SSEU, 13 OCB2d 18 (BCB 2020)

(IP) (Docket No. BCB-4380-20)

Summary of Decision*: The Union filed an improper practice petition alleging that NYCHA failed to bargain in good faith regarding a change in the supervisory structure for Community Associates and ending a practice of allowing members to take excused paid leave when attending meetings of a Union foundation, and that the latter action discriminated against bargaining unit members. NYCHA asserted that the claims were time-barred, that it was not required to bargain on those issues, that the supervision issue was not a mandatory subject of bargaining, that it did not discriminate or retaliate against employees when it denied the leave requests, and that there was no change to its excused leave policy. The Board found that the supervision issue was time-barred and denied the petition as to that claim. The Board further found that the excused leave issue was timely and ordered a hearing on the Union's claim that there existed a past practice of approving Union representatives' requests for excused leave to attend Foundation meetings. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,

Petitioner,

-and-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

INTERIM DECISION AND ORDER

On May 26, 2020, Social Service Employees Union, Local 371 ("Union") filed an improper practice petition against the New York City Housing Authority ("NYCHA"). The Union claims that NYCHA's reassignment of certain employees in the Community Associate ("CA") title to report to and be supervised by employees in the Social Work Supervisor Level II title constitutes

a failure to bargain in good faith, in violation of § 12-306(a)(4) of the New York City Collective Bargaining Law ("NYCCBL"). In addition, the Union claims that NYCHA's refusal to bargain over its decision to deny two Union representatives excused paid leave to attend trustee meetings of the Union-run Charles Ensley Foundation ("Foundation") violates NYCCBL § 12-306(4) and § 12-307(a). The Union claims that the denial of excused paid leave for Foundation meetings also violates NYCCBL § 12-306(a)(3). NYCHA argues that the Union's claims are untimely, that changing which title supervises CAs is not a mandatory subject of bargaining, and that NYCHA has no obligation to grant excused leave to attend Foundation meetings because the Mayor's Executive Order 75 ("EO 75"), on which the Union's claim is based, does not apply to NYCHA. NYCHA denies that it violated NYCCBL § 12-306(a)(3), claiming that it did not discriminate or retaliate against employees when it denied the leave requests. The Board finds that the supervision issue was time-barred and denied the petition as to that claim. The Board further finds that the excused leave issue was timely filed. As the record does not contain sufficient evidence to determine whether there was a past practice of approving Union representatives' requests for excused leave to attend Foundation meetings, the Board orders a hearing on this issue. Accordingly, the petition is granted in part and denied in part.

BACKGROUND

The Union is the certified bargaining representative of certain NYCHA employees including employees in the CA and Social Work Supervisor titles. NYCHA is a non-mayoral agency and public benefit corporation created pursuant to the New York State Public Housing Law to provide affordable housing to low-income families in the City of New York. *See* N.Y. Pub. Hous. Law § 401. The Union and NYCHA are parties to a collective bargaining agreement ("Agreement") governed by the NYCCBL.

Supervision of CAs

On October 4, 2019, representatives of NYCHA and the Union met to discuss the reassignment of CAs who had worked at senior centers that had subsequently been closed. NYCHA informed the Union that affected CAs would be reassigned to NYCHA's Family Partnerships Department, under the supervision of Social Work Supervisors Level II. Prior to the reassignment, CAs had been supervised by Community Coordinators, a title in the same series as CAs.

The Union objected to the supervision change because CAs would now be reporting to a title outside of their title series. The Union advised NYCHA that this violated a long-standing policy that employees report only to employees in the same title series and that the supervision of CAs was out-of-title work for Social Work Supervisor Level IIs and thus prohibited by Civil Service Law § 63(2). NYCHA informed the Union that the reassignment would go forward and implemented the reassignment on November 4, 2019.

Excused Leave Time

The Foundation is a charitable trust established by the Union and run by a board of trustees designated by the Union. The Union asserts that excused paid leave to attend Foundation meetings was routinely approved in the past. Upon the request of the Trial Examiner, the Union provided three examples of such approvals in August, September, and October of 2019. In response to the Union's submission, NYCHA stipulated in an email, dated August 11, 2020, that in "at least" those three instances, it granted the leave requests.[1] NYCHA did not provide evidence of excused leave denials and asserts that the only instance of NYCHA's Human Resources office having directly

[1] Requests for excused leave were sent to Matthew Driscoll, Senior Deputy Director of Human Resources at NYCHA.

approved excused paid leave to attend these meetings was for an October 18, 2019 meeting.[2]

NYCHA asserts that as a non-mayoral agency, it has promulgated its own rules for excused union release time and has elected to adopt only certain portions of EO 75, on pages 52-56 of the NYCHA Human Resources Manual. The NYCHA HR Manual ("Manual") contains rules, partially incorporated from EO 75, governing when excused leave will be granted for Union business. The Manual describes two categories of union representatives who may receive excused paid leave for union business: "Regularly Designated Representatives," who have been "duly designated by certified collective bargaining representatives" to perform a wide range of union functions, and "Ad Hoc Representatives," who have been designated on an *ad hoc* basis to handle grievances and participate in departmental joint labor-management activities or in negotiations between NYCHA and the union. (Ans. Ex. A). Neither category of union representatives includes a provision for union representatives to receive excused paid leave for attending meetings of a union-sponsored charitable trust or foundation.

Regarding the excused leave approved in October 2019, two Union representatives submitted a request for excused paid leave to attend a Foundation meeting scheduled for October 18, 2019. In an October 17, 2019 email from NYCHA Deputy Director Robin Yudkovitz to NYCHA representative Judy Boyce, the request was granted, but it stated that the approval was on a one-time basis and should not be considered an expansion of NYCHA's excused leave policy. Specifically, Yudkovitz wrote:

> Please be advised that David Soto and Nancy Quinones shall be granted release for tomorrow, Friday, October 18, 2019, to attend the event referenced in the attached letter. Their time should be marked as "excused." Please note that the release of these two employees is a one-time accommodation and shall not constitute an expansion of our policy as it relates to excused time. If you have

[2] At the July 28, 2020 conference held in this matter, NYCHA suggested that excused paid approvals may have also been granted by the employees' immediate supervisors and not the NYCHA Human Resources office.

> any questions, please do not hesitate to call me. I have copied Carl Cook, from Local 371, for awareness.

(Pet. Ex. B)

Union Vice President of Negotiations and Research Carl Cook was copied on the email. In an October 28, 2019 meeting with the NYCHA Chair, the Union President raised the issue of excused leave to attend Foundation meetings. NYCHA averred in the answer that the NYCHA Chair informed the Union President at that meeting that attendance of Foundation meetings "was not a valid reason" for employees to receive excused time. (Ans. Ex. C) The Union did not factually respond to this claim in its Reply. Instead, it both denied knowledge and information as to the specific fact and denied a summary containing this fact. (Rep. ¶¶ 6, 8).

On November 20, 2019, the Union requested excused paid leave for the same two representatives for an upcoming November 29, 2019 Foundation meeting. In a November 26, 2019 email to Cook, Yudkovitz denied that request and stated:

> I am writing to follow-up on our meeting with NYCHA's Chair on Monday, October 28, 2019, during which the Union raised several concerns, including the below. NYCHA's Chair has advised Mr. Wells of our position, however, our formal responses are below.
>
> **Excused Release to Attend Charles Ensley Scholarship Foundation Meetings**
> NYCHA will provide excused release to employees in a manner consistent with our HR Manual. Accordingly, as the Union's request for excused release to attend the Charles Ensley Scholarship Foundation meetings does not fall within one of the areas for which excused release is granted, such requests will be denied. Employees may be permitted to attend this meeting on his or her own time. As a reminder, annual Leave is taken at the convenience of NYCHA.

(Email submitted by Union at July 28, 2020 Conference)

On February 4, 2020, the NYCHA Chair sent a letter to the Union President "as a follow up" to their October 2019 meeting. (Ans. Ex. C) That letter reads, in pertinent part:

> I write as a follow-up to a conversation we had during our meeting

> on Monday, October 28, 2019. During our meeting, you raised the issue of full-day release time for your members to attend The Charles Ensley Scholarship Foundation meetings, and it was the Union's position that the New York City Housing Authority (NYCHA) should excuse your members to attends this monthly meeting. As communicated to you after our meeting, NYCHA's position was that the Union's request for excused release to attend the Charles Ensley Scholarship Foundation meetings does not fall within one of the areas for which excused release is granted, and as such, requests for excused time will be denied. Following our meeting, upon receipt of the monthly request for release, NYCHA has advised that the request for full day excused time will not be granted for your members to attend this meeting, and if the employees wish to attend this event, they should submit a leave of absence for use of annual leave.

(*Id.*)

NYCHA also denied a subsequent request for excused paid leave for the same two Union representatives to attend a February 21, 2020 Foundation meeting.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that NYCHA has violated §§ 12-306(a)(4) and 12-307(a) of the NYCCBL by failing to bargain in good faith regarding the supervision of CAs who were re-assigned to NYCHA's Community Engagement and Partnership Family Partnership Program following the closing of NYCHA's senior centers. The Union claims that assigning CAs to be supervised by Social Work Supervisor Level IIs violates a Citywide past practice that employees in lower titles only report to supervisors in the same title chain. In addition, the Union argues that supervising CAs is out-of-title work in violation of Civil Service Law § 63(2) for employees in the Social Work Supervisor Level II title.

Regarding the timeliness of these allegations, the Union claims that its petition is timely despite not having been filed within four months of the occurrence of the acts alleged because the

Governor's Executive Orders 202.8 ("EO 202.8") and 202.38 ("EO 202.38") extended the time limit for the commencement of any legal proceeding actionable as of March 20, 2020 until July 6, 2020.[3] The Union claims that the change in supervision policy was implemented "during the period from at least November 20, 2019 until the present" but later conceded that the change was implemented on November 4, 2020. (Rep. ¶ 10)

The Union also alleges that by not granting excused paid leave for Union representatives to attend Foundation meetings in November 2019 and February 2020, NYCHA discriminated against those representatives in violation of § 12-306(a)(3) of the NYCCBL and made a unilateral change to a mandatory subject of bargaining in violation of § 12-306(a)(4). The Union further alleges that the policy of denying excused paid leave to Union representatives to attend Foundation meetings violates EO 75, as incorporated in the NYCHA Human Resources Manual.

Regarding the timeliness of these allegations, the Union claims that the dates on which members were denied excused paid leave to attend Foundation meetings, November 29, 2019, and February 21, 2020, were each less than four months before the March 20, 2020 tolling date. The Union therefore argues that because the failure to grant excused leave occurred on those dates, their claims are timely.

As a remedy, the Union seeks an order directing NYCHA to bargain in good faith with the Union regarding the supervisory reporting relationship, to cease and desist from implementing the new supervisory reporting relationship pending the completion of the parties' good faith bargaining, and to grant excused leave to designated Union representatives to attend meetings of the Foundation.

[3] The extension of the time limit to commence legal proceedings has since been extended through October 4, 2020, pursuant to Executive Order 202.60.

NYCHA's Position

NYCHA argues that the Union's improper practice petition must be dismissed because its claims are time-barred. NYCHA claims it informed the Union of the changing supervisory relationship on October 4, 2019, and that should be the date when the statute of limitations for any related claims began to run. Since October 4, 2019 is more than 120 days prior to the tolling of the statute of limitations on March 20, 2020, the limitations period expired before the extension began. As to the excused leave claim, NYCHA asserts that the limitation period runs from an October 17, 2019 email in which it notified the Union that it did not consider attendance at Foundation meetings to be a valid use of excused release time and explicitly granted such a release on a one-time basis. It also asserts that the Union was placed on notice of the claim again when NYCHA's Chair informed the Union President on October 28, 2019 that attendance at the meetings was not a valid reason for employees to be released for Union business and that it would not be granted in the future. As both October 17 and October 28, 2019, fall more than 120 days before the March 20, 2020 tolling of the statute of limitations, NYCHA contends that this claim is also time-barred.

NYCHA also argues that if the supervision claim is deemed timely, it should be denied on the merits. NYCHA argues that it is not obligated to bargain over its reporting structure because this is not a mandatory subject of bargaining. Further, NYCHA claims there is no provision in the collective bargaining agreement requiring bargaining on that issue. It also notes that the Union's claim that there is a past practice of employees in lower titles only reporting to supervisors in the same title sequence is unsupported by any evidence regarding either the City of New York ("City") generally or NYCHA in particular. NYCHA asserts that this claim falls short of the standard that a past practice be unequivocal and exist for a long enough period of time that unit employees would expect it to remain unchanged. NYCHA therefore argues that the Union has not established

a failure to bargain on a mandatory subject of bargaining and maintains that organizational structure is a management right.[4]

With respect to the merits of the Union's claim on the denial of excused leave, NYCHA argues the Union has not established that it acted out of anti-union animus or discriminated against any employee for participating in union activity. Further, NYCHA claims that its denial of excused leave was not discriminatory because there was no existing right to such leave. Moreover, the Union's reliance on the application of EO 75 is misplaced because NYCHA is not a Mayoral agency to which the executive order applies, and it has adopted only select provisions of EO 75 in its Manual. Instead, NYCHA maintains that its standards for paid and unpaid release time are set forth in its Manual and that it fully complied with those provisions and therefore there was no unilateral change to a mandatory subject of bargaining.

Accordingly, NYCHA argues that the petition must be dismissed with prejudice.

DISCUSSION

As a preliminary matter, we consider NYCHA's argument that the petition was not timely filed. *See Nardiello*, 2 OCB2d 5, at 28 (BCB 2009) (timeliness is a threshold question). "A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence." NYCCBL § 12-306(e); *see also* Rules of the Office of Collective Bargaining (Rules

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[4] NYCHA notes that this is not the correct forum for the Union's claim that supervising CAs was out-of-title work for Social Work Supervisor Level IIs and thus prohibited by Civil Service Law § 63(2). Further, NYCHA notes that the Union has not provided any factual support for that claim.

of the City of New York, Title 61, Chapter 1) § 1-07(b)(4). Consequently, "[a]ny claims antedating the four month period preceding the filing of the [p]etition are not properly before the Board and will not be considered." *Rondinella*, 5 OCB2d 13, at 15 (BCB 2012) (quoting *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007)) (internal quotation marks omitted).

Supervision of CAs

The Union was informed of NYCHA's decision to alter the supervision of CAs from Community Coordinators to Social Work Supervisors Level II at an October 4, 2019 meeting. The change in supervision was implemented one month later, on November 4, 2019. Therefore, for the claim to be timely, the Union would have to have filed no later than March 4, 2020, four months after the date of implementation of the alleged change. *See Rondinella*, 5 OCB2d 13, at 15. The Union filed its petition on May 26, 2020. Therefore, we find that the Union's claims regarding the change in supervision fall outside the statute of limitations and must be dismissed.[5]

Excused Leave Time

Regarding the denial of excused leave, NYCHA has asserted that claim was also time-barred. As we have long held, an "improper practice charge must be filed no later than four months from the time the disputed action occurred or from the time the petitioner knew or should have known of said occurrence." *Raby*, 71 OCB 14 at 9 (BCB 2003), *aff'd, Raby v. Office of Collective Bargaining,* No. 109481/03 (Sup. Ct. N.Y. Co. Oct. 8, 2003); *see Sweeney*, 73 OCB 9 (BCB 2004). As the statute of limitations is an affirmative defense, the burden of proving notice where such is subject to dispute lies with the party raising the defense. *See UFA*, 3 OCB2d 38, at 7 (BCB 2010);

[5] Since we find the supervision claim is untimely, we do not address whether it concerns a mandatory subject of bargaining. *See Dixon*, 8 OCB2d 9 at 13 (BCB 2015) (timeliness is a threshold issue, and the Board does not address the merits when a claim is ruled untimely). Similarly, because the statute of limitation for this claim expired prior to the Governor's March 20, 2020 tolling of the statute of limitations, that extension of time does not apply to this claim.

USA, 3 OCB2d 27, at 6-7 (BCB 2010). The Board finds that NYCHA has not met its burden to prove that the Union knew or should have known of the change in excused leave policy earlier than November 2019. *See USA, Local 831*, 3 OCB 2d 27 (BCB 2010) (claim was ruled timely due to the City's failing to meet its burden of proof on timeliness).

NYCHA argues that the Union had notice of its excused leave policy regarding Foundation meetings via the October 17, 2019 email and at the October 28, 2019 meeting. We do not find sufficient evidence to conclude that the Union was clearly on notice that NYCHA would be strictly enforcing its Manual on either of these dates. First, the parties do not dispute that prior to October 17, 2019, there were at least two other instances when excused leave was granted to Union representatives to attend Foundation meetings. While NYCHA asserts these prior approvals were inconsistent with its Manual, the leave requests to attend the October Foundation meeting were granted.[6] As a result, the representation in the October approval that it was a "one-time accommodation" did not accurately represent what had transpired up until that date. (Pet. Ex. B) Further, in context, the additional statement that the October approval would "not constitute an expansion of our policy as it relates to excused time," suggested that future requests would not be granted, but did not expressly say so. (*Id.*) Nevertheless, it appears that the Union reasonably understood that the statement indicated future requests may not be approved and sought to address the issue. It is undisputed that just a few days later, the Union President and the NYCHA Chair met. In his February 4, 2020 letter, the Chair acknowledged that the Union President "raised the issue of full-day release time" for its members. (Ans Ex. C) NYCHA alleged that the NYCHA Chair informed the Union President at the October 28 meeting that "release time would not be granted in the future." (Ans. ¶ 14) However, a statement made in the Chair's February 4, 2020

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[6] The prior leave requests provided by the Union show that those requests were sent to NYCHA Human Resource representatives.

letter is not consistent with this assertion. In the letter, the Chair wrote that NYCHA communicated this to the Union President "after" the October 28, 2019 meeting. (Ans Ex. C) As a result, we find insufficient evidence to conclude that the denial in issue occurred or that the Union knew or should have known that NYCHA would deny all further requests on either October 17 or 28, 2019.

On the record presented, we find that the denial of excused leave and notice of NYCHA's position occurred on November 26, 2019, when NYCHA denied leave for Union representatives to attend the November 29, 2019 Foundation meeting and clearly advised the Union that future requests would not be granted. NYCHA has failed to meet its burden of proving unambiguously that the Union had notice of the change in practice before that date, and as PERB has noted, "[j]ust as a failure or ambiguity of proof must be resolved against a charging party, a failure or ambiguity of proof in support of a defense to a charge must be resolved against a respondent." *City of Syracuse*, 32 PERB ¶ 3029 (1999), *affd,* 279 AD2d 98 (4th Dept 2000). Thus, the November 26, 2019 occurrence is the first date on which the Union had clear notice of the disputed action. As a result, the four-month statute of limitations ended on March 26, 2020. Governor Cuomo issued a series of Executive Orders tolling statutes of limitations (Executive Orders No. 202.8, 202.28, 202.38, 202.48, 202.55, 202.60) beginning on March 20, 2020. The Union's claim was tolled as of that date, and at least through October 4, 2020. Thus, the Union's claim regarding the excused leave, filed May 26, 2020, is timely.

The Union's allegation that EO 75 governs the granting of excused paid leave to Union representatives to attend Foundation meetings is without support because NYCHA is not a City agency or other subcategory automatically covered by the terms of EO 75. *See Feder*, 5 OCB2d 14, at 28-29 (2012). Instead, NYCHA's Manual incorporates EO 75 only with regard to employees who are "regularly designated union representatives." *Id.* at 29, (Ans. Ex. A). The Union has

made no claim that the representatives attending Foundation meetings were in the "regularly designated" representative category.

Further, the Union claims NYCHA violated § 12-306(a)(3) of the NYCCBL by its denial of excused paid leave to Union representatives to attend Foundation meetings. In determining if any action violates NYCCBL § 12-306(a)(3), the Board applies the *Bowman/Salamanca* test, which requires a petitioner to 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 (BCB 1987) (applying *City of Salamanca*, 18 PERB ¶ 3012 (1985)). The Union has not alleged facts to support this claim. Instead, the Union alleges only that the denial of excused leave was discriminatory in order to discourage participation in Union activity. There are no alleged facts that, if true, would demonstrate a motivation for the denial was to retaliate against employees. Therefore, the Union has not shown a violation of NYCCBL § 12-306(a)(3), and we dismiss this claim.

Turning to the unilateral change claim, NYCCBL §12-306(a)(4) makes it an improper practice to fail to bargain in good faith "on matters within the scope of collective bargaining, which generally consist of certain aspects of wages, hours, and working conditions." *Local 621, SEIU*, 2 OCB2d 27, at 10 (BCB 2009); *see also UFA,* 39 OCB 21 (BCB 1987). We have long held that "if a unilateral change is found to have occurred in a term and condition of employment which is determined to be a mandatory subject, then this [Board] will find the change to constitute a refusal to bargain in good faith and, therefore, an improper practice." *DC 37*, 79 OCB 20, at 9 (BCB 2007); *see also NYSNA*, 4 OCB2d 23, at 10 (BCB 2011); *PBA*, 63 OCB 4, at 10 (BCB 1999). A party asserting that such a unilateral change has occurred must demonstrate that (i) "the matter sought to be negotiated is, in fact, a mandatory subject" and (ii) "the existence of such a change

from existing policy." *Id.* (citing *Doctors Council, SEIU*, 67 OCB 21, at 7 (BCB 2001); *PBA*, 73 OCB 12, at 17 (BCB 2004), *affd*, *Matter of Patrolmen's Benevolent Assn. v. NYC Bd. of Collective Bargaining*, No. 112687/04 (Sup. Ct. N.Y. Co. Aug. 8, 2005), *affd*, 38 A.D.3d 482 (1st Dept 2007), *lv denied*, 9 N.Y.3d 807 (2007)); *see DC 37, L. 436 & 768*, 4 OCB2d 31 (BCB 2011).

The NYCCBL expressly states that "time and leave benefits" are within the scope of mandatory bargaining. *See* NYCCBL § 12-307(a). Thus, "unilateral changes regarding paid leave constitute a violation of an employer's bargaining obligation." *CEU, L. 237*, 9 OCB2d 22, at 6 (citing *DC 37*, 6 OCB2d 14, at 16-17 (BCB 2013), *affd., Matter of City of New York v. Bd. of Collective Bargaining*, Index No. 451081/13 (Sup. Ct. N.Y. Co. Oct. 28, 2014) (discussing mandatory negotiability of leave time); *UFOA, L. 854*, 67 OCB 17 (BCB 2001) (determining that employer's holiday leave policy was a mandatory subject of bargaining); *DC 37, L. 436 & 768*, 4 OCB2d 31, at 14 (finding mandatorily negotiable a change in policy regarding payment for days in which employees do not work because their work locations are closed due to inclement weather)). Accordingly, we find that excused leave for union business is a mandatory subject of bargaining. *Local 237, IBT*, 13 OCB2d 17 (BCB 2020) (provision of excused leave time is a mandatory subject of bargaining). However, there remains a dispute over whether there has been a change to that mandatory subject of bargaining.

The Union alleged that excused paid leave to attend Foundation meetings was routinely granted and provided examples of three instances when such requests were approved in August, September and October 2019. NYCHA did not deny these approvals and did not produce evidence to show that these were isolated instances. Nevertheless, it maintained that the Manual did not provide excused leave would be granted to attend Foundation Meetings and that its practice has been to deny such leave. We find that this record does not contain sufficient evidence to determine whether there was a past practice of Union representatives receiving paid excused leave to attend

Foundation meetings. Therefore, we order a hearing before a Trial Examiner designated by the Office of Collective Bargaining to give the parties the opportunity to present evidence concerning the alleged practice.

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 Union's claim that NYCHA made a unilateral change to the supervisory structure of CAs in violation of NYCCBL § 12-306(a)(4) is dismissed as untimely; and it is further

ORDERED that the Union's claim that NYCHA retaliated or discriminated against employees by denying requests for paid excused leave to attend Foundation meetings in violation of NYCCBL § 12-306(a)(3) is dismissed; and it is further

ORDERED, that the parties shall present evidence at a hearing before a Trial Examiner designated by the Office of Collective Bargaining on the issue of whether there existed a practice of granting paid excused leave to Union representatives to attend Foundation meetings.

Dated: October 1, 2020
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

CHARLES G. MOERDLER
MEMBER

GWYNNE A. WILCOX
MEMBER