

**CEA, 16 OCB2d 9 (BCB 2023)**  
(IP/Scope) (Docket No. BCB-4440-21)

**Summary of Decision:** The Union alleged that the NYPD violated NYCCBL § 12-306(a)(1) and (4) by unilaterally implementing new procedures for appointing Commanding Officers. It further alleged that the new appointment procedures have a practical impact on its bargaining unit members' terms and conditions of employment, including workload. The City argued that the selection process for Commanding Officers is not a mandatory subject of bargaining. It also argued that the Union failed to establish a practical impact. The Board found that the decision to require a new panel interview and community meeting was not a mandatory subject of bargaining, but that the procedures relating to the panel interview and community meeting that affect terms and conditions of employment were mandatorily bargainable. It found that all other changes to the Commanding Officer selection process were non-bargainable. Further, it found that the pleadings did not allege facts sufficient to warrant a hearing on practical impact. Accordingly, the improper practice portion of the petition was denied, and the scope of bargaining portion of the petition was granted only as to procedures relating to the panel interview and community meeting. (*Official decision follows*).

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

**In the Matter of the Improper Practice/Scope of Bargaining Proceeding**

*-between-*

**CAPTAINS' ENDOWMENT ASSOCIATION,**

*Petitioner,*

*-and-*

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

*Respondents.*

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**DECISION AND ORDER**

On July 27, 2021, the Captains' Endowment Association ("Union") filed a verified improper practice and scope of bargaining petition against the City of New York ("City") and the

New York City Police Department (“NYPD” or “Department”) pursuant to §§ 12-306 and 12-307 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). On June 21, 2022, the Union filed an amended petition. The Union alleges that the NYPD violated NYCCBL § 12-306(a)(1) and (4) by unilaterally implementing new procedures for appointing Commanding Officers. It further alleges that the new appointment procedures have a practical impact on its bargaining unit members’ terms and conditions of employment, including workload. The City argues that the selection process for Commanding Officers is not a mandatory subject of bargaining. It also argues that the Union failed to establish a practical impact. The Board finds that the decision to require a new panel interview and community meeting is not a mandatory subject of bargaining, but that the procedures relating to the panel interview and community meeting, such as preparation, notice, or scheduling, that affect terms and conditions of employment are mandatorily bargainable. It finds that all other changes to the Commanding Officer selection process are non-bargainable. Further, it finds that the pleadings do not allege facts sufficient to warrant a hearing on practical impact. Accordingly, the improper practice portion of the petition was denied, and the scope of bargaining portion of the petition was granted only as to procedures relating to the panel interview and community meeting.

### **BACKGROUND**

The Union is the certified bargaining representative of Captains and details therefrom, including Inspectors, Deputy Inspectors, Deputy Chiefs, and Police Surgeons. The Union’s bargaining unit members are employed by the NYPD in various bureaus and major offices,

including the Patrol Services, Housing, and Transit Bureaus.<sup>1</sup> Each bureau has subdivisions that are led by appointed Commanding Officers (“COs”) who direct and manage operations.<sup>2</sup> CO appointments are exclusively held by the Union’s bargaining unit members. However, the CO appointment is not a promotion, and it does not offer additional compensation or benefits.<sup>3</sup>

On June 12, 2020, the Governor of New York State issued Executive Order No. 203 (“E.O. 203”), which directed each local government in the State to create a plan to reform and reinvent their police force. On March 25, 2021, the City Council passed Resolution 1584-2021 at the request of the Mayor, which adopted the New York City Police Reform and Reinvention Collaborative Plan (“Police Reform Plan”) pursuant to E.O. 203. The Police Reform Plan instructs the NYPD to “incorporate direct community participation” in the selection of COs.<sup>4</sup> (Amended Ans., Ex. 1) Prior to April 12, 2021, eligible candidates applied for vacant CO positions by submitting a personal statement and resume to the Department through an online submission form. There was no interview process, and selections were made at the Police Commissioner’s

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<sup>1</sup> The NYPD’s stated mission is to enhance the quality of life in the City by “working in partnership with the community to enforce the laws, preserve the peace, protect the people, reduce fear, and maintain order.” (Amended Ans. ¶ 49)

<sup>2</sup> For instance, the Patrol Services Bureau is divided into eight borough commands, which are further divided into 77 police precincts. The NYPD appoints a CO to each precinct. Additionally, the Housing Bureau is divided into nine police service areas, and the Department appoints a CO to each area.

<sup>3</sup> The Union avers that although the CO appointment is not a formal promotion, it does improve its members’ prospects for promotion to details for which they can receive higher wages.

<sup>4</sup> Specifically, the Police Reform Plan directs that, “Precinct Councils will interview NYPD’s proposed candidates for precinct commanders and provide the NYPD with feedback on the candidates. These panels will maintain relationships with commanding officers, and will evaluate their general effectiveness, engagement with the larger neighborhood and responsiveness to issues raised by the residents.” (Amended Ans., Ex. 1)

discretion. On April 12, 2021, the Department instituted a 90-day pilot program that introduced community meetings and feedback as part of the selection process. On March 11, 2022, the Department further revised the selection process in an administrative bulletin titled “Commanding Officer Selection Process” (“2022 Selection Process”).<sup>5</sup> The 2022 Selection Process notes that it was instituted in accordance with Resolution 1584-2021 and the Police Reform Plan.

Pursuant to the 2022 Selection Process, the Office of the Chief of the Department publishes a bulletin when CO positions are available and provides applicants with a list of required qualifications and instructions. Applicants are then interviewed by a panel of Department executive members, including the Chief of Department (or designee), the Chief of Patrol (or designee), the Chief of Housing (or designee), the Chief of Transit (or designee), the CO of the Patrol Services, Housing, or Transit borough where the command is located, and a representative from the Office of Professional Development. Following the interviews, the panel selects two final candidates to participate in precinct or police service area community meetings for Patrol Services and Housing Bureau commands.<sup>6</sup> The Department provides candidates with “training and guidance” for the panel interview and the community meeting through the Office of Professional Development. (Amended Pet., Ex. 5)

During the community meetings, final candidates introduce themselves to the community, discuss their experience, qualifications, and plans for reducing crime and furthering community

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<sup>5</sup> At a conference in this matter, the City confirmed that the 2022 Selection Process is permanent and not another pilot program. Accordingly, the Union clarified that it only seeks relief from the 2022 Selection Process. Therefore, further details and events related to the April 2021 pilot program are not discussed here.

<sup>6</sup> The Chief of the Department, in consultation with the panel, selects COs for the Transit Bureau. Transit Bureau candidates are not subject to community meetings.

engagement, and answer pre-submitted questions from community members. All community meetings are observed by a representative from the Office of the Chief of the Department, and community members have the opportunity at the conclusion of each meeting to provide the Department with feedback regarding the candidates. Following the community meetings, the Chief of Department confers with the Chief of Internal Affairs, the Chief of Risk Management, and the Deputy Commissioner of Equity and Inclusion and considers, among other factors, the candidates' experience and qualifications, the interview panel's recommendation, and the community's feedback in making final CO selections.

According to the Union, the Department is "free to retain" any written reports or memoranda generated by NYPD personnel during or following the panel interviews and community meetings in candidates' personnel files and use them as bases for future performance evaluations. (Amended Pet. ¶ 56-58) However, the City contends that records related to the panel interviews and community meetings are not retained in candidates' personnel files and are not used in performance evaluations because they do not pertain to the performance of job duties.

## **POSITIONS OF THE PARTIES**

### **Union's Position**

The Union argues that the NYPD violated NYCCBL § 12-306(a)(1) and (4) by unilaterally changing the procedures governing the appointment of COs.<sup>7</sup> It asserts that the procedural changes

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<sup>7</sup> NYCCBL § 12-306(a) provides, in pertinent part:

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

in the 2022 Selection Process represent a “radical shift” from the original process by requiring a panel interview and community meeting. (Amended Pet. ¶ 52) The Union contends that the substantive community participation in the appointment procedure is without precedent as “[i]t does not appear Respondents have ever submitted a civil service employee to public evaluation when determining whether to promote or appoint that employee to a position.” (*Id.* at ¶ 53)

Moreover, the Union argues that promotion procedures are a mandatory subject of bargaining. Although it concedes that CO appointments “are not promotions in the sense that they confer a higher title or pay,” the Union avers that they are analogous to promotions because they are selective and improve members’ prospects for promotion to details for which they can receive higher wages. (Amended Pet. ¶ 51) Indeed, the Union asserts that a balancing test would weigh in favor of finding that the 2022 Selection Process is a mandatory subject of bargaining in this case because the opportunity to apply for the CO position is a critical component of its bargaining unit members’ employment and being selected makes them more competitive for promotion, whereas the City’s goal of building trust and transparency in communities has always existed without ever

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(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 . . . .

having required community participation in the CO selection process.<sup>8</sup>

Further, the Union contends that the 2022 Selection Process implicates performance evaluation procedures, which are also mandatory subjects of bargaining when they require additional employee participation. It asserts that the panel interview and community meeting are additional procedures, which require employee participation and “generate additional data for [the] Respondents to use in evaluating [the Union’s] members’ performance.”<sup>9</sup> (Amended Pet. ¶ 56)

The Union also argues that the NYPD has a duty to bargain over the practical impact of the 2022 Selection Process pursuant to NYCCBL § 12-307(b).<sup>10</sup> It contends that the new

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<sup>8</sup> The Union also alleges that the City’s invocation of City Council Resolution 1584-2021 is “irrelevant” because it does not have the force of law, and the Resolution does not state that its initiatives take precedence over the NYCCBL, “which is law.” (Amended Rep. ¶ 38)

<sup>9</sup> In response to the City’s position that the panel interview and community meeting are not assessments of job performance, the Union avers that such matters are assessments of job performance because the panel is comprised of high-ranking Department officials and supervisors who are responsible for evaluating the bargaining unit members and the community meeting yields feedback that reflects on their performance during the meeting.

<sup>10</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 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,

appointment procedures have a workload impact on its members by requiring them, in addition to their regular duties, to prepare for the panel interview with executive officials and create a presentation for the community meeting covering their experience, skills, and plans to reduce crime.<sup>11</sup> Additionally, the Union avers that the “information generated from [the] new appointment procedures[] will be retained by the Department and used in a way that will impact [the Union’s] members’ future promotional or advancement opportunities and assignments.” (Amended Pet. ¶ 66)

As a remedy, the Union seeks an order directing that the NYPD cease and desist from utilizing the new appointment procedures, bargain regarding the new procedures and their impact, post notices of the improper practices, and any such other relief as may be just and proper.

### **City’s Position**

The City argues that the NYPD did not violate NYCCBL § 12-306(a)(1) and (4) because the 2022 Selection Process does not implicate a mandatory subject of bargaining. It asserts that the selection of personnel is a managerial prerogative under NYCCBL § 12-307(b), and it is well-established that the qualifications for employment, special assignments, and promotions are not within the scope of bargaining. The City contends that the 2022 Selection Process’s panel interview and community meeting are not procedures, but are merely two criteria used to evaluate candidates for the CO assignment. However, assuming *arguendo* that the 2022 Selection Process is deemed to be procedural, the City avers that assignment procedures are also non-mandatory subjects of bargaining. Alternatively, it asserts that any balancing test would weigh in favor of the

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including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

<sup>11</sup> The Union acknowledges that the NYPD schedules each candidate’s panel interview and community meeting during work hours.



NYPD in this case because the Department's mission is to work in partnership with communities, the goal of trust and transparency in communities is crucially important, and the Police Reform Plan as adopted by City Council Resolution 1584-2021 specifically directs community participation in the selection of COs, whereas the panel interviews and community meetings have no significant or material relationship to conditions of employment.

Further, the City argues that the 2022 Selection Process is unrelated to performance evaluations. Although the City admits that procedural aspects of performance evaluations are mandatory subjects of bargaining, it contends that the panel interview and community meeting are not assessments of job performance and that any attempt to characterize them as performance evaluations is "wholly speculative." (Amended Ans. ¶ 89) Moreover, it avers that records associated with the panel interviews and community meetings will not be used in any capacity in the performance evaluation process nor will they be retained in candidates' personnel files.

The City also argues that the Union has failed to establish a practical impact under NYCCBL § 12-307(b). It asserts that the Union has failed to present any facts alleging a workload impact as the 2022 Selection Process simply does not require CO candidates to work more or perform additional job duties. The City contends that the Union's assertion that preparation for an interview for a voluntary assignment creates a workload impact is "preposterous" and that preparation for any interview, whether it be for an assignment or promotion, should be done while off duty. (Amended Ans. ¶ 106)

### **DISCUSSION**

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.” 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, 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) (quotation and internal editing marks omitted) (quoting *Local 1182, CWA*, 7 OCB2d 5, at 11 (BCB 2014)).

As a preliminary matter, we reject the Union’s argument that the 2022 Selection Process changed the CO performance evaluation process. The record reflects that the 2022 Selection Process is solely applicable to CO appointments and does not concern CO candidates’ performance evaluations. Moreover, the Union has provided no evidence to support its assertion that the Department uses information retained from the 2022 Selection Process as part of the performance evaluation process.

However, the parties do not dispute that the 2022 Selection Process altered the CO appointment process and represents a change from existing policy. Specifically, CO candidates are now required to participate in a panel interview with executive members of the Department. With respect to the Transit Bureau, the Chief of Department, in consultation with the panel, selects COs following each candidate’s interview. With respect to the Patrol Services and Housing Bureaus, the panel selects final candidates to participate in a required community meeting. The Department provides candidates with training and guidance for the panel interview and the community meeting. Following each candidate’s community meeting, the Chief of Department

confers with executive members of the Department and considers, among other factors, the interview panel's recommendation and the community's feedback in making CO selections.<sup>12</sup> Accordingly, we consider whether the changes to the CO appointment process that the Union contests implicate a mandatory subject of bargaining.<sup>13</sup> *See Doctors Council, L. 10MD, SEIU*, 9 OCB2d 2, at 10.

NYCCBL § 12-307(a) provides that the City must bargain regarding wages, hours, and working conditions.<sup>14</sup> As we have often stated, “[s]ince neither the NYCCBL nor the Civil Service

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<sup>12</sup> We note that the Union does not contest the Police Commissioner's authority to delegate responsibility for making CO selections to the Chief of Department or otherwise delegate responsibility with respect to the internal deliberative selection. *See* NYCCBL § 12-307(b); *see also Onondaga Community College*, 11 PERB ¶ 3045 (1978) (holding that a demand concerning the internal process for nominating and selecting a department chairperson was a non-mandatory subject and that a demand regarding who should serve on appointment committee was a non-mandatory subject); *Orange County Community College*, 9 PERB ¶ 3068 (1976) (holding that a demand concerning the structure and organization of an appointment and promotion committee, including the selection of committee members, was a non-mandatory subject).

<sup>13</sup> The Board has held that training is a non-mandatory subject of bargaining. *See, e.g., PBA*, 73 OCB 12, at 18 (BCB 2004) (holding that the employer could “establish unilaterally the kind of training it will provide . . . in order to maintain the quality of service to be delivered to the public”), *affd.*, *Matter of Patrolmen's Benevolent Assn. v. New York City Bd. of Collective Bargaining*, Index No. 112687/2004 (Sup. Ct. N.Y. Co. Aug. 8, 2005) (Friedman, J.), *affd.*, 38 A.D.3d 482 (1st Dept. 2007), *lv. denied*, 9 N.Y.3d 807 (2007). Accordingly, we do not find that the City had a duty to bargain over the training offered in the 2022 Selection Process.

<sup>14</sup> NYCCBL § 12-307(a) provides, in pertinent part:

Subject to the provisions 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 (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions and provisions for the deduction from the wages or salaries of employees in the appropriate bargaining unit who are not members of the

Law expressly delineates the nature of ‘working conditions,’ or ‘conditions of employment,’ both this Board and [PERB] determine on a case-by-case basis the extent of the parties’ duty to negotiate.” *DC 37, L. 1457, 77 OCB 26*, at 12 (BCB 2006). This determination “takes the form of a balancing test which weighs the interests of the public employer and those of the union with respect to that subject under the circumstances of the particular case.” *CEU, L. 237, IBT, 2 OCB2d 37*, at 14 (BCB 2009) (citations omitted); *see also State of New York (Dept. of Corr. Serv.)*, 38 PERB ¶ 3008 (2005) (PERB applies the balancing test under the Public Employees’ Fair Employment Act (“Taylor Law”)); *Matter of Levitt v. Bd. of Collective Bargaining of the City of New York*, 79 N.Y.2d 120 (1992) (upholding Board’s use of balancing test). Some subjects require no further analysis by this Board because they have been “‘pre-balanced’ by the Legislature . . . [including those] identified in NYCCBL § 12-307(b) as reserved for managerial discretion.” *CEU, 2 OCB2d 37*, at 14-15 (citations omitted).

NYCCBL § 12-307(b) reserves to the City the sole discretion to “determine the standards for selection for employment” and the “methods, means and personnel by which government operations are to be conducted.” Consequently, “deciding whether some types of experience are more valuable than others in preparing employees for particular job assignments or for promotion is the type of judgment reserved to the City.” *CSBA, L. 237, 65 OCB 9*, at 12-13 (BCB 2000) (citation omitted), *affd.*, *Matter of City of New York v. DeCosta, Civ. Serv. Bar Assn., Local 237, Int’l Bhd. Of Teamsters*, Index No. 403335/2000 (Sup. Ct. N.Y. Co. June 7, 2001) (Kapnick, J.). Indeed, the Board has consistently held that criteria for the selection of personnel and qualifications for employment are non-mandatory subjects of bargaining. *See UFA, 4 OCB2d 3*, at 8 (BCB 2011)

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certified or designated employee organization of an agency shop fee  
to the extent permitted by law . . . .

(holding that the consideration of newly-added criteria of aptitude, demeanor, and judgment in awarding assignments to chauffeur positions was a non-mandatory subject), *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); *COBA*, 11 OCB2d 33, at 14-15 (BCB 2018) (holding that the consideration of Corrections Officers' use of force incidents and disciplinary infractions as criteria in the promotional process was a non-mandatory subject), *affd.*, *Correction Officers' Benevolent Association v. New York City Bd. of Collective Bargaining, City of New York, New York City Department of Correction*, Index No. 159233/2018 (Sup. Ct. N.Y. Co. Sept. 5, 2019) (Perry, J.); *UFOA*, 71 OCB 6, at 7-8 (BCB 2003) (holding that the education requirement for new applicants for promotion was a non-mandatory qualification for employment).

On the other hand, the Board has consistently held that although the City maintains the right to make certain personnel decisions, in several instances the procedures for implementing decisions that affect terms and conditions of employment are mandatorily bargainable. *See PBA*, 6 OCB2d 36, at 15-17 (BCB 2013) (performance evaluation procedures mandatorily bargainable), *affd.*, *Matter of City v. Patrolmen's Benev. Assn.*, Index Nos. 400091/2014 and 100114/2014 (Sup. Ct. N.Y. Co. Apr. 10, 2015) (Schlesinger, J.); *Local 371, SSEU*, 71 OCB 31, at 12-13 (BCB 2003) (merit pay procedures mandatorily bargainable); *DC 37, 67 OCB 25*, at 7-8 (BCB 2001) (disciplinary procedures mandatorily bargainable); *District Council 37, Local 1457*, 1 OCB2d 32, at 34-35 (BCB 2008) (procedures for searching employees for narcotics mandatorily bargainable) (citations omitted); *see also Matter of City of Watertown v. State of N.Y. Pub. Empl. Relations Bd.*, 95 N.Y.2d 73, 79-80 (2000) (holding that although the employer had the right to make disability

status determinations, the procedures for challenging such determinations were mandatory subject).

In this case, the 2022 Selection Process's panel interview and community meeting are like procedures to the extent they are processes that candidates must follow in order to be considered for CO assignments. *See, e.g., PBA*, 6 OCB2d 36, at 15-17. On the other hand, the NYPD's decision to consider a candidate's response to interview or community questions is intrinsic to management's right to evaluate candidates and determine criteria for CO assignments. *See, e.g., UFA*, 4 OCB2d 3, at 8. Accordingly, because the Board has not previously ruled upon similar aspects of the assignment process, we must apply a balancing test to determine whether the panel interview and community meeting requirements are mandatory subjects of bargaining. *See CEU, L. 237, IBT*, 2 OCB2d 37, at 14.

We first consider the CO candidates' interests in this matter. According to the Union, the opportunity to apply for CO assignments is a critical component of its bargaining unit members' employment because serving as a CO makes them more competitive for promotions to details with higher compensation. Therefore, it maintains that the changes substantially affect bargaining members' terms and conditions of employment. For the NYPD, it has an interest in determining the best CO candidates to fulfill its mission. Moreover, according to the City, a crucial part of the NYPD's mission is to build trust and transparency in communities. Therefore, the panel interview and community meeting are intended to support this goal, assist in determining the best candidates, and comply with the Police Reform Plan and City Council Resolution 1584-2021. Accordingly, the City argues that the panel interview and community meeting are management rights, not procedures affecting employee terms and conditions of employment.

In this instance, we conclude that the NYPD's interests outweigh the CO candidates' interests. The record reflects that these requirements support the NYPD's goal of building trust and transparency in communities, in furtherance of its community policing mission, by permitting constituents an opportunity to give feedback on candidates and providing the Department with additional opportunities to evaluate whether applicants are capable of working with the communities they aspire to serve. On the other hand, the panel interview and community meeting requirements have no impact on the ability of bargaining unit members to apply and be considered for CO assignments and seeking these assignments is completely voluntary. Therefore, on balance, we find that the decision to require the panel interview and community meeting is not a mandatory subject of bargaining. *See DC 37, 14 OCB2d 16, at 13-14 (BCB 2021)* (using balancing test and concluding that the DOF's interest in administering the City's tax and revenue laws outweighed the employees' interests with respect to privacy and potential discipline where the DOF introduced remote, GPS-enabled field integrity tests for property assessors). Accordingly, we dismiss the Union's unilateral change claim.

However, as mentioned above, notwithstanding the City's the right to make certain decisions regarding personnel, there may be procedures relating to the panel interview and community meeting, such as preparation, notice, or scheduling, that affect terms and conditions of employment that are mandatorily bargainable. *See, e.g., DC 37, 75 OCB 13, at 11-12 (BCB 2005)* (procedures related to implementation of the decision to search employee storage lockers bargainable). Accordingly, consistent with our case law, we find that the procedures relating to the panel interview and community meeting requirements are mandatory subjects of bargaining. Therefore, we conclude that, upon request, the City must bargain over the procedures relating to the panel interview and community meeting requirements.

We also address the Union's practical impact claims pursuant to NYCCBL § 12-307(b). The right to impact bargaining arises when the Board determines that management decisions on matters that lie within management's rights have a practical impact on terms and conditions of employment. *See* NYCCBL § 12-307(b). The purpose of this requirement "is to provide means of cushioning, or reducing, to the extent possible, the adverse effects upon employees arising from exercises of management prerogatives." *DC 37, L. 2507 & 3621*, 14 OCB2d 11, at 23 (BCB 2021) (internal quotation marks omitted) (quoting *DC 37, L. 2507 & 3621*, 15 OCB 21, at 21 (BCB 1975), *affd.*, *Matter of City of New York v. Bd. of Collective Bargaining*, Index No. 41993/1975 (Sup. Ct. N.Y. Co. Dec. 1, 1975) (Nadel, J.)).

With respect to practical workload impact, the Board has held that a petitioner must allege sufficient facts to show that the managerial decision created an "unreasonably excessive or unduly burdensome workload as a regular condition of employment." *DC 37, L. 3621 & 2507*, 11 OCB2d 10, at 21 (BCB 2018). 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." *COBA*, 10 OCB2d 21, at 14 (BCB 2017) (declining to order hearing) (internal quotation marks and citations omitted). Thus, a "claim of increased workload during the workday does not amount to a workload impact absent a showing that employees were subject to working more time than scheduled or overtime to complete their work." *Local 333, UMD*, 5 OCB2d 15, at 15-16 (BCB 2012) (declining to order hearing) (citation omitted).

In this case, the Union alleges that the 2022 Selection Process has led to additional duties related to the NYPD's decision to require the panel interview and community meeting. However, our caselaw is clear that the mere articulation of additional duties without a showing that employees were subject to working more time than scheduled or overtime to complete their work



is insufficient to establish a workload impact or warrant a hearing. *See COBA*, 10 OCB2d 21, at 14-16; *Local 333, UMD*, 5 OCB2d 15, at 15-16. Moreover, to the extent the Union also alleges that “information” derived from the 2022 Selection Process may be retained by the NYPD and “used in a way that will impact [the Union’s] members’ future promotional or advancement opportunities and assignments,” we find that its claim is vague, speculative, and insufficient to warrant a hearing. *See UFA*, 5 OCB2d 3, at 14 (BCB 2012) (explaining that the Board’s pleading standard for impact claims requires allegations of “specific facts,” and that “conclusory statements or vague non-specific allegations” are insufficient to establish a practical impact or to warrant a hearing) (quoting *UFA*, 4 OCB2d 30, at 29 (BCB 2011)) (additional citations omitted). Consequently, we dismiss the Union’s practical impact claims.

### **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 portion of the petition, docketed as BCB-4440-21, filed by the Captains’ Endowment Association, against the City of New York and New York City Police Department, is denied; and it is further

ORDERED, that the scope of bargaining portion of the petition is granted as to the procedures relating to the panel interview and community meeting that affect terms and conditions of employment and denied as to all other claims; and it is further

ORDERED, that upon request the City of New York and New York City Police Department bargain in good faith with the Captains’ Endowment Association regarding procedures

relating to the panel interview and community meeting that affect terms and conditions of employment.

Dated: February 14, 2023  
New York, New York

SUSAN J. PANEPENTO  
CHAIR

ALAN R. VIANI  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

CAROLE O'BLENES  
MEMBER

I dissent, in part, and concur, in part (see attached opinion). CHARLES G. MOERDLER  
MEMBER

I dissent, in part, and concur, in part (see attached opinion). PETER PEPPER  
MEMBER

**CEA, 16 OCB2d 9 (BCB 2023)**

(IP) (Docket No. BCB-4440-21)

**Partial Concurrence and Partial Dissent of Charles G. Moerdler and Peter Pepper**

We concur in basic aspects of the outcome but not in the changed language employed at the City's behest that alters the nature and tone of what this Record evidenced and the relief it merited, as stated in the decretal language originally proposed, namely (i) a plain violation was established of the spirit and intent of NYCCBL § 12-306(a)(1) and in failing to bargain as to certain new procedures relating to the appointment of Commanding Officers that affect the terms and conditions of employment, including the panel interview and community meeting, and (ii) unilateral changes in both the decision and the decretal language warranting grant of that claim. To effectuate those warranted conclusions, the Order should have read as follows:

**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 portion of the petition, docketed as BCB-4440-21, filed by the Captains' Endowment Association, against the City of New York and New York City Police Department, is denied except as hereinafter set forth; and it is further

ORDERED, that the scope of bargaining petition is granted to the extent that the City of New York and New York City Police Department violated NYCCBL § 12-306(a)(1) and (4) by failing to bargain over the procedures relating to the panel interview and community meeting that affect terms and conditions of employment; and it is further

ORDERED, that the scope of bargaining petition is denied as to all other claims; and it is further

ORDERED, that the City of New York and New York City Police Department cease and desist from utilizing the panel interview and community meeting requirements as part of the CO selection process until they bargain in good faith with the Captains' Endowment Association regarding procedures relating to the panel interview and community meeting that affect terms and conditions of employment; and it is further

ORDERED, that the New York City Police Department post or distribute the Notice of Decision and Order in the manner that it customarily communicates information to employees. When posted, as required above, the notice must remain for a minimum of thirty days.

Dated: February 14, 2023

CHARLES G. MOERDLER  
MEMBER

PETER PEPPER  
MEMBER