

**SSEU, 14 OCB2d 20 (BCB 2021)**

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

**Summary of Decision:** The Union claimed 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 represented a unilateral change to a mandatory subject of bargaining in violation of NYCCBL §§ 12-306(a)(4) and 12-307(a). NYCHA argued that the Union failed to demonstrate the existence of a past practice on which to base its claim. The Board found that the Union had proven the existence of a past practice of providing two Union representatives excused paid leave to attend Foundation meetings and that NYCHA had made a unilateral change to that practice. Accordingly, the petition was granted. (*Official decision follows.*)

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**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.*

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**DECISION AND ORDER**

On May 26, 2020, Social Service Employees Union, Local 371 (“Union”) filed an improper practice petition alleging, among other things, that by not granting excused paid leave for two Union representatives to attend trustee meetings of the Union-run Charles Ensley Foundation (“Foundation”), the New York City Housing Authority (“NYCHA”) made a unilateral change to a mandatory subject of bargaining in violation of §§ 12-306(4) and 12-307(a) of the New York

City Collective Bargaining Law (“NYCCBL”).<sup>1</sup> The Union claims that NYCHA had an established past practice of allowing its trustees to take excused paid time off to attend Foundation meetings, which is a mandatory subject of bargaining. The Union therefore argues that NYCHA made a unilateral change to a mandatory subject of bargaining by discontinuing the practice of granting excused paid leave for trustees to attend Foundation meetings. NYCHA argues that the Union failed to demonstrate the existence of a past practice on which to base its claim. Following a hearing, the Board finds that the Union has proven the existence of a past practice of providing two Union trustees excused paid leave to attend Foundation meetings and that NYCHA made a unilateral change to that practice. Accordingly, the petition is granted.

### **BACKGROUND**

The Trial Examiner held one day of hearing at which testimony was taken from Union Vice President of Negotiations and Research Carl Cook, Foundation trustee David Soto, NYCHA Associate Staff Analyst Schanel McMillian, and NYCHA Deputy Director of Human Resources (“HR”) Robin Yudkovitz. The totality of the record, including the pleadings, exhibits, and briefs, established the relevant facts set forth below.

The Foundation is a charitable trust established by the Union to provide scholarships to Union members who are accepted to certain labor and public administration programs at the

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<sup>1</sup> On October 1, 2020, the Board issued an Interim Decision and Order in this matter. *See SSEU*, 13 OCB2d 18 (BCB 2020). That decision dismissed as untimely a claim regarding a change in the supervisory structure of a group of Local 371-represented NYCHA employees. Regarding the claim that NYCHA denied excused paid leave to trustees to attend Foundation meetings, the Board found NYCHA had not adopted Mayoral Executive Order 75, which governs leave for union business. Further, the Board concluded that the record did not contain sufficient evidence to determine whether there was a past practice of NYCHA granting excused paid leave for trustees to attend Foundation meetings and ordered the hearing upon which this Decision and Order is based.

CUNY School of Urban and Labor Studies. The Foundation is run by a board of trustees designated by the Union. Trustees meet approximately once per month along with legal counsel and staff to discuss policy, procedures, and future meeting dates.

David Soto and Nancy Quinones are NYCHA employees and Union members. Soto has been a trustee of the Foundation since September 2016. Quinones was a trustee of the Foundation from April 2019 until December 2020.

The NYCHA HR Manual grants union representatives the right to be absent with pay, also known as “excused paid leave,” to participate in certain union activities such as attending labor-management meetings, investigating and processing grievances, and serving as members of the City Pension Board, Municipal Labor Committee, or Authorized Safety Committees.<sup>2</sup> (City Ex. A) If an employee is not granted excused paid leave to attend a union activity, they may still be excused from work to participate but must use their annual leave or request time off without pay to do so.

Cook, the Union’s Vice President of Negotiations and Research, testified regarding the procedure for obtaining release time for Foundation trustees prior to the alleged unilateral change. Cook testified, and presented documents to confirm, that the Union President regularly sent NYCHA requests for excused paid leave for each trustee in advance of Foundation meetings. According to Cook, prior to the alleged unilateral change in October 2019, those requests were regularly granted. NYCHA Deputy Director of HR Robin Yudkovitz testified that “requests for release time must be approved by HR,” and that she was unaware that any excused paid leave

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<sup>2</sup> “Excused paid leave” is paid release time that does not require the use of an employee’s annual leave. “Absence with pay is granted for labor-management activities of employee representatives who are duly designated by certified collective bargaining representatives operating under the terms and conditions specified herein and acting on matters related to the employees in their respective collective bargaining units, to... [p]articipate in meetings of NYCHA labor-management committees.” (City Ex. A)

requests to attend Foundation meetings were granted prior to October 2019. (Tr. 91)

On November 15, 2016, the Union President sent the NYCHA Senior Deputy Director of HR a request that Soto be released to attend a Foundation meeting on November 21, 2016. Associate Staff Analyst Schanel McMillan, who was copied on the request, emailed Cook a response the same day:

Pursuant to our conversation please see the attached, Article 23 “Employee Representatives” of NYCHA’s HR Manual. This provision governs release of NYCHA employees not Executive Order 75. As such the employee will have to make use of annual leave or request time off without pay.

(NYCHA Ex. E) Cook replied the next day:

I disagree with NYCHA’s position as it relates to release time for union trustees. It’s been a past practice of NYCHA to release members who are trustees for union business. In the past [Union President] Anthony’s secretary always forwarded the release for such meetings to [Deputy Director of HR] David Marcinek who never rejected the request. We are asking that NYCHA honor this past practice as it relates to our members (trustees) being released for official union business.

(NYCHA Ex. E)

Despite that email exchange, a stipulated summary of payroll records indicates that Soto received excused paid leave for the November 2016 Foundation meeting.<sup>3</sup>

The record reflects that an employee must complete a “Leave of Absence Request” form when requesting time off. This form indicates the type of leave requested and requires a supervisor’s approval and signature, and the date. The record also reflects that Soto and Quinones routinely submitted a Leave of Absence Request form to their supervisor for any Foundation meeting they sought to attend. The five Leave of Absence Request forms provided by the Union

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<sup>3</sup> The parties stipulated to the dates of the Foundation meetings, provided by the Union, and a summary of the payroll status of the two trustees in question on those dates, provided by NYCHA.

reflect that the supervisor must indicate whether the leave requests were approved, and whether the requests were excused with or without pay.

McMillan's testified regarding NYCHA's process for granting excused paid leave and suggested that there was an irregularity in the Union's submission of requests for excused paid leave. She testified that when NYCHA's HR department receives a request for excused paid leave, it reviews whether the request complies with the HR Manual and approves only those requests that comply. If NYCHA's HR department approves the request for excused paid leave, then it will notify supervisors at the employee's work location that they should release the employee. There is no evidence that the Union is also notified when a request it submitted is approved. Once the supervisors receive that authorization, they grant the request for excused paid leave on the employee's Leave of Absence Request form. McMillan noted that this process is also followed when the Union requests excused paid leave for other activities, such as quarterly labor-management meetings. In the case of Foundation meetings, the Union submitted its requests to NYCHA HR as required.<sup>4</sup> Similarly, the Union trustees submitted their Leave of Absence Request forms to location supervisors. According to McMillan and Yudkovitz, the location supervisors responsible for responding to leave request forms submitted by Soto and Quinones did not receive approval from NYCHA HR to grant the requests.<sup>5</sup> Nevertheless, the record reflects that the two trustees were granted excused paid leave approximately 26 times between September 2016 and

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<sup>4</sup> The first request in the record, sent in September 2016 on behalf of Soto, was addressed to David Marcinek, the Deputy Director of HR at NYCHA at the time. All subsequent letters were addressed to Matthew Driscoll, Senior Deputy Director of HR at NYCHA. Driscoll left NYCHA in 2017. Although he continued to be the primary addressee of the request letters, other NYCHA employees were also copied, including McMillan in NYCHA's HR Department.

<sup>5</sup> McMillan testified that she would in the course of her duties have knowledge of whether trustees were granted excused paid leave.

October 2019.

Soto testified that he attended nearly all the Foundation's monthly meetings. According to Soto, between September 2016 and October 2019, he received excused paid leave for "all the [Foundation meetings] that [he] requested." (Tr. 60)

The Foundation held 35 meetings between when Soto became a trustee in September 2016, and the October 7, 2019 Foundation meeting preceding the alleged unilateral change. The record indicates that the Union requested excused paid leave for Soto to attend 31 Foundation meetings during this time period. Of those 31 requests, Soto received excused paid leave to attend 20 meetings. For remaining eleven dates on which a Foundation meeting was held and excused paid leave was requested, the payroll summary produced by NYCHA shows that Soto worked his regular hours six times, took annual leave four times, and on one occasion received paid workers compensation. On the four Foundation meeting dates for which there is no evidence that leave was requested by the Union, Soto received excused paid leave twice and worked regular hours twice. There is no evidence in the record that a request for excused paid leave for Soto to attend the Foundation meetings during that period was ever denied.

The Foundation held seven meetings between April 2019, when Quinones became a trustee, and the October 7, 2019 Foundation meeting. The Union requested excused paid leave for Quinones to attend Foundation meetings on five occasions between April and October 7, 2019. On four of those occasions, she received excused paid leave. On the fifth occasion, Quinones received paid workers compensation. The record does not reflect that the Union requested excused paid leave for Quinones to attend the two other Foundation meetings during this time period, and the summary of the payroll records shows that Quinones took annual leave on one date and worked regular hours on the other. There is no evidence in the record that excused paid leave for Quinones to attend the Foundation meetings in that period was ever requested and denied.

Deputy Director of HR Yudkovitz testified that she first learned that requests for excused paid leave to attend Foundation meetings were being granted in October 2019. The Union submitted a request for excused paid leave for both trustees for the October 18, 2019 Foundation meeting. In an October 17, 2019 email, Yudkovitz instructed Judy Boyce, a supervisor who had approved previous requests for excused paid leave, that she should grant the request for leave only this one time and that the granting of the request should not be considered an expansion of NYCHA's excused paid 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 any questions, please do not hesitate to call me. I have copied Carl Cook, from Local 371, for awareness.

(NYCHA Ex. B)

Boyce marked Soto and Quinones' October 18, 2019 absence as "excused" on the Leave of Absence Request form, but checked the box marking the request as "disapproved" and wrote that the requests did not meet the definition of excused time. (Union Ex. F) According to NYCHA's summary of payroll records, Soto and Quinones did not receive excused paid leave for October 18, 2019, and instead used annual leave to attend that day's meeting. The Union also submitted requests for excused paid leave for Soto and Quinones for the November 29, 2019 and February 21, 2020 Foundation meetings, both of which were denied. On November 26, 2019, Yudkovitz sent an email to Cook stating that excused paid leave is not available for trustees to attend Foundation meetings and that NYCHA would not grant further requests for excused paid leave. The trustees did not receive excused paid leave for those or any subsequent Foundation meetings. Yudkovitz testified that she advised the Union that excused paid leave to attend this

type of event was not permitted under the HR Manual and thus an employee would only be permitted to attend on his or her own time. (Tr. 92)

### **POSITIONS OF THE PARTIES**

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

The Union alleges that by not granting excused paid leave for Union representatives to attend Foundation meetings in November 2019 and February 2020, NYCHA made a unilateral change to a mandatory subject of bargaining in violation of §§ 12-306(4) and 307(a) of the NYCCBL.<sup>6</sup> The Union argues that rules regarding time off for attendance at Foundation meetings constitute a paid leave/release time issue and, as such, are a mandatory subject of bargaining.

The Union argues that NYCHA provided excused paid leave to attend Foundation meetings on more than 20 occasions for Soto and five occasions for Quinones prior to the alleged unilateral change. The Union claims that this is sufficient to establish that granting excused paid leave for Foundation meetings was a past practice. Thus, the Union asserts that NYCHA's decision to refuse to grant excused paid leave for trustees to attend Foundation meetings constitutes a unilateral rescission of the past practice.

The Union argues that the claimed lack of awareness by NYCHA's HR Department that excused paid leave was being granted by certain NYCHA officials is irrelevant. Thus, the Union

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<sup>6</sup> NYCCBL § 12-306(a)(4) provides, in pertinent part: "It shall be 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."

NYCCBL § 12-307(a) provides, in pertinent part: "Subject to the provision of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages . . . , hours (including but not limited to overtime and time and leave benefits), working conditions . . .



asserts that NYCHA has refused to bargain in good faith concerning excused paid leave for Foundation meetings and requests that its petition be granted. As a remedy, the Union seeks an order directing NYCHA to cease and desist from denying Soto, Quinones, or any other NYCHA-employed trustee of the Charles Ensley Foundation excused paid leave to attend Foundation meetings until the parties reach an agreement or bargain to impasse, and grant Soto and Quinones excused paid leave for their attendance at the February 21, 2020 Foundation meeting.

### **NYCHA's Position**

NYCHA argues that the Union has not established an enforceable past practice that it granted excused paid leave for trustees to attend Foundation meetings. NYCHA claims that to demonstrate the existence of a past practice, the Union bears the burden of proving that the practice was “unequivocal,” existed for a sufficiently long duration, and that unit employees could reasonably expect the practice to continue unchanged. (NYCHA Br. at 6-7) NYCHA asserts that the Union has failed to prove any of those factors.

NYCHA claims that its HR Department has consistently communicated to the Union that trustees do not qualify for excused paid leave to attend Foundation meetings, pointing to McMillan's November 15, 2016 email that references NYCHA's position years before the instant petition was filed. NYCHA argues that “only” the HR department has the authority to approve requests for excused paid leave. (NYCHA Br. at 2) Thus, it asserts that the requests for excused paid leave to attend Foundation meetings were granted in error by supervisors unaware of the official HR policy against granting such leave.

NYCHA alleges that there is no evidence to support a past practice other than Cook and Soto's “conclusory and self-serving testimony.” (*Id.*) According to NYCHA, while the trustees were “sporadically” granted excused paid leave by their supervisors, they frequently did not receive excused paid leave even before October 2019. (NYCHA Br. at 8) In support of this

assertion NYCHA points to the fact that Soto used annual leave to take the days off on certain Foundation meeting dates. Quinones similarly took a day of annual leave on the date of one of the Foundation meetings during her tenure as trustee. Further, NYCHA argues that in light of the fact that it explained its policy to the Union in 2016 and 2019, only 40 Foundation meetings over a couple of years is insufficient to establish the duration required for an enforceable past practice.

In addition, NYCHA argues that regardless of the extent to which a past practice existed, “the equities require dismissing the petition because it would be harmful to labor relations if the union can create a binding past practice by intentionally circumventing the regular labor relations channels.” (NYCHA Br. at 9-10) It argues that the HR Department communicated NYCHA’s policy to the Union and expected it to be followed. It asserts that instead, the Union and Foundation trustees sidestepped the regular approval channels by continuing to submit Leave of Absence Request forms asking for excused paid leave directly to the supervisors at the trustees’ work locations. NYCHA therefore argues that creating a binding past practice in these circumstances would encourage the Union to disregard other established protocols and written communications from NYCHA’s HR Department.

Accordingly, NYCHA asks that the petition be dismissed with prejudice.

### **DISCUSSION**

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, at 1 (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 (1<sup>st</sup> 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). Accordingly, we find that excused paid leave for union business is a mandatory subject of bargaining. *See SSEU*, 13 OCB2d 18, at 14 (BCB 2020) (excused paid leave for union business is a mandatory subject of bargaining); *Local 237, IBT*, 13 OCB2d 17, at 6 (BCB 2020) (provision of excused leave time is a mandatory subject of bargaining); *See In the Matter of City of Buffalo*, 23 PERB ¶ 3054 (1990) (release time for attendance at union meetings, conferences, and conventions is a mandatory subject of bargaining) (citing *City of Albany*, 7 PERB ¶¶ 3078 and 3079 (1974), *aff’d sub nom. City of Albany v. Helsby*, 38 N.Y. 2d 778, 9 PERB ¶ 7005 (1975) and *City of Troy*, 10 PERB ¶ 3015, at 3032 (1977)).

However, there remains a dispute over whether there has been a change to that mandatory subject of bargaining. When determining whether a change has occurred, we accept evidence of a “past practice.” *See DC 37, L. 436 & 768*, 4 OCB2d 31, at 14. A party may establish a violation

of the duty to bargain over a mandatory subject by showing a departure from a past practice that “was unequivocal and existed for such a period of time that unit employees could reasonably expect the practice to continue unchanged.” *Local 621, SEIU*, 2 OCB2d 27, at 12 (BCB 2008) citing *County of Nassau*, 38 PERB ¶ 3005 (2005). See, e.g., *CEU, L. 237*, 9 OCB2d 22 (BCB 2016) (finding a past practice based on 10 years of providing two hours of excused leave for the December holidays); *DC 37, L. 436 & 768*, 4 OCB2d 31 (BCB 2011) (finding a past practice of paying employees during snow emergencies).

The Board has found a past practice that deviated from a written policy in instances when there was evidence that the policy was not implemented or enforced. For example, in *UFOA*, 1 OCB2d 17 (BCB 2008), the Board found there to be an enforceable past practice of allowing light duty Firefighters to work schedules other than five days per week, eight hours per day, which deviated from a written policy restricting light duty Firefighters to such schedules. Indeed, at the time the practice was discontinued, at least 47 out of 181 officers assigned to light duty worked non-compliant schedules. The Board found a violation of the duty to bargain stating that the reissuance of its written policy was to “address what FDNY considered the abuses that resulted from the existing scheduling practice.” *Id.* at 14.

Similarly, in *Doctors Council, Local 10MD, SEIU*, 9 OCB2d 2, at 12 (BCB 2016), supervisors responsible for staffing and scheduling attending physicians were found to have established an enforceable past practice involving holiday pay. The Board found that despite the agency’s argument that it did not approve of and had no knowledge of the practice, the supervisors had the authority to approve timesheets and therefore their actions bound the employer to the practice

In the instant matter, the record reflects that the Union requested, and Soto received excused paid leave 20 times between September 2016 and October 7, 2019, and that it requested,

and Quinones received excused paid leave four times in that same period. However, the payroll summaries also show that on another eleven occasions, the Union requested excused paid leave for Soto to attend Foundation meetings, but Soto either worked his regular hours or, on four occasions, took annual leave.<sup>7</sup>

NYCHA argues that because the Union requested excused paid leave on Foundation meeting dates when Soto worked regular hours or used annual leave, the Board must conclude that his requests for excused paid leave were not consistently granted but were in fact denied at least ten times. While the payroll summaries NYCHA provided reflect the type of leave taken on the Foundation dates in issue, they do not reflect whether the Union's requests for Soto were granted or denied. Instead, the record demonstrates that such approval or denial is reflected only on the Leave of Absence Request forms that are completed by the employee and supervisor, and that these forms are then relied upon for payroll. However, these forms on the ten Foundation dates in issue are not in evidence, nor was there any testimony concerning whether the hours worked or annual leave taken on those ten dates was due to the denial of a request for excused paid leave.<sup>8</sup>

There is simply no direct evidence that any of the Union's requests were denied between September 2016 and October 2019. To the contrary, Soto testified that when requested, he received excused paid leave to attend Foundation meetings. However, his testimony also indicated that he did not attend every meeting. McMillan and Yudkovitz did not rebut these assertions. Rather, they both testified that local supervisors had granted the requests for Soto and Quinones to receive excused paid leave. Notably, NYCHA does not argue that it denied excused paid leave to the two trustees on any occasion (other than the November 15, 2016) prior to October 18, 2019.

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<sup>7</sup> Quinones took excused paid leave on all dates it was requested except one that the payroll summary shows he received worker compensation.

<sup>8</sup> The five Leave of Absence request forms in evidence were offered by the Union.

*See UFT*, 4 OCB2d 2, at 10-11 (finding a practice to be sufficiently unequivocal based on the City not disputing that it took place). Moreover, the record shows that although NYCHA communicated to the Union that it planned to deny Soto's November 15, 2016 request, Soto in fact received excused paid leave to attend the Foundation's November meeting. Accordingly, based on the evidence, we cannot conclude that NYCHA denied any of Soto's excused paid leave requests between September 2016 and October 18, 2019.

Given those facts, this Board finds that there existed a past practice of granting excused paid leave time to Soto and Quinones to attend Foundation meetings. We have held that the three-year period during which those requests were granted, is a sufficient duration to establish a past practice. *See Local 621, SEIU*, 2 OCB2d 27, at 13 (finding three years sufficient to establish past practice); *City of Rochester*, 21 PERB ¶ 3040 (1988), *affd*, *Matter of City of Rochester v. New York State Pub. Empl. Relations Bd.*, 155 A.D.2d 1003 (4th Dept 1989) (finding 13 months sufficient to establish past practice); *DC 37, L. 436 & 768*, 4 OCB2d 31 (BCB 2011) (finding three instances sufficient to establish past practice).

NYCHA contends that because the approvals were granted by supervisors who were not aware of the official HR policy, it should not be bound by the supervisors' actions. However, in such situations, the Board has considered whether the supervisors implementing a practice at variance with written policy have the authority to bind their agency and found enforceable past practices when they did have such authority. *See UFOA*, 1 OCB2d 17, at 13 (finding a practice based upon actions of supervisors even where those actions contradicted written policies). *See also Doctors Council, Local 10MD, SEIU*, 9 OCB2d 2, at 12 (enforceable past practice found based on direct supervisor's approval of holiday pay). Here, the record is clear that local supervisors responsible for approving Leave of Absence Requests submitted by the trustees had the authority to grant or deny leave. (*See* Union Exs. B, D, F)

The record thus reflects that the practice “was unequivocal and existed for such a period of time that unit employees could reasonably expect the practice to continue unchanged.”<sup>9</sup> *Local 621, SEIU*, 2 OCB2d 27, at 12. Therefore, this Board concludes that the discontinuance of granting trustees Soto and Quinones excused paid leave to attend Foundation meetings constitutes a unilateral change to the existing practice of granting such leave, which is a mandatory subject of bargaining.

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<sup>9</sup> We find NYCHA’s assertion that the Union acted deceptively or intentionally circumvented the regular approval process by submitting the requests for excused paid leave directly to their location supervisors to be unsupported and unpersuasive. The record shows that the Union properly made requests for excused paid leave to NYCHA HR for Soto and Quinones and that Soto and Quinones followed the proper procedure by submitting their own Leave of Absence Request forms to their location’s supervisors. As a result, NYCHA HR was continuously on notice that the requests were being made and any deviation from proper procedure was initiated by NYCHA’s local supervisors, who granted the trustees’ leave requests without prior approval by HR.

**ORDER**

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, the improper practice petition filed by the Social Service Employees Union, Local 371, docketed at BCB-4380-20, be, and the same hereby is, granted to the extent NYCHA made a unilateral change to the past practice of granting excused paid leave to two Union trustees; and it is further

DETERMINED, that the New York City Housing Authority violated NYCCBL § 12-306(a)(4) by making a unilateral change when it ceased to grant excused paid leave for two Union trustees to attend monthly meetings of the Charles Ensley Foundation, a mandatory subject of bargaining; and it is further

ORDERED, that the New York City Housing Authority make Union trustees David Soto and Nancy Quinones whole for the denial of excused paid leave to attend Foundation meetings; and it is further

ORDERED, that NYCHA cease and desist from denying excused paid leave for two Union trustees to attend meetings of the Charles Ensley Foundation until such a time as the parties reach an agreement or bargain to impasse with respect to such changes.

Dated: August 3, 2021  
New York, New York

SUSAN J. PANEPENTO  
CHAIR

ALAN R. VIANI  
MEMBER

M. DAVID ZURNDORFER  
MEMBER



CAROLE O'BLNES

MEMBER

PETER PEPPER

MEMBER