

***New York City Deputy Sheriffs Association, 14 OCB2d 9 (BCB 2021)***  
(IP) (Docket No. BCB-4400-20)

***Summary of Decision:*** The Union alleged that the DOF violated NYCCBL § 12-306(a)(1) and (4) by refusing to bargain over the assignment of duties to Deputy Sheriffs associated with the New York State Bail Reform Law’s Electronic Monitoring Program and the resulting practical impact. The City argued that the assignment of such duties is not a mandatory subject of bargaining. It also argued that any practical impact claim is premature, but to the extent that the Board considers the instant claim as a scope of bargaining petition, the Union failed to establish a practical impact. The Board found that the assignment of Electronic Monitoring Program duties to Deputy Sheriffs was not a mandatory subject of bargaining. Further, it found that the pleadings did not allege facts sufficient to warrant a hearing on practical impact. Accordingly, the petition was dismissed in its entirety. (*Official decision follows*).

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

**In the Matter of the Improper Practice Proceeding**

***-between-***

**NEW YORK CITY DEPUTY SHERIFFS ASSOCIATION,**

***Petitioner,***

***-and-***

**THE CITY OF NEW YORK and  
THE NEW YORK CITY DEPARTMENT OF FINANCE,**

***Respondents.***

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**DECISION AND ORDER**

On October 15, 2020, the New York City Deputy Sheriffs Association (“Union”) filed an improper practice petition against the City of New York (“City”) and the New York City Department of Finance (“DOF”) pursuant to § 12-306 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). The Union alleges

that the DOF violated NYCCBL § 12-306(a)(1) and (4) by refusing to bargain over the assignment of duties to Deputy Sheriffs associated with the New York State Bail Reform Law's Electronic Monitoring Program and the resulting practical impact. The City argues that the assignment of such duties is not a mandatory subject of bargaining. It also argues that any practical impact claim is premature, but to the extent that the Board considers the instant claim as a scope of bargaining petition, the Union failed to establish a practical impact. The Board finds that the assignment of Electronic Monitoring Program duties to Deputy Sheriffs is not a mandatory subject of bargaining. Further, it finds that the pleadings did not allege facts sufficient to warrant a hearing on practical impact. Accordingly, the petition is dismissed in its entirety.

### **BACKGROUND**

The Union is the certified bargaining representative of Deputy Sheriffs, who are employed by the DOF in the Office of the Sheriff ("Sheriff's Office"). The Sheriff's Office is generally responsible for enforcing court mandates, orders, and decrees and other duties as prescribed by New York state law. Such functions include, *inter alia*, executing service, seizing property, and conducting arrests.<sup>1</sup> The title specification for Deputy Sheriffs states that they are responsible for carrying out duties, including: executing mandates and orders resulting from civil litigation; effecting service of civil process, such as complaints and subpoenas; executing process involving the seizure of property and giving actual possession of real property; apprehending persons pursuant to order of civil arrest; escorting prisoners to civil jail and assuming responsibility for

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<sup>1</sup> We take administrative notice of the Sheriff's Office's website, which describes its general structure and functions.

their care and custody; and guarding against prisoner escape.<sup>2</sup> (*See* City Ex. A)

In April 2020, New York State amended its Bail Reform Law and thereby enacted the Electronic Monitoring Program (“Program”). The Program allows state courts to issue electronic monitoring orders in lieu of bail for certain criminal defendants, using electronic bracelets to monitor eligible defendants following their arraignment. On May 27, 2020, the Sheriff’s Office began monitoring and enforcing the Program. As a result, Deputy Sheriffs are responsible for carrying out court orders involving defendants subject to the Program, which requires them to attach electronic monitoring devices, respond to violation notifications, and make arrests of defendants who violate the terms of their electronic monitoring.

On June 1, 2020, Union President Ingrid Siminovic wrote a letter to the City’s Office of Labor Relations (“OLR”) requesting impact bargaining over the assignment of Program duties and alleging that, prior to the Sheriff’s Office’s participation in the Program, Deputy Sheriffs had never been utilized for criminal apprehensions following a violation of a defendant’s criminal bail restrictions. (*See* Pet., Ex. A) The letter provides, in pertinent part:

The New York City Sheriff’s Department has historically been mandated to serve both criminal and civil process (subpoenas or court orders) as well as taken into custody individuals subject to Family Court Orders of Detainer. At no point were Deputy Sheriffs utilized for criminal apprehensions following a violation of an individual’s criminal bail restrictions. Such a change and expansion of duties is a unilateral change in terms and conditions of employment since those duties were inherently posited with other law enforcement agencies within New York City (ie; NYPD, Probation and Parole). Hence, I formally request negotiations with your office to impact bargain such a change in terms and conditions.

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<sup>2</sup> The notice of examination for the Deputy Sheriff position from December 2016 provides that they are also responsible for conducting criminal arrests, issuing accusatory instruments for criminal offenses, and apprehending persons pursuant to court order and arrest warrants. (*See* Pet., Ex. B)

(*Id.*)

In response, on June 10, 2020, OLR asserted that the Deputy Sheriffs' duties under the Program were consistent with their existing duties and that impact bargaining was not required because the Board had not yet determined that there was any practical impact on Deputy Sheriffs as a result of the decision to have them participate in the Program. (*See* Pet., Ex. B) The response provides, in pertinent part:

The City and the Sheriff's Office believe that this work falls within the scope of the Deputy Sheriffs duties as law enforcement officers. As you can see from the attached recent Notice of Exam, Deputy Sheriffs, among other things, carry out duties as prescribed by the NYS CPLR, NYS Penal law, Family Court Act and other laws of the State of NY. They are required to execute and enforce mandates and orders issued from local and State Courts, apprehend persons pursuant to orders and warrants of arrest as well as make criminal arrests. While the above does not encompass the full range of a Deputy Sheriff's duties, it does support the decision to have Deputy Sheriffs participate in the Electronic Monitoring Program.

Additionally, the City does not believe that impact bargaining is required in these circumstances as the Board of Collective Bargaining has yet to determine that there has been any practical impact on the Deputy Sheriffs as a result of the decision to have them participate in the Electronic Monitoring Program. Moreover, the tasks performed by bargaining unit employees as a result of the Electronic Monitoring Program do not appear to have any deleterious effect on employee safety or workload.

(*Id.*)

### **POSITIONS OF THE PARTIES**

#### **Union's Position**

The Union argues that the assignment of Program duties to Deputy Sheriffs is a mandatory subject of bargaining, and therefore DOF violated NYCCBL § 12-306(a)(1) and (4) by refusing to

bargain.<sup>3</sup> It asserts that prior to the enactment of the Bail Reform Law and Program, other law enforcement agencies were utilized for criminal apprehensions following bail restriction violations, with no involvement from Deputy Sheriffs.<sup>4</sup> It contends that DOF has “improperly assigned work from other units” and that “the expansion of duties to those that are outside the inherent nature of the bargaining unit” is a mandatory subject of bargaining. (Pet. ¶¶ 9, 14) In the alternative, the Union argues that DOF has a duty to bargain over the practical impact of the assignment of Program duties pursuant to NYCCBL § 12-307(b).<sup>5</sup> It avers that the factual

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<sup>3</sup> NYCCBL § 12-306(a) provides, in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

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(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees; . . . .

NYCCBL § 12-305 provides, in pertinent part:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities . . . .

<sup>4</sup> While the Union’s June 2020 letter to OLR mentions only the assignment of Deputy Sheriffs to apprehend the criminally accused following bail restriction violations, the Union’s pleadings do not appear to limit its claims solely to that duty. Therefore, we consider its claims to include all assigned duties relating to the Program.

<sup>5</sup> NYCCBL § 12-307(b) provides, in pertinent part:

It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental

assertions in President Siminovic's June 1, 2020 letter are sufficient to set forth a practical impact claim.

### **City's Position**

The City argues that the DOF did not violate NYCCBL § 12-306(a)(1) and (4) because the assignment of Program duties to Deputy Sheriffs is not a mandatory subject of bargaining. It asserts that the assignment of duties is a managerial prerogative under NYCCBL § 12-307(b) and that the Program duties are consistent with the inherent nature of the Deputy Sheriff position. It contends that Deputy Sheriffs are law enforcement officers responsible for carrying out duties prescribed by state law and court order and that the Program duties fall within the "longstanding scope of work" for the Deputy Sheriff bargaining unit. (Ans. ¶ 29) However, to the extent that the Union is making an out-of-title claim, the City avers that such claim is meritless but properly asserted as a grievance, not an improper practice petition.

Further, the City argues that the Union's practical impact claim under NYCCBL § 12-306(a)(1) and (4) is premature because impact bargaining does not become mandatory until the Board finds that an impact actually exists, and in this case the Board has not yet made such a finding. However, to the extent that the Board construes the Union's claim as a scope of bargaining petition under NYCCBL § 12-307(b), the City contends that the Union has failed to establish the

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operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but . . . questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

existence of a practical impact resulting from the assignment of Program duties. It asserts that the Union presented no specific factual allegations with respect to how the assignment of Program duties has resulted in a safety or workload impact for Deputy Sheriffs.

### **DISCUSSION**

The Union asserts two distinct claims regarding the assignment of Program duties. *See SSEU, L. 371*, 1 OCB2d 20, at 12 (BCB 2008). First, it asserts an improper practice claim that the DOF violated NYCCBL § 12-306(a)(1) and (4) by refusing to bargain over the assignment of Program duties to Deputy Sheriffs. In addition, the Union argues that the assignment of Program duties has a practical impact on Deputy Sheriffs that is within the scope of bargaining under NYCCBL § 12-307(b).<sup>6</sup>

NYCCBL § 12-306(a)(4) makes it an improper practice for a public employer or its agents “to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.” Thus, NYCCBL § 12-306(c) requires that public employers and employee organizations “bargain over matters concerning wages, hours, and working conditions, and any subject with a significant or material relationship to a condition of employment.” *CEU, L. 237, IBT*, 2 OCB2d 37, at 11 (BCB 2009). The Board has long held that “[a]s a unilateral change in a term and condition of employment accomplishes the same result as a refusal to bargain in good faith, it is likewise an improper practice.” *DC 37*,

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<sup>6</sup> Although a scope of bargaining petition is the proper procedural mechanism through which to assert a claim of practical impact, the Board has exercised its discretion to consider scope claims as alleged in an improper practice petition. *See, e.g., Local 1182, CWA*, 5 OCB2d 41 (BCB 2012); *Local 333, UMD, ILA, AFL-CIO*, 5 OCB2d 15 (BCB 2012); *NYSNA*, 71 OCB 23 (BCB 2003); *SBA*, 41 OCB 56 (BCB 1988).

*L. 420*, 5 OCB2d 19, at 9 (BCB 2012). “In order to establish that a unilateral change constitutes an improper practice, the petitioner must demonstrate the existence of such a change from the existing policy or practice and establish that the change as to which it seeks to negotiate is or relates to a mandatory subject of bargaining.” *Doctors Council, L. 10MD, SEIU*, 9 OCB2d 2, at 10 (BCB 2016) (quoting *Local 1182, CWA*, 7 OCB2d 5, at 11 (BCB 2014)) (quotation and internal editing marks omitted).

However, not every decision by a public employer that affects a term and condition of employment is a mandatory subject of bargaining. See *Local 1182, CWA*, 61 OCB 4, at 6 (BCB 1998). Rather, NYCCBL § 12-307(b) “reserves to the City exclusive control and sole discretion to act unilaterally in certain enumerated areas that are outside the scope of collective bargaining, such as assigning and directing its employees, determining their duties during working hours, and allocating duties among its employees, unless the parties themselves limit that right in bargaining.” *COBA*, 63 OCB 26, at 9-10 (BCB 1999) (citing *PBA*, 63 OCB 12 (BCB 1999)), *affd.*, *Matter of Saunders v. DeCosta*, Index No. 103467/1999 (Sup. Ct. N.Y. Co. July 7, 1999) (Wilkins, J.); *Local 621, SEIU*, 51 OCB 34 (BCB 1993). The Board holds that “[i]n order to maintain the efficiency of governmental operations, management may make appropriate assignments within the general job description for an employee’s title.” *UFA, L. 94, & UFOA, L. 854*, 13 OCB2d 9, at 30 (BCB 2020) (finding no duty to bargain over assignment of Firefighters to counter-terrorism task force responsible for responding at the scene of active shooter incidents) (citing *PBA*, 73 OCB 12, at 19 (BCB 2004)); see *LBA*, 49 OCB 14, at 7-8 (BCB 1992) (finding no duty to bargain over assignment of Lieutenants and Sergeants to solo supervisory patrols). “As long as the tasks assigned are an aspect of the essential duties and functions of the position, there is no mandatory obligation to negotiate when they are amended.” *UFA*, 47 OCB 61, at 10 (BCB 1991); see also *County of*



*Nassau*, 43 PERB ¶ 4509 (ALJ 2010) (“[o]nly the assignment of duties that are not within the inherent nature of the employee’s position, such as the assignment of vehicle repairs to a police officer or craftsman work to a firefighter, is a mandatorily negotiable matter”) (citing and quoting *Manhasset Union Free Sch. District*, 41 PERB ¶ 3005 (2008), *confirmed sub nom. and mod, in part, Matter of Manhasset Union Free School District v. N.Y.S. Pub. Empl. Rel. Bd.*, 61 A.D.3d 1231 (3d Dept 2009)).

In this case, the parties do not dispute that Deputy Sheriffs have been assigned Program duties associated with the recent enactment of the Bail Reform Law. We find that the assigned Program duties are generally consistent with those contemplated by the job description for the Deputy Sheriff title. *See UFA, L. 94, & UFOA, L. 854*, 13 OCB2d 9, at 30; *LBA*, 49 OCB 14, at 7-8. The Program requires attaching electronic monitoring devices, responding to violation notifications, and making criminal apprehensions following bail restriction violations. Those duties are related to those essential law enforcement duties and functions described by the Deputy Sheriff title specification, including, *inter alia*, making arrests, escorting prisoners and maintaining responsibility for their custody, and executing court mandates and orders. *See UFA*, 47 OCB 61 at 10 (finding no duty to bargain over assignment of Fire Marshalls to joint NYPD/FDNY task force with law enforcement and security duties when the position’s job description already contemplated duties such as “apprehending” and “effecting arrests of suspects”). Accordingly, because the Program duties are generally consistent with the job description for the Deputy Sheriff title and relate to the essential functions of the position, we find that the assignment of such duties is not a mandatory subject of bargaining. *See UFA, L. 94, & UFOA, L. 854*, 13 OCB2d 9, at 30;

*UFA*, 47 OCB 61, at 10.<sup>7</sup> Therefore, we dismiss the Union’s refusal to bargain claim under NYCCBL § 12-306(a)(1) and (4).

Notwithstanding DOF’s discretion to assign Program duties, if this discretion is exercised “in a manner that has an adverse effect on terms or conditions of employment and thus results in a practical impact, the duty to bargain may arise over the alleviation of that impact.” *Local 1182, CWA*, 5 OCB2d 41, at 8 (BCB 2012) (quoting *NYSNA*, 71 OCB 23, at 11 (BCB 2003)). However, “there is no duty to bargain – and therefore no violation of NYCCBL § 12-306(a)(4) by way of refusal to bargain – arising out of a claim of practical impact until the Board has first found that a practical impact exists as a result of the exercise of a management prerogative pursuant to NYCCBL § 12-307(b).” *Local 333, UMD, ILA, AFL-CIO*, 5 OCB2d 15, at 13 (BCB 2012) (citing *Local 1180, CWA*, 43 OCB 47, at 17 (BCB 1989)). Moreover, “[a] petitioner urging the Board to find such an impact must present more than conclusory statements of a practical impact in order to require the employer to bargain or, indeed, in order to warrant a hearing to present further evidence.” *COBA*, 10 OCB2d 21, at 14 (BCB 2017) (quoting *CEU, L. 237, IBT*, 2 OCB2d 37, at 17 (BCB 2009)) (internal quotation marks omitted). The Board has articulated the pleading standard that must be met to warrant a hearing on practical impact, as follows:

We have interpreted the language of NYCCBL § 12-307(b) to require initially that a union offer allegations of specific facts in support of its claim of practical impact. Conclusory statements or vague or non-specific allegations are not sufficient to prove practical impact or to warrant a hearing into whether a practical impact exists.

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<sup>7</sup> Our ruling does not reach the issue of whether the Program duties are substantially different from those set forth in the job specification, the standard applicable in a contractual out-of-title claim. The Board has no jurisdiction to adjudicate such a claim. Such out-of-title claims are appropriately pursued in the contractual grievance process or in litigation for an alleged violation of the New York State Civil Service Law. Accordingly, our findings with respect to the Union’s rights under the NYCCBL should not bear upon the ultimate determination in any future out-of-title proceeding.

*UFA*, 5 OCB2d 3, at 14 (BCB 2012) (quoting *UFA*, 4 OCB2d 30, at 30 (BCB 2011)) (additional citations omitted).

In this case, the Union has alleged only general and conclusory statements in support of its impact claims, and it has therefore failed to satisfy the Board’s pleading standard.<sup>8</sup> The Union relies on the assertions in its June 2020 letter to OLR, which merely states that Deputy Sheriffs had not previously been utilized for criminal apprehensions following criminal bail violations. This assertion is insufficient to warrant a hearing because it fails to articulate a practical impact with specificity. *See Local 333, UMD, ILA, AFL-CIO*, 5 OCB2d 15, at 14 (finding that affidavits generally describing the “dangerous nature of the position and relate to past incidents[,] . . .” without any facts concerning an increase in safety risk to the employees were insufficient to order a hearing on the safety impact from the staffing change); *COBA*, 10 OCB2d 21, at 14-16 (declining to order a hearing and explaining that “[a] petitioner does not demonstrate a practical impact on workload merely by enumerating additional duties assigned to employees or by noting a new assignment of duties covered in the job specifications”) (internal quotation marks and citations omitted).

Consequently, we find that the Union’s factual allegations are insufficient to form a basis for a finding of practical impact or to raise material issues of fact that would warrant a hearing on practical impact. Therefore, we dismiss the Union’s petition in its entirety.<sup>9</sup>

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<sup>8</sup> The Union’s pleadings did not specify whether it is alleging a practical impact based on safety, workload, or any other term and condition of employment related to the assignment of Program duties.

<sup>9</sup> This holding is without prejudice to the Union’s right in the future to submit a petition alleging sufficiently specific facts claimed to constitute a practical impact on a term or condition of employment. *See Local 1182, CWA*, 5 OCB2d 41, at 10 (BCB 2012).

**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, docketed as BCB-4400-20, filed by the New York City Deputy Sheriffs Association, against the City of New York and New York City Department of Finance, is dismissed in its entirety.

Dated: April 1, 2021  
New York, New York

SUSAN J. PANEPENTO  
CHAIR

ALAN R. VIANI  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

CAROLE O' BLENES  
MEMBER

I dissent.

CHARLES G. MOERDLER  
MEMBER

GWYNNE A. WILCOX  
MEMBER