petition pending the outcome of a grievance and lawsuit that it filed regarding the 2016 health benefits agreement. In response to the Motion, the City and the MLC argue that the petition is timely, states a claim under the NYCCBL, should not be dismissed for lack of due process, and that there are no grounds for deferral. The Board finds that the City's allegations as set forth in the petition are timely and sufficient to state a claim under the NYCCBL, that deferral is not appropriate, and that the PBA has not shown that it cannot obtain due process before the Board. Accordingly, the Motion is denied.

THE CITY'S ALLEGATIONS OF FACT

In considering a motion to dismiss, the Board relies upon the factual allegations set forth in the improper practice petition. *See DEA*, 4 OCB2d 35, at 8 (BCB 2011). Therefore, unless otherwise noted, the following facts are taken directly from the City's verified improper practice

[1] The MLC is a council of certified public employee organizations created pursuant to a memorandum dated March 31, 1966, and codified at NYCCBL § 12-303(k). The City notes that the MLC is named as a respondent in order to "effectuate appropriate relief." (Pet. ¶ 3.)

petition.[2]

For over forty years, the City has negotiated and entered into agreements with the MLC concerning the terms and conditions of the Citywide health benefits program. The PBA has been a member of the MLC and has participated in health benefits program negotiations as an MLC member at all times relevant to this proceeding. The PBA has also attended MLC General Membership and Technical Committee meetings and has voted on agreements negotiated by the MLC, including the health benefits agreements at issue in this matter.

From 1966 through the present, the terms of all MLC-City agreements have been applied to PBA bargaining unit members and these members have "enjoyed the benefits" of all the letters, negotiations, and agreements that the MLC has entered into with the City.[3] (Pet. ¶ 8.) In 1992, the City and the MLC entered into an agreement ("1992 Agreement") that reaffirmed the ongoing practice between the City and the MLC to "continue to bargain and determine by mutual agreement the terms and conditions of employee health care benefits." (Pet. ¶ 9.) Then-PBA President Philip Caruso signed the 1992 Agreement. The health benefits agreements executed by the City and the MLC on June 30, 2004 and July 2, 2009, explicitly provided that the benefits negotiated pursuant to those agreements "apply to employers, employees and retirees covered by the New York City Employees Health Benefit Program." *See, e.g.*, Pet. ¶ 21, Ex. D (Complaint, Ex. 5 & 6). Since the 1992 Agreement, in addition to negotiating the terms of the Citywide health benefits program, the MLC has, on many occasions, negotiated and agreed to the joint issuance of requests

[2] The Board takes administrative notice that Exhibit D to the improper practice petition, a complaint filed by the PBA in New York State Supreme Court, contains exhibits which are not included in Exhibit D, but are nonetheless considered part of the petition. (*See* Pet., Ex. D.)

[3] The City notes that the PBA has actively sought judicial enforcement of certain City-MLC agreements, citing *Lynch v. City of New York*, 2012 N.Y. Slip Op. 33199, 2012 WL 8700415 (Sup. Ct., New York County 2012), *modified by* 108 A.D.3d 94 (2013), *revd.*, 23 N.Y.3d 757 (2014).

for proposals defining the benefits to be provided under the Citywide health benefits programs, including in 1996, 1999, 2001, and 2003.

The City and the MLC are parties to a Letter Agreement, dated May 5, 2014 ("2014 Health Benefits Agreement"), which includes the City's and the MLC's agreement to Citywide health benefits savings commencing in Fiscal Year 2015.[4] Each of the elements of the 2014 Health Benefits Agreement is based on the participation of the entire City workforce. The MLC negotiated the terms of the 2014 Health Benefits Agreement on behalf of its member unions. The MLC has consistently represented that upon ratification by its member unions, the 2014 Health Benefits Agreement was binding on all MLC members, including the PBA.

Pursuant to the 2014 Health Benefits Agreement, one billion dollars was transferred from the City-MLC-negotiated Health Insurance Stabilization Fund ("Stabilization Fund")[5] to the City, effective July 1, 2014, to support wage increases. (*See* Pet., Ex. B.) In addition, the health benefits changes for Fiscal Years 2015 and 2016 were applied to PBA members. The health benefits program changes that were applied to Police Officers were: HIP rate savings and GHI senior care savings for Fiscal Years 2015 and 2016; dependent eligibility verification audit; reduction from equalization obligation for mental health parity; Minimum Premium Program with GHI; Blue Cross administrative fee reduction; Express Scripts contract negotiations; care management changes; lower radiology and durable medical equipment fees; and availability of

[4] Pursuant to the 2014 Health Benefits Agreement, the City and the MLC agreed to Citywide health benefits savings of $400 million in Fiscal Year 2015, $700 million in Fiscal Year 2016, $1 billion in Fiscal Year 2017, and $1.3 billion in Fiscal Year 2018 and every year thereafter.

[5] We take administrative notice that, in 1986, the City and the MLC entered into a health benefits agreement which established the Stabilization Fund, also known as the Stabilization and Reserve Account. The Stabilization Fund is a "jointly administered fund which was established to pay any amounts due to health insurance carriers that exceed an agreed-upon 'equalization rate.'" *See MLC*, 4 OCB2d 51, at 3 (BCB 2011).

Telemedicine and ZocDoc.

Subsequent to the completion of the 2014 Health Benefits Agreement, the PBA continued to attend and participate in MLC Technical Committee meetings. The purpose of these meetings was to review and adopt specific health benefit modifications to achieve the cost savings targets set forth in the 2014 Health Benefits Agreement. In addition, after May 5, 2014, the PBA remained an active participant in MLC-City health benefits negotiations. In a May 1, 2014 letter to MLC Chair Harry Nespoli and Robert W. Linn, the Commissioner of the City's Office of Labor Relations, PBA President Patrick Lynch stated that the PBA "continues to insist that it be afforded the rights of all members of the MLC . . . and will continue to be present at MLC informational meetings to hear information about the City's desire, in the current round of bargaining, to make modifications to the health benefit program." (Pet. ¶ 28, Ex. F.) The PBA's participation in health benefits negotiations included "attending both General Membership and Technical Committee meetings, engaging in discussions during those meetings, engaging in internal MLC discussions, and voting on the adoption of proposed agreements, including the 2014 and 2016 [Health Benefits] Agreements." (Pet. ¶ 30.) According to the City, the PBA "never limited its participation in these negotiations." (*Id.*) In February 2016, the City and the MLC identified specific changes applicable to Fiscal Year 2017 necessary to meet the savings target identified in the 2014 Health Benefits Agreement, and incorporated these changes into a letter agreement, dated February 19, 2016 ("2016 Health Benefits Agreement").

Nevertheless, on April 19, 2016, the PBA sent a letter to Commissioner Linn explicitly objecting to the changes to health benefits and the Stabilization Fund set forth in the 2016 Health Benefits Agreement and sought the City's confirmation that "no changes to the healthcare benefits of PBA members will be altered on July 1, 2016, the effective date of the changes reflected in the

2016 [Health Benefits] Agreement."[6] (Pet. ¶ 21, Ex. D.) On May 16, 2016, the PBA commenced a lawsuit against the City in the Supreme Court, New York County ("Lawsuit"), alleging that the City had, *inter alia*, anticipatorily breached the parties' collective bargaining agreement by intending to implement health benefit changes in July 2016 that were negotiated by the MLC without the PBA's approval, among other violations. As relief, the PBA sought a preliminary and permanent injunction restraining the City from implementing the 2016 Health Benefits Agreement as to Police Officers or, alternatively, a preliminary injunction in aid of arbitration.[7]

To date, pursuant to TROs relating to the Lawsuit, the Fiscal Year 2017 health benefits changes have not been implemented for PBA bargaining unit members.

POSITIONS OF THE PARTIES

[6] While not alleged as a basis for the improper practice petition, the PBA also filed a grievance on May 13, 2016 against the City ("May 2016 Grievance") by sending a Step III grievance letter to NYPD Deputy Commissioner John Beirne challenging the implementation of the health benefit changes with respect to Police Officers. (*See* Affirmation of Robert Grass, dated September 2, 2016 ("Grass Aff."), Ex. C, p. 14 (Complaint).) This grievance asserts that the PBA is not bound by the 2014 Health Benefits Agreement, but seeks a remedy only concerning changes set forth in the 2016 Health Benefits Agreement.

[7] The Supreme Court denied the PBA's request for a temporary restraining order ("TRO") on June 16, 2016. On appeal, an Appellate Division, First Department justice issued a TRO pending determination of the full bench. On July 21, 2016, a full First Department panel issued, "pending a decision by Supreme Court on plaintiff's motion for a preliminary injunction," a TRO enjoining the City from implementing the terms of the 2016 Health Benefits Agreement with respect to PBA members. (*See* Grass Aff., Ex. A.)

On September 12, 2016, the Supreme Court denied the PBA's motion for a preliminary injunction and granted the City's cross-motion to dismiss the complaint. The decision also dissolved the TRO issued by the First Department pending the Supreme Court's decision. *See PBA v. City of New York, et al.*, 2016 N.Y. Slip. Op. 31729 (U), 2016 WL 4919953 (Sup. Ct. New York County 2016). The PBA appealed the decision to the First Department on September 16, 2016 and, on September 21, 2016, again obtained a TRO pending decision on its appeal.

PBA's Position

The PBA asserts that the City's petition is untimely and fails to state an improper practice claim, that a court or arbitrator can resolve the issue raised, and that a proceeding before the Board would deprive the PBA of its due process rights. Accordingly, the PBA argues that the Board should defer consideration of the City's petition or dismiss it entirely.

The PBA contends that the City's petition is time-barred because each of the City's claims arose prior to the four-month statute of limitations. Based on its correspondence to the City and the MLC in 2013 and 2014, and the actions it took during that period, the PBA asserts that the City knew or should have known of the PBA's position -- that the 2014 and 2016 Health Benefits Agreements were not applicable to Police Officers -- well before the statutory time period began to run.[8]

Further, the PBA argues that its objections to the 2014 and 2016 Health Benefits Agreements do not demonstrate a continuing violation that would allow the petition to be deemed timely. The PBA asserts that the petition is not timely simply because it told the City in April 2016 what it repeatedly told the City in 2013 and 2014. Similarly, the PBA asserts that the statute of limitations should not be tolled based on equitable estoppel because the PBA's conduct could not have led the City to believe that the matter would be resolved without arbitration or litigation. According to the PBA, it did not receive the benefits expected to be generated from the 2014

[8] The PBA claims that it took the following actions. In June 2014, it explicitly rejected the City's bargaining proposal to incorporate the terms of the 2014 Health Benefits Agreement into the parties' collective bargaining agreement ("CBA"). It refused to countersign a September 9, 2014 letter from the City's Office of Labor Relations requesting that the PBA agree to modify its welfare funds in accordance with the 2014 Health Benefits Agreement, and it filed a Step III grievance on September 29, 2014, asserting that application of the 2014 Health Benefits Agreement violated the CBA.

Health Benefits Agreement and, therefore, did not acquiesce to the implementation of that Agreement.

Next, the PBA argues that the petition fails to state a claim because the initiation of the May 2016 Grievance and the Lawsuit were protected activities that cannot form the basis of an improper practice under the NYCCBL. Litigation in the exercise of a protected labor right is not an unfair labor practice when it is not improperly motivated and has a reasonable basis. The PBA contends that the dismissal of the Lawsuit does not indicate that it was baseless because the First Department has issued a TRO preserving the *status quo* pending the PBA's appeal of that dismissal, marking the third time the appeals court has temporarily enjoined the City from implementing changes to Police Officers' health benefits in connection with the Lawsuit.

According to the PBA, the MLC lacks the authority to bind the PBA to the 2014 and 2016 Health Benefits Agreements as a matter of law. The PBA argues that the CBA expressly recognizes it as the "sole and exclusive bargaining representative" for unit members and the NYCCBL explicitly provides that the PBA is not obligated to negotiate jointly with other unions through the MLC or otherwise on health benefits. (PBA Memo at 15.) It maintains that neither the document that created the MLC nor the NYCCBL contemplate any role for the MLC in collective bargaining.[9] The PBA asserts that it is uncontested that the MLC has no authority independent of the PBA to bargain over health benefits for Police Officers. The City is thus required to bargain with the PBA "or its authorized agent" on this issue. (*Id*. at 16.) The PBA

[9] The PBA notes that NYCCBL § 12-314(b) expressly prohibits any organization from being certified to represent Police Officers, if, among other reasons, such organization "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department." It asserts that the MLC cannot be certified as the bargaining representative for Police Officers because it has members who are not Police Officers.

recognizes that "[t]he MLC can bargain over health benefits for Police Officers" if the PBA confers that authority. (*Id.* at 18.) It also acknowledges that "[t]here is no dispute that multiple certified employee organizations can consent to bargain collectively as a group." (*Id.* at 19.)

The PBA further asserts that its membership in the MLC does not bind it to the results of MLC negotiations. It notes that there is nothing inherent in MLC membership or in its rules and regulations that require members to delegate their right to bargain over health benefits to the MLC. Additionally, the PBA's attendance at General Membership and Technical Committee meetings did not confer authority on the MLC to act for Police Officers in negotiating and executing the 2014 and 2016 Health Benefits Agreements.

Giving the example of the Sergeants Benevolent Association ("SBA"), the PBA contends that, even if a member union grants the MLC authority to bargain on its behalf, the Health Benefits Agreement is binding only if incorporated into a ratified unit agreement. The PBA asserts that, unlike the SBA, it did not agree to a collective bargaining agreement governing the time period referenced in the 2014 Health Benefits Agreement. Neither the CBA nor the interest arbitration award that resulted in the CBA mentions the 2014 or 2016 Health Benefits Agreements or incorporates the Agreements' terms.[10] Accordingly, the PBA asserts, it has not received any of the benefits from the health benefits savings under the 2014 Health Benefits Agreement, including wage increases and increased contributions to its welfare funds for the corresponding period, which the unions that authorized the Agreements have received.

The PBA argues that it did not authorize the MLC to act as its agent in negotiating and executing the 2014 and 2016 Health Benefits Agreements. It asserts that the MLC lacked both actual and apparent authority to act as the PBA's agent in executing those Agreements. The PBA

[10] The CBA covers the period of August 1, 2010, through July 31, 2012.

did not manifest an intent for the MLC to have authority. Rather, it advised the City and the MLC on at least three occasions prior to the execution of the 2014 Health Benefits Agreement as well as prior to the 2016 Health Benefits Agreement that it did not authorize the MLC to bargain health benefits. (PBA Memo at 18.) Further, the MLC lacked apparent authority because the PBA has not done or said anything to give rise to the City's belief that the MLC possessed the authority to enter in to those Agreements on the PBA's behalf.

According to the PBA, the fact that it agreed to be bound by prior MLC health benefits agreements does not provide a legal basis for the MLC to negotiate and execute the 2014 and 2016 Health Benefits Agreements on behalf of Police Officers. The PBA maintains that it authorized the MLC to "negotiate and execute those agreements that it determines serve the best interests of Police Officers and has declined to authorize those agreements that it determines do not." (PBA Memo at 21.) It contends that past agreements do not override the PBA's legal status as the sole and exclusive bargaining representative for Police Officers. Further, it asserts that the cases cited by the City are distinguishable because they do not address the MLC's authority to bind a member union to an agreement independent of authorization from that member union.

The City's proposals during unit negotiations following the execution of the 2014 Health Benefits Agreement are an acknowledgment that the PBA has the authority to negotiate health benefits independent of the MLC, according to the PBA. The City expressly sought the PBA's consent to the 2014 Health Benefits Agreement and also offered the PBA additional wage increases if it agreed to health benefit changes "over and above any savings achieved through" the 2014 Health Benefits Agreement. (PBA Memo at 28.) The PBA asserts that the City's proposals indicate its willingness to provide "different health benefits to different City workers outside the structure of MLC-negotiated agreements." (*Id.*)

Moreover, the PBA contends that it did not need to withdraw from group bargaining with the MLC because it was not part of the group of unions that authorized the 2014 and 2016 MLC Agreements. It asserts that it has not repudiated the Agreements since it was never bound by them.

With respect to deferral, the PBA argues that the central issue raised in the petition is also the subject of the Lawsuit and the May 2016 Grievance. Therefore, the Board should defer consideration of the petition pending the outcome of those matters. According to the PBA, the Board has deferred improper practice petitions to grievance arbitration when the allegations require interpretation of a collective bargaining agreement and when arbitration would resolve claims arising under the NYCCBL and the agreement. The PBA asserts that the City's improper practice claims are "inextricably intertwined" with the PBA's claims for breach of the CBA. (PBA Memo at 7.) The Lawsuit asserts claims for violations of the CBA obligating the City to recognize the PBA as the sole and exclusive bargaining representative for Police Officers, and the central issue in the City's petition is whether the 2016 Health Benefits Agreement is binding on the PBA. Accordingly, the PBA argues that either the court or an arbitrator can resolve the issue raised in the City's improper practice petition and that deferral is appropriate.

The PBA asserts that it is not estopped from arguing arbitral deferral because there is nothing inconsistent about its position in the instant matter and its assertion that the arbitration process is futile in sworn proceedings in the Lawsuit.[11] According to the PBA, it has continued to pursue the May 2016 Grievance through the contractual grievance process.

[11] The PBA notes that an arbitrator would decide the case only if the grievance procedure is "not determined to be futile." (PBA Memo at 6.) In the Lawsuit, the PBA asserted that the CBA's grievance procedure "does not provide a means to resolve the PBA's dispute" with the City regarding the health benefit changes. (Grass Aff., Ex. C at 14.)

Lastly, the PBA contends that it cannot receive due process before the Board because the interests of the MLC and the City are aligned and adverse to the PBA and the MLC-appointed Board member is a partner at Stroock & Stroock & Lavan LLP ("Stroock"), the law firm that represents the MLC. As a result, the PBA argues that there will effectively be four City-designated Board members and that the Board would not be truly tripartite. The PBA asserts that the situation cannot be remedied by the MLC-appointed member's recusal or substitution with an alternate member because permitting the MLC to appoint a substitute Board member would not cure the fact that the MLC's interests are adverse to the PBA.

City's Position

The City argues that the Board should reject the PBA's stated grounds for dismissal of the petition and that deferral is inappropriate. According to the City, the petition is timely because it was filed within four months of the PBA's repudiation of the 2016 Health Benefits Agreement. The City asserts that the PBA acquiesced to the implementation of the 2014 Health Benefits Agreement for Fiscal Years 2015 and 2016. Although it expressed opposition to the 2014 Health Benefits Agreement, the City asserts that the PBA maintained its membership in the MLC, insisted on being afforded the rights of all MLC members, continued to attend technical meetings, and was an active participant in the MLC's negotiations with the City regarding modifications to the Health Benefits Agreement after May 2014. According to the City, despite the PBA's equivocal statements, it accepted the benefits of the implementation of the 2014 Health Benefits Agreement without objection until May 2016, when it repudiated the Health Benefits Agreements by filing the Grievance and Lawsuit.

Alternatively, the City argues that the PBA's objections to the Health Benefits Agreements represent a continuing violation. As a result, the City's time to file did not begin to run until the

last definitive statement of repudiation. Alternatively, the City submits that the Board should toll the statute of limitations under the equitable estoppel doctrine. According to the City, its belief that the 2016 Health Benefits Agreement would be binding on all MLC members was reasonably attributable to the PBA's conduct, notwithstanding the PBA's statements regarding the 2014 Health Benefits Agreement, as those statements were not acted upon until 2016.

The City maintains that the petition states a *prima faci*e cause of action under the NYCCBL by providing the predicate factual assertions to support its allegation that the PBA, by authorizing coalition bargaining and failing to lawfully withdraw, bound its members to the 2014 and 2016 Health Benefits Agreements and that the PBA unlawfully repudiated those Agreements in 2016. The City acknowledges that the MLC can bargain health benefits for police officers only when the PBA confers the authority to act as its agent and argues that the facts demonstrate that the PBA did grant the MLC that authority. (City Memo, p. 14.) The City asserts that the PBA was not exercising a protected right when it filed the Lawsuit and that it is well-established that resorting to judicial intervention or insisting on the grievance/arbitration procedure "can itself be evidence of an improper practice." (City Memo at 13.)

The City submits that the PBA's arguments that the petition fails to state a cause of action go to the substantive merits of the case and are therefore not properly raised in a motion to dismiss. Rather, issues of factual dispute must be resolved through an evidentiary hearing.

The City argues that deferral to the Lawsuit should be rejected because the Lawsuit has been dismissed. It asserts that the Board's deferral to a judicial forum is discretionary and that there is no justification to exercise that discretion in this instance, particularly where the Lawsuit was dismissed on the grounds that the PBA failed to exhaust its administrative remedies. It contends that deferral to arbitration is likewise inappropriate for three reasons. First, the claim in

the petition is not a contract interpretation issue and cannot be resolved by an arbitrator. According to the City, the petition is premised on an allegation that the PBA repudiated the 2014 and 2016 Health Benefits Agreements. This claim cannot be deferred because it requires the Board to determine whether the PBA authorized the MLC to bargain health benefits and/or properly withdrew from coalition bargaining. Therefore, the City argues, such a claim neither depends on nor requires an interpretation of the CBA. Second, the City argues that the PBA is estopped from advocating for deferral to arbitration because it asserts, in sworn pleadings in this matter and the Lawsuit, that the arbitration process is futile. Third, the City contends that the PBA has already declined to pursue arbitration and cannot now use arbitration "as a sword" to circumvent the Board's exclusive, non-delegable jurisdiction over the issue raised in the improper practice.[12] (City Memo at 7.)

Finally, the City disputes the assertion that the PBA cannot receive due process before the Board. The City argues that a legally sufficient claim of deprivation of due process requires specific factual allegations of bias, not hyperbole. It asserts that there is no reason to assume that the Board's Labor members will act out of bias simply because the MLC filed an *amicus* motion in the Lawsuit. Moreover, the PBA's concern with one Labor member can be remedied by his recusal. Recusal by Board members when a true conflict arises is a well-established practice. Accordingly, the City requests that the Motion be denied.

[12] The City notes that it took this same position in the Lawsuit when it asked the court to defer to the Board.

MLC's Position

The MLC argues that the Motion cannot succeed because the City has pled facts sufficient to state a claim of breach of the duty to bargain in good faith.[13] The petition asserts that the PBA violated its duty to bargain in good faith by challenging the 2016 Health Benefits Agreement despite the parties having bargained to agreement and the fact that the PBA was bound by that negotiation and the 2014 Health Benefits Agreement. According to the MLC, the PBA's assertion that it was not bound to the 2016 Health Benefits Agreement does not mean that the City has failed to state a claim by asserting that the PBA is bound by it.

The MLC submits that the PBA's actions and continued insistence on participating in Citywide benefits and agreements granted the MLC authority to negotiate health benefits on the PBA's behalf and that withdrawing that authorization requires more than a letter. According to the MLC, the ratified 2014 Health Benefits Agreement is binding on all MLC member unions, regardless of whether the PBA voted to approve the agreement.

The MLC asserts that once a union is part of an association that bargains on behalf of a group of unions, it cannot selectively accept or reject portions of negotiated agreements. Moreover, the terms of the Citywide health plans and the Stabilization Fund are collective in nature, and individual unions cannot opt out. This is because the City health benefits consist of "unitary pooled plans" designed and priced based upon an entire pool of participants. (MLC Memo at 30.) The MLC asserts that the basic health plan designs were created on a Citywide basis and have never been subject to individual union negotiation. Moreover, the comparative costs of the two main City health plans and the number of employees included in the programs

[13] The MLC defers to the City's response regarding timeliness.

directly impacts the City's obligations under the Stabilization Fund.[14] Accordingly, the PBA's desire to have its own health plan while also receiving Citywide benefits is contrary to the nature of how the Citywide health plans, Stabilization fund, and experience ratings work.[15]

According to the MLC, while the PBA could negotiate on its own if it properly withdrew from coalition bargaining, it cannot transform the existing Citywide benefits and agreements into ones that are PBA-specific. The MLC maintains that it is this "irreconcilable reality" that undermines the effect of the PBA's letters disavowing participation through the MLC but insisting upon continued participation in both the Citywide benefits and the MLC's administration of those benefits. (MLC Memo at 36.)

The MLC argues that deferral is inappropriate because resolution of the City's improper practice claim does not arise from or require interpretation of the CBA. It contends that the Board has exclusive jurisdiction over the claim that the PBA repudiated the Health Benefits Agreements and that claim cannot be resolved through arbitration. The City has not raised an issue over the interpretation of any language in the CBA or the Health Benefits Agreements. Rather, the petition involves the bargaining obligations of the City, the PBA, and the MLC. The MLC argues that the PBA's status as the certified bargaining representative for Police Officers does not prevent it from

[14] The MLC asserts that a 1982-1984 agreement between the City and the MLC required equalization of premium rates charged by health benefit providers. That agreement has been amended and incorporated into later agreements covering all employees who participate in City health benefits. Thereafter, the MLC and the City established the Stabilization Fund to effectuate equalization. (MLC Memo at 7-9.)

[15] The MLC submits that the Stabilization Fund is a pooled asset. According to the MLC, the PBA's position that it has some "unspecified claim" to some proportion of the Stabilization Fund and can block the MLC's agreement with the City to utilize the funds for certain purposes even though the City contributes to the Stabilization Fund on a Citywide basis, is baseless. (MLC Memo at 32.) In addition, the fact that the PBA's CBA repeats the language of the Stabilization Agreement does not transform the Fund into something that the PBA can unilaterally control.

bargaining on certain issues as part of the MLC, and when and how a union enters and exists a coalition in the course of bargaining cannot be determined by reference to a boilerplate union recognition clause. The MLC asserts that since no party disputes that the PBA represents Police Officers, no interpretation of that provision will resolve the City's claim of failure to bargain in good faith.

The MLC argues that the fact that the MLC appoints both Labor members of the Board and is a party appearing before the Board does not create a conflict that impairs due process. It asserts that the Board has exclusive, non-delegable jurisdiction to hear improper practice claims and that there is no other forum in which the City's improper practice claim may be brought. It argues that the PBA cannot divest the Board of its jurisdiction and leave the parties with no forum simply because the PBA has taken a legal position contrary to the City and the "vast majority" of municipal unions. (MLC Memo at 14.) The MLC notes that the City regularly appears before the Board as a party and also appoints the City members of the Board. This power to appoint and remove members does not foreclose the City from appearing before the Board or preclude the Board from fulfilling its statutory mandate.[16] Further, the practice of the Labor member at issue is to recuse himself from cases in which his law firm acts as counsel, and then another Labor member or an alternate member deliberates on the case. The Administrative Code contemplates that the Board can function without all seven members. Indeed, a quorum requires only one Labor member, one City member, and one impartial member, or any four members. Therefore, the MLC argues, the Motion should be denied.

[16] The MLC contends that the Board's composition is not unique in that there are many other tribunals where hearing officers or officials are appointed by a government entity that also appears as a party. According to the MLC, courts have consistently found that merely being an appointee of a party does not disqualify a hearing officer from the case.

DISCUSSION

We have long held that, when evaluating a motion to dismiss a petition alleging a statutory violation, "we deem the moving party to concede the truth of the facts alleged by the petitioner . . . [and] accord the petition every favorable inference." *DEA*, 4 OCB2d 35, at 8 (quoting *Fabbricante*, 61 OCB 38, at 8 (BCB 1998)). In short, the Board construes the petition to allege whatever may reasonably be implied from its factual allegations. We have explained that in considering a motion to dismiss, we cannot rely upon facts asserted by the moving party that are contrary to those alleged in the petition since we do not resolve questions of credibility and weight. *See Farina*, 31 OCB 20, at 7 (BCB 1983). Rather, such factual questions are properly determined after an evidentiary hearing. *See PBA*, 73 OCB 13, at 10 (BCB 2004). Before reaching the merits of the Motion, however, we must address the threshold issue of whether the petition is untimely.

Motion to Dismiss the Petition as Untimely

Our law establishes that an improper practice petition may be filed no later than four months after the disputed action occurred. *See* NYCCBL § 12-306(e); s*ee also* § 1-07(b)(4) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"). Here, the City challenges three actions taken by the PBA: the April 7, 2016 letter to the City, the April 19, 2016 letter to the City, and the Lawsuit filed on May 16, 2016. The City's petition was filed on July 15, 2016, within four months of each of the challenged actions; thus it is timely.

The PBA argues that the City's time to file should be measured from various dates starting in 2013 which represent instances where the PBA expressed disapproval of the 2014 Health Benefits Agreement or claimed that it was not binding on its members. As such, the PBA asserts

that the City knew or should have known that the PBA rejected the 2016 Health Benefits Agreement well before four months prior to the petition filing date.[17] While the facts asserted by the PBA may play a role in determining the merits of the petition, *i.e.*, whether the PBA was bound by the terms of the 2016 Health Benefits Agreement, they do not render the petition untimely.

Moreover, we have held that "[t]he statute of limitations period does not necessarily begin to run on the date a party announces an intended change; rather it begins to run after the intended action is actually implemented and the charging party is injured thereby." *DC 37*, 6 OCB2d 24, at 19 (BCB 2013) (petition filed two weeks before the implementation of previously announced revised job specifications is timely) (citation and internal quotation marks omitted); *see also COBA*, 69 OCB 26, at 6 (BCB 2002) (knowledge of intended policy revision more than four months prior to filing the petition does not make the petition untimely as it was only upon implementation that the union had knowledge of definitive acts to put it on notice to complain).[18] The City's petition was filed within four months of the challenged actions taken by the PBA. Thus, it is timely.

Motion to Dismiss the Petition for Failure to State a Cause of Action

The PBA maintains that the allegations in the petition fail to state a claim that constitutes

[17] In correspondence dated May 30 and June 10, 2013, May 1, 2014, and February 22, 2016, the PBA advised the City and the MLC that it had not authorized the MLC to be its bargaining agent in negotiations over health benefits and/or did not approve MLC-negotiated changes. The PBA further asserts that it took additional actions in 2014 which put the City on notice of its position, including its rejection of the City's June 17, 2014 bargaining proposal to incorporate the terms of the 2014 Health Benefits Agreement into the parties' CBA, its refusal to countersign a September 9, 2014 letter from the City asking the PBA to modify the PBA welfare fund in accordance with the 2014 Health Benefits Agreement, and its September 2014 initiation of a grievance.

[18] Moreover, based on the facts pled by the City, it had no basis to file an improper practice prior to April 2016 because the PBA accepted the changes that were implemented as a result of the 2014 Health Benefits Agreement and the PBA only took action in April and May 2016 to stop the implementation of the 2016 Health Benefits Agreement.

an improper practice. At the outset, we emphasize that in considering the Motion, we do not make a factual determination as to whether the PBA's conduct as alleged by the City constitutes a failure to bargain collectively in good faith. Rather, we are simply determining whether the petition sets forth sufficient facts which, if true, state a claim under the NYCCBL. *See PBA*, 73 OCB 13, at 10.

According to the City, the PBA has failed to bargain in good faith by challenging the implementation of the 2016 Health Benefits Agreement, in violation of NYCCBL §§ 12-306(b)(2), (c)(1), and (c)(5). NYCCBL § 12-306(b)(2) provides that: "It shall be an improper practice for a public employee organization or its agents . . . to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer[.]" To comply with the statutory duty to bargain collectively in good faith, the NYCCBL provides that both a public employer and a certified public employee organization must meet five obligations, two of which are "(1) to approach negotiations with a sincere resolve to reach an agreement" and, "(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement." NYCCBL § 12-306(c)(1) and (5).[19] In determining whether a party has breached

[19] The remaining obligations, set forth in NYCCBL § 12-306(c), are:

> (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
> (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business . . . ;

its duty to bargain collectively in good faith, the Board engages in a fact-specific inquiry encompassing an evaluation of the "totality of a party's conduct." *CWA, L. 1180*, 6 OCB 30, at 9 (BCB 2013) (citation omitted).

We find that the City has alleged sufficient facts to state a claim for failure to bargain in good faith under the NYCCBL. It is well-established that the subject matter in dispute, health benefits, falls within the scope of collective bargaining. *See MLC*, 7 OCB2d 6, at 16 (BCB 2014); *Local 621, SEIU*, 51 OCB 34, at 12 (BCB 1993). The facts in the petition allege that the MLC has negotiated health benefits with the City on behalf of all its member unions, including the PBA, for decades. At all times relevant herein, the PBA has been a member of the MLC and the City alleges that it participated in the negotiations for the 2014 Health Benefits Agreement as a MLC member. The 2014 Health Benefits Agreement was approved by the MLC. Therefore, the City asserts that the MLC is a bargaining coalition, and the 2014 Health Benefits Agreement is binding on all MLC members, including the PBA.

While the City concedes that the PBA took actions to communicate its disapproval of the terms of the 2014 Health Benefits Agreement, it maintains that the PBA did not clearly manifest an intention to withdraw from coalition bargaining at an appropriate time. The City further asserts that Citywide health benefits savings targets were memorialized in the 2014 Health Benefits Agreement and all changes negotiated to the health benefits program as a result of the 2014 Health Benefits Agreement for Fiscal Years 2015 and 2016 were applied to the PBA's bargaining unit members. It asserts that thereafter and pursuant to the 2014 Health Benefits Agreement, the PBA continued to attend MLC Technical Committee meetings and to participate in negotiations with the City and the MLC to identify modifications in the health benefit plans for Fiscal Year 2017.

The petition alleges that despite the PBA's participation in coalition bargaining and failure

to disclaim health benefits changes implemented between May 2014 and May 2016, the PBA, by its April 2016 letters, rejected the implementation of the health benefit modifications set forth in the 2016 Health Benefits Agreement. It then took affirmative steps to halt the implementation of those benefits as to Police Officers by applying to the Court for an injunction. Construing the City's allegations to accord them every favorable inference, we find that these allegations, if proven, could support a claim of failure to bargain in good faith in violation of NYCCBL § 12-306(c)(1) and (c)(5). Because the City has sufficiently pleaded claims under NYCCBL § 12-306(c)(1) and (c)(5), we also find that it has pleaded a claim under NYCCBL § 12-306(b)(2).

The arguments offered by the PBA urging dismissal of the petition for failure to state a claim are not persuasive. Rather, these arguments raise issues of material fact, or legal arguments relying on those disputed facts, that are relevant to the Board's determination concerning whether the MLC had the authority to negotiate health benefits on the PBA's behalf and whether the PBA is bound by the MLC's agreements. We note that neither the PBA's status as the exclusive bargaining representative for Police Officers nor its statutory authority to negotiate all terms and conditions of employment for its members is at issue here. It is undisputed that the PBA can authorize the MLC, as its agent, to bargain over health benefits for Police Officers. (*See, e.g.*, PBA Memo at 16, 18; City Memo at 14; MLC Memo at 26.) The issue raised in the petition is whether the PBA, through its actions, authorized the MLC to negotiate with the City on its behalf over health benefits for its members.

In reaching the merits of the City's claims, the Board will need to consider all the facts and arguments raised, including whether the PBA expressly or implicitly authorized the MLC to negotiate on its behalf, whether MLC membership alone is authorization for the MLC to negotiate on a union's behalf, any authorizations by the PBA for the MLC to bargain on its behalf prior to

2014, and any actions the PBA took to disavow the MLC agreements and/or withdraw from coalition bargaining. At this juncture, the City is merely required to establish sufficient facts that, given every favorable inference, could support a claim of a failure to bargain in good faith. *See PBA*, 73 OCB 13, at 10. It has done so here and therefore the motion to dismiss for failure to state a claim is denied.

Motion to Defer Consideration of the Petition

Since we have determined that the City has stated a cause of action under the NYCCBL, we now turn to the question of whether that claim may be deferred pending determination of the May 2016 Grievance and the Lawsuit. This Board has exclusive, non-delegable jurisdiction under NYCCBL § 12-309(a)(4) to remedy improper practices. See, e.g., UFT, 6 OCB2d 19, at 11 (BCB 2013). Based on the particular facts and circumstances raised in a given case, we have exercised discretion to defer improper practice matters. *See Ornas*, 65 OCB 12, at 6 (BCB 2000) (declining to defer to Office of Administrative Trials and Hearings ("OATH") disciplinary hearing where it would not resolve improper practice claim); *see also UFA*, 45 OCB 39, at 15-16 (BCB 1990) (Board is not bound by any statutory or other legal requirement to defer its jurisdiction merely because a case involving similar issues is being concurrently considered in a judicial forum).

There have been instances where the Board has considered deferral of a matter to pending litigation where resolution of the action would also resolve some or all of the claims under the NYCCBL. *See, e.g., Ornas*, 65 OCB 12, at 6; *DC 37*, 35 OCB 3, at 9 (BCB 1985) (refusing to defer to proceedings on appeal before the Civil Service Commission ("CSC") because the lower tribunals did not "explore[] the possibility that the actions taken against [the unit member] were motivated by anti-union animus and might constitute a violation of the NYCCBL"); *Schoenbrun*,

33 OCB 8, at 10-12 (BCB 1984) (holding improper practice petition in abeyance where a prior matter filed by the same petitioner was pending in federal court and could resolve issues raised before the Board).

Similarly, the Board will defer a matter to arbitration when the improper practice requires interpretation of the collective bargaining agreement and where it appears that arbitration would resolve both the statutory and the contractual claims. *See, e.g., UFA*, 4 OCB2d 3 (BCB (2011), *affd., Matter of Uniformed Firefighters Assn v. City of New York, et al,* Index No. 101817/2011 (Sup. Ct. N.Y. Co. Feb. 17, 2012) (Huff, J.), *affd.*, 106 A.D.3d 616 (1st Dept. 2013); *Local 1757, DC 37*, 67 OCB 10 (BCB 2001). However, the Board has not deferred claims to arbitration where the improper practice and contractual claims arose from the same facts but raised distinct legal issues. *See, e.g., ADW/DWA*, 3 OCB2d 8, at 13 (BCB 2010) (Board declined to defer petition alleging refusal to negotiate compensatory time procedures to arbitration where determination of grievance regarding employee's forfeiture of accrued compensatory time would not resolve the claim). *See also UFA*, 4 OCB2d 3, at 6-7 (deferral to arbitration not appropriate where the source of right arises from a failure to bargain and not from the parties' agreement); *DC 37*, 1 OCB2d 4, at 9-10 (BCB 2008) (declining to defer improper practice claims to arbitration where resolution of contractual disciplinary charges would still leave statutory interference and discrimination claims unresolved).

We do not find that deferral to arbitration is warranted in the instant matter. The dispute before us is whether the PBA has violated the NYCCBL by refusing to comply with the implementation of the 2016 Health Benefits Agreements. To resolve this dispute, we must consider the factual circumstances surrounding the negotiation and execution of the Health Benefits Agreements and determine whether the PBA was part of the coalition that is bound to

them. If the PBA is bound, we must determine whether the alleged actions it has taken to repudiate or disavow the Health Benefits Agreements constitute a violation of the NYCCBL. Deferral to arbitration would not resolve the statutory issues before us because these legal issues do not require an interpretation of any provisions of the CBA. It is within the exclusive jurisdiction of this Board to determine whether a party has breached its duty to bargain in good faith. Here, this determination rests on facts outside the CBA and legal issues surrounding the binding nature of coalition bargaining that do not require interpretation of the CBA. Therefore, deferral of the City's claims to arbitration is not appropriate.[20]

We also do not stay or defer this matter pending resolution of the Lawsuit. The decision to defer a matter to another forum is entirely within the Board's discretion. The Supreme Court dismissed the Lawsuit in September 2016 on the ground that the PBA failed to exhaust its administrative remedies. *See PBA*, 2016 WL 4919953. Indeed, this Board has exclusive jurisdiction to remedy improper practices. *See* NYCCBL § 12-309(a)(4). The matter before us seeks a determination of whether the PBA violated the NYCCBL by challenging the implementation of the 2016 Health Benefits Agreements. Since the Court does not have the jurisdiction to determine whether the PBA breached its duty to bargain in good faith, this issue will not necessarily be determined by the Court's resolution of the PBA's contractual claims. Therefore, we decline to stay or defer this matter to the Lawsuit. *See Ornas*, 65 OCB 12, at 6; *DC 37*, 35 OCB 3, at 9.

The cases cited by the PBA in support of deferral are not applicable to the facts herein.

---

[20] The May 2016 Grievance asserts a violation of the CBA's recognition clause, among other provisions. (*See* Reply Affirmation of Robert Grass, dated October 17, 2016, Ex. 2.) As noted, *supra*, the PBA's status as the exclusive bargaining representative of Police Officers is not at issue in this improper practice petition.

All involve improper practice charges that hinged upon the resolution of a contractual issue, facts that are not present here. For example, *PBA*, 1 OCB2d 14 (BCB 2008), concerned a direct dealing claim alleging, in part, whether the New York City Police Department ("NYPD") improperly advanced a portion of the contractual uniform allowance to new recruits. The Board deferred this claim to arbitration because the parties' bargaining agreement permitted advancing contractual uniform allowances under certain circumstances. *PBA*, 1 OCB2d 14, at 14-15. Thus, whether the NYPD engaged in direct dealing required an interpretation of the parties' agreement. *Id*. at 15.

For all the reasons discussed above, we decline to defer the petition to either arbitration or the Lawsuit.[21]

Due Process Claim

Finally, we do not dismiss the City's petition based on the PBA's assertion that it will be denied due process because the interests of the MLC and the City, which appoint the Board's Labor and City members, are aligned against the PBA in this matter. The PBA contends that as a result of these common interests, it has been deprived of a Board that operates in "true tripartite fashion," as the Legislature intended. (PBA Reply Memo, p. 5.) The PBA also seeks dismissal because Labor Board member Charles Moerdler is a partner at Stroock, the law firm that represents the MLC.

There is no dispute that "a fair trial in a fair tribunal is a basic requirement of due process."

[21] We note that while the PBA urges deferral of the improper practice claims to arbitration, it also maintains that it cannot arbitrate its claims if the contractual grievance procedure is determined to be futile. While the City and the PBA disagree as to whether they have a pre-existing panel arbitrator to hear their disputes, the NYCCBL expressly provides for a mechanism under which parties may obtain, and the Office of Collective Bargaining will designate, an arbitrator to resolve their contractual disputes. *See* NYCCBL § 12-312 (a) and (c); OCB Rule § 1-06(e).

Withrow v. Larkin, 421 U.S. 35, 46 (1975) (citation omitted). However, there is also a "presumption of honesty and integrity accorded to administrative body members." *Yoonessi v. State Bd. for Professional Med. Conduct*, 2 A.D.3d 1070, 1071 (3d Dept. 2003) (citation omitted), *lv. denied*, 3 NY3d 607 (2004). New York courts have held that "a bare allegation of bias or prejudgment does not suffice to state a claim that due process has been violated." *N.Y.S. Inspection, Sec. and Law Enforcement Empl. v. N.Y.S. Pub. Empl. Relations Bd.*, 629 F.Supp. 33, 39-40 (N.D.N.Y. 1984). Because a claim that a decision-maker was prejudiced can be made so easily, the complaint must contain "some specific factual allegations indicating bias or prejudgment, and not rely only upon conclusions." *N.Y.S. Inspection*, 629 F.Supp. at 40. *See also Yoonessi*, 2 A.D.3d at 1071 ("Merely alleging bias is not sufficient to set aside an administrative determination. Rather, the party alleging bias must set forth a factual demonstration supporting the allegation as well as prove that the administrative outcome flowed from it.").

Here, the PBA's claims of bias and prejudice are conclusory and lack evidentiary support. Its allegation that the Board cannot operate in "true tripartite fashion" thus amounts to a presumption that the Board's Labor members are incapable of adjudicating a dispute where the MLC is an interested party. (PBA Reply Memo, p. 5.) This presumption is unsupported, as is the PBA's assertion that the tripartite structure is irreparably undermined by the alignment of the interests of the MLC and the City. While this circumstance was clearly foreseeable, the Legislature did not find it necessary to take measures to prohibit the Board from ruling on matters where the MLC and City's interests were aligned. On the contrary, the Board's enabling statute expressly authorizes it to act even in the absence of partisan members. The NYCCBL provides, for example, that a quorum can be established by "one city member, one labor member and one

impartial member or [] any four members." *See* NYCCBL § 12-310(a)(1).

Similarly, the Board's history demonstrates that it is also not uncommon for Board members to rule against the interests of the entity that appointed him or her to the Board. Indeed, nearly every unanimous Board decision involves a Board member who has voted against the interests of his or her appointing body. *See, e.g.*, *SSEU, L. 371*, 9 OCB2d 3 (BCB 2016) (Board unanimously determined that agency did not discharge employee in retaliation for her union activity); *Fabbricante*, 71 OCB 30 (BCB 2003) (Board unanimously held that the agency and union violated an employee's rights under the NYCCBL); Doctors Council, 9 OCB2d 2 (BCB 2016) (Board unanimously determined that HHC had unilaterally altered employees' compensation without first bargaining with the union). As the City and the MLC point out, if the Board's mandate precluded these MLC-appointed members from acting on cases involving the MLC, then the Board could not operate as the Legislature intended. In fact, the Board routinely examines cases in which the City and a municipal union are both named as respondent parties. An example of this type of case is a duty of fair representation charge brought by an individual petitioner against a union pursuant to NYCCBL § 12-306(b)(3), where the employer agency is a required respondent. In these cases, as is true here, the interests of the City and the Labor members are also aligned against the petitioning party. *See, e.g.*, *Bonnen*, 9 OCB2d 7 (BCB 2016).

Further, the PBA misconstrues the law concerning alternate Board members. The New York City Charter provides that the Mayor, on behalf of the City, and the MLC, have the power to appoint two members of the Board each and also the power to appoint alternate Board members.[22]

[22] The current MLC-appointed alternate Board members are Gwynne Wilcox and Peter Pepper. They were appointed in 2012 and 2007, respectively.

See N.Y. City Charter, Ch. 54, § 1171. NYCCBL § 12-310(c)(2) provides for alternate Board members, all of whom have previously been appointed, to vote in place of a regular Board member. Alternate members are not appointed as each particular case arises, as suggested by the PBA. Instead, appointed alternate Board members step in for their City or Labor counterparts at meetings when a regular Board member is unavailable.

Moreover, Board members routinely recuse themselves when there is a perceived or apparent conflict of interest with any of the parties appearing before them.[23] In these instances, as has happened here, an appointed alternate member fills in for the member who has recused.

In sum, the PBA has failed to offer any evidence of bias on the part of the MLC-appointed Board members or the MLC-appointed alternates. Its claims of prejudice or inability to obtain due process before the Board are conclusory. *See N.Y.S. Inspection,* 629 F.Supp. at 40. Accordingly, we deny the Motion based on the due process claims.

The Motion is denied. This matter shall proceed to a hearing before a hearing officer.

[23] Labor Board member Moerdler has recused himself from this matter. In addition, although not challenged by any party, City Board member M. David Zurndorfer and alternate City Board member Carole O'Blenes have recused themselves because they are partners at Proskauer Rose LLP, the law firm that represents the City in this matter.

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 motion to defer or dismiss the petition, filed by the Patrolmen's Benevolent Association of the City of New York, Inc., be and hereby is, denied; and it is further

ORDERED, that the case shall proceeding to hearing.

Dated: December 6, 2016
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

PAMELA S. SILVERBLATT
MEMBER

GWYNNE A. WILCOX
MEMBER