# *CWA, L. 1183*, 17 OCB2d 7 (BCB 2024)

(IP) (Docket No. BCB-4487-22)

***Summary of Decision*:** The Union claimed that the Board of Elections unilaterally changed the eligibility criteria for annual bonuses, in violation of NYCCBL § 12-306(a)(1) and (4), which resulted in the Board of Elections withholding payment of the bonuses to Trainer Assistants. The City contended that the petition should be dismissed as untimely or, in the alternative, deferred to arbitration because the Union is attempting to enforce a contractual provision, and that there was no change of criteria because the Board of Elections merely exercised its managerial prerogative to issue discretionary bonuses. The Board found that the petition is timely, declined to defer the matter to arbitration, and held that the eligibility criteria for annual bonuses is a mandatory subject of bargaining that the Board of Elections unilaterally changed in violation of NYCCBL § 12-306(a)(1) and (4). 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-***

**COMMUNICATION WORKERS OF AMERICA, LOCAL 1183,**

***Petitioner*,**

***-and-***

**THE CITY OF NEW YORK and THE NEW YORK CITY BOARD OF ELECTIONS,**

***Respondents*.**

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## DECISION AND ORDER

On May 20, 2022, the Communications Workers of America, Local 1183 ("Union"), filed an improper practice petition alleging that the City of New York ("City") and the New York City

Board of Elections ("Board of Elections") violated § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") when it unilaterally changed the eligibility criteria for annual bonuses and, as a result of this change, withheld payment of these bonuses to Trainer Assistants in January 2022 and December 2022. The City contends that the petition should be dismissed as untimely or, in the alternative, deferred to arbitration because the Union is attempting to enforce a contractual provision. The City also argues that the collective bargaining agreement explicitly permits granting bonuses and that its determination as to who received the bonuses is discretionary and fall squarely within its managerial prerogative under NYCCBL § 12-307(b). The Board finds that the petition is timely, declined to defer the issue to arbitration, and holds that the decision to change the eligibility criteria for annual bonuses is a mandatory subject of bargaining that the Board of Elections unilaterally changed in violation of NYCCBL § 12-306(a)(1) and (4).

## BACKGROUND

The Trial Examiner held two days of hearings and found that the totality of the record, including the pleadings, exhibits, and briefs, established the relevant facts set forth below.

The Board of Elections is an administrative body made up of ten commissioners, two from each of the City's five boroughs. Each commissioner must be recommended by both political parties and then appointed by the City Council for a term of four years. Pursuant to the New York State Election Law, the Board of Elections is responsible for overseeing the election process in the City.

The Union is the exclusive bargaining representative for Board of Elections employees in civil service titles including, among others, Voting Machine Technician ("VMT"), Trainer

Assistant, Administrative Assistant, and Administrative Associate. Approximately 50 employees in the Trainer Assistant, Administrative Assistant, and Administrative Associate titles serve in the in-house position of Voting Machine Facility Supervisor ("VMF Supervisor"). Within this in-house position, the Board of Elections refers to employees in the Administrative Assistant and Administrative Associate titles as "administrative" and employees in the Trainer Assistant title as "non-administrative." It is undisputed that regardless of which civil service title is held by an employee assigned as a VMF Supervisor, the duties of those in the in-house position are functionally the same. During the relevant time period, Alexandria Abreu and Pia Bowman were Trainer Assistants serving in the position of VMF Supervisor. In addition to Abreu and Bowman, the Board of Elections employed a number of similarly situated Trainer Assistants working as VMF Supervisors during the relevant time period.

The Union and the City are parties to a collective bargaining agreement ("Agreement"), and two memoranda of understanding, which incorporate and modify the Agreement. The current memorandum of understanding covers the period of January 19, 2021, through July 18, 2026. The Agreement states, in pertinent part, "the Union acknowledges the Employer's right to pay additional compensation for outstanding performance. The Employer agrees to notify the Union of its intent to pay such additional compensation." (Ans., Ex. A at 21)

The Discretionary Annual Bonus

Board of Elections Executive Director Michael Ryan ("Executive Director") testified that before 2019, all VMTs and all bargaining unit titles serving as VMF Supervisors were eligible to receive the discretionary annual bonus ("bonus") of up to $7,500, if the employee had worked for the entirety of the prior year's elections and had received a performance evaluation that was satisfactory or higher. Abreu and Bowman testified that they first received the bonus in 2018,

which was for their work during the 2017 election year. Consistent with this testimony, Abreu and Bowman's pay stubs confirmed that they each received a bonus of $7,500 in 2018, 2019, and 2021.[1]

The Executive Director testified that after New York State enacted early voting in 2019, the Board of Elections voted to increase staffing and certain employees' salaries in order to meet the additional workload required to implement early voting. Sometime prior to August 18, 2019, the Board of Commissioners approved these changes. The Board of Elections Deputy Executive Director sent an email to Board of Elections executive management on August 20, 2019, which stated "The annual bonus for [VMTs] will only be available to the supervisors who are in an administrative assistant line or an administrative associate line." (Ans. Ex. C). An email from the Executive Director to Board of Elections dated March 3, 2020, explained the rationale behind the changes to the annual bonus:

> [P]lease process the annual bonus for all eligible VMF Supervisors according to the process established for these matters.
>
> The VMT annual bonus was discontinued after the VMTs received a raise; however, the VMF supervisors received no such raises. As such, the supervisors remain eligible for the commissioner approved bonus.[2]

(Union Ex. 4)

[1] Bonuses are generally paid for work performed during the prior year's elections. Due to the COVID-19 pandemic, the Board of Elections was unable to issue a bonus for work performed in 2019 until January 2021. In addition, the bonus for work performed in 2020 was not issued until January 2022, and the bonus for work performed in 2021 was issued in December 2022.

[2] The record does not explain whether the statement in this email that VMF Supervisors remain eligible for the annual bonus was intended to include Trainer Assistants assigned as VMF Supervisors or whether only Administrative Assistants and Administrative Associates were eligible, as stated in the Deputy Executive Director's August 2019 email to the Board of Elections.

According to the Executive Director, after the Board of Commissioners' action in 2019, VMTs received a raise, but VMF Supervisors did not. In addition, only those employees in the Administrative Assistant and Administrative Associate titles were eligible for the annual bonus. These changes were first applied to the distribution of bonuses for work performed in 2019. The bonus remained limited to employees who had worked for the entirety of the prior year's elections and received at least a "satisfactory" performance evaluation.

The Executive Director testified that due to the August 2019 change, Abreu and Bowman were no longer eligible to receive bonuses because they were Trainer Assistants. He further testified that Abreu and Bowman received $7,500 bonuses issued on January 8, 2021, for work performed in 2019 because their borough manager recommended them, and it was mistakenly granted.[3] The City never sought to recoup these erroneous payments to avoid hurting the employees who received them solely because of their manager's error. Thereafter, neither Abreu or Bowman received bonuses.[4] The record demonstrates that for work performed in 2020 and 2021, 24 employees received bonuses. Most employees who received the bonus in those two years received $7,500; only two employees each year received a bonus of $6,500.[5] In addition, all those who received bonuses for work performed in 2020 and 2021 were in the titles Administrative Assistant or Administrative Associate, except for one Trainer Assistant who received a $7,500 bonus for each of the two years.[6]

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[3] The record demonstrates that two other Trainer Assistants did not receive the 2019 bonus.

[4] Abreu resigned from the Board of Elections on April 25, 2022.

[5] From 2017-2019, all Trainer Assistants who received a bonus received $7,500, with the exception of one employee in 2017 who received $5,000 after transferring into the title mid-year.

[6] The same employee moved from the title Clerk to Trainer Assistant in September 2019, but received a $7,500 bonus for 2019 as well. No explanation was provided as to why one Trainer Assistant was granted a bonus for 2019, 2020 and 2021.

Abreu and Bowman testified that prior to the 2019 change, they had received a bonus every year, and they were confused as to why they had not received the bonus granted in January 2022 for the 2020 election year. After learning that 2020 bonuses had been granted to other employees, Abreu and Bowman contacted their supervisors to determine the reason. Both supervisors replied that they were unaware that Abreu and Bowman had not received the bonus. They could not explain why this was the case because they had put Abreu and Bowman's names on the list of employees that would receive the bonus. Shortly thereafter, in early February 2022, Abreu and Bowman contacted Union President Donna Ellaby to complain that they had not received the bonus issued on January 21, 2022, unlike in previous years. Abreu and Bowman testified that they were unaware that the Board of Elections considered them to be ineligible for the bonus solely because they were Trainer Assistants until after they failed to receive the bonus issued in January 2022. They further testified that they were never told in their evaluations that they had any performance issues that would prevent them from receiving the bonus. Abreu and Bowman's testimony concerning their evaluations was not contested.

The Union President testified that prior to speaking with Abreu and Bowman in February 2022, the Union had not been notified and was unaware that the Board of Elections had made any changes to the eligibility criteria for the annual bonus. On April 6, 2022, the Union President and Union Representative Luis Benitez-Burgos met with Board of Elections officials concerning the bonuses paid to VMF Supervisors. The Union Representative testified that the Union first received notice of the unilateral change of criteria during this meeting. At that meeting, the Board of Elections informed the Union that it had changed the eligibility criteria following an internal meeting in 2019. During this meeting with the Union, the Board of Elections provided documentation explaining the 2019 changes it made to the annual bonus criteria.

In January 2023, the Board of Elections again changed the criteria for bonuses, and all civil service titles working as VMF Supervisors are again eligible to receive the annual bonus.

## POSITIONS OF THE PARTIES

### Union's Position

The Union argues that the Board of Elections violated NYCCBL § 12-306(a)(1) and (4) when it unilaterally changed the criteria for which employees in the VMF Supervisor position are eligible to receive the bonus. It asserts that the Board of Elections did not provide notice to the Union of this unilateral change or an opportunity to bargain. As a result of the change, Abreu, Bowman, and other similarly situated employees in the Trainer Assistant title were ineligible to receive the bonus of up to $7,500 for work performed during the years 2020 and 2021.

The Union asserts that the petition is timely because it did not receive notice that the Board of Elections had changed the criteria for which titles were eligible to receive the bonuses until January 22, 2022, when Abreu and Bowman informed the Union that they had not received a bonus. The Union also asserts that it could not have been on constructive notice of the change because prior to the Board of Elections' unilateral change, all titles serving in the VMF Supervisor position were eligible to receive it. The Union argues that it could not have anticipated that the Trainer Assistant title would become ineligible for the bonus because it is undisputed that all employees in the VMF Supervisor position perform the same job duties, regardless of civil service title. Furthermore, the record demonstrates that Trainer Assistants continued to receive the bonus even after the Board of Elections voted to change the eligibility criteria in 2019. The Union notes that it filed this improper practice petition on May 20, 2022, within four months of learning of the change, and thus the petition is timely.

The Union requests that the Board not defer this matter to arbitration because it does not contest the Board of Elections' right to pay additional compensation as described in the Agreement. The Union claims that the bonus falls squarely within the NYCCBL's definition of a mandatory subject of bargaining, specifically "wages, hours, and working conditions." (Pet. ¶ 8) Accordingly, the Union argues that the Board of Elections violated the NYCCBL when it unilaterally ceased providing these bonuses to Trainer Assistants without notice to the Union. Moreover, even if the Board were to find that the bonuses are a non-mandatory subject of bargaining, the Union contends that the Board of Elections nonetheless violated the NYCCBL when it unilaterally changed which civil service titles were eligible to receive the bonus. The Union notes that the criteria and procedures for determining eligibility for merit pay are themselves mandatory subjects of bargaining.

According to the Union, the evidence demonstrates that the Board of Elections began paying employees the bonus as early as 2017 and that until 2019 all titles with the in-house position of VMF Supervisor were eligible to receive the bonus. It contends that, in August 2019, the Board of Elections unilaterally decided that only Administrative Assistants and Administrative Associates were eligible for the bonus, excluding Trainer Assistants. Thus, it argues that this was not a new bonus, but rather, a change to the criteria of an existing bonus. The Union asserts that the City does not dispute that Trainer Assistants who became ineligible to receive the bonus in 2019 were eligible in the past and that they have identical work duties and responsibilities as those in eligible civil service titles who all have the in-house position of VMF Supervisor. Critically, there is no evidence that Abreu and Bowman failed to meet any criteria for the bonuses and that the City has not argued that they did not receive the bonus due to their performance. The Union

notes that the City does not dispute that they did not receive the bonuses because of new criteria that excluded their title.

The Union contends that the City has also derivatively violated NYCCBL § 12-306(a)(1) because it violated its duty to bargain in good faith over these new criteria. As a remedy, the Union asks that the Board order the City to pay $7,500 to Abreu, Bowman, and other similarly situated Trainer Assistants as a bonus for each year that they were not eligible it to receive because of the Board of Election's unilateral change in 2019 and any other just and proper relief.

**City's Position**

The City argues that this petition should be dismissed as untimely because Abreu and Bowman had notice when they "did not receive any payments in January 2021 reflecting their 2020 bonus." (Ans. ¶ 28) The City's position is that the Union was on notice once Abreu, Bowman, and other similarly situated Trainer Assistants failed to receive a bonus. According to the City, the improper practice petition was filed well beyond the applicable four-month statute of limitations.

If the Board declines to dismiss the petition as untimely, the City argues that this petition should be deferred to arbitration because this dispute is contemplated by the Agreement and falls under the agreed upon grievance procedure, specifically, provisions of the Agreement that directly address the issue of discretionary bonuses.

As to the merits of the petition, the City argues that it did not violate NYCCBL § 12-306(a)(1) and (a)(4) because the Board of Elections' decision to issue the bonuses falls under the City's managerial right to issue bonuses, a non-mandatory subject of bargaining that is expressly protected by the NYCCBL § 12-307(b) and the Agreement. The City also argues that the Union

failed to raise this issue in the most recent round of bargaining and that the Board should reject the Union's attempt to engage in mid-term bargaining of this issue.

The City describes the bonuses as discretionary payments that are separate and apart from the salaries and wages paid to Board of Elections employees. According to the City, the Board of Elections has the right to withhold the bonus from any employee because the bonuses are discretionary. Further, the City argues that the 2020 bonuses were new – the Board of Elections first decided to issue these bonuses in 2019 after early voting was enacted by the State legislature. Accordingly, the Board of Elections created a new bonus in 2019, as opposed to changing the criteria for the existing bonus. While the City acknowledges that criteria and procedures for determining eligibility for merit increases are mandatory subjects of bargaining, the City maintains that it never changed the eligibility criteria for the bonus. Should the Board find that the Board of Elections' action in August 2019 was not the issuance of a new bonus but rather a modification to the pre-existing bonus, the City avers that the criteria has not changed. The criteria has always been that an employee must receive a satisfactory or better performance evaluation while performing the duties of a VMF Supervisor over the course of the prior election year. Finally, the City asserts that the Union has failed to establish an independent NYCCBL § 12-306(a)(1) violation because it has not identified any behavior that can be considered "inherently destructive."

## DISCUSSION

Pursuant to NYCCBL § 12-306(e) and § 1-07(b)(4) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), the statute of limitations for an improper practice petition is four months. Thus, "an improper practice charge 'must be filed no later than four months from the time the disputed action occurred or from the

time the petitioner knew or should have known of said occurrence.'" *DC 37, L. 420*, 5 OCB2d 19, at 7 (BCB 2012); *see Mahinda*, 2 OCB2d 38, at 9 (BCB 2009), *affd., Matter of Mahinda v. City of New York.*, Index No. 117487/09 (Sup. Ct. N.Y. Co. Oct. 7, 2010) (Scarpulla, J.), *affd*., 91 A.D.3d 564 (1st Dept. 2012); *Raby*, 71 OCB 14, at 9 (BCB 2003), *affd., Matter of Raby v. Office of Collective Bargaining*, Index No. 109481/03 (Sup. Ct. New York Co. Oct. 8, 2003) (Beeler, J.).

As we have long held, "[t]he statute of limitations begins to run upon the party having actual or constructive knowledge of definitive acts which put it on notice of the need to complain." *DC 37*, 1 OCB2d 21, at 12 (BCB 2008); *see UPOA*, 43 OCB 38, at 24-25 (BCB 1989). As the statute of limitations is an affirmative defense, the burden of proving notice is on the party raising the defense. *See SSEU*, 13 OCB2d 18, at 10-11 (BCB 2020). The Board has consistently held that, even if an employer has previously announced a policy, it is only upon implementation of that policy that a union has "knowledge of definitive acts to put it on notice of the need to complain." *COBA*, 69 OCB 26, at 6 (BCB 2002) *(*quoting *UPOA*, 37 OCB 44, at 18 (BCB 1986)). A finding of constructive notice is essentially a context-specific determination of whether facts surrounding a development would reasonably have alerted a party to the development. *See Raby*, 71 OCB 14, *aff'd*, *Raby*, Index No. 109481/03 (petitioner should have known that the union would not pursue her grievance after the union did not respond to her multiple attempts to discuss grievance it).

We find that the Union's claims are timely because the Union did not have actual or constructive notice of the unilateral change to the bonus until January 21, 2022, at the earliest. The City argues in its answer and brief that the petition is untimely because Abreu and Bowman had actual notice that they were no longer eligible for the bonus when they first failed to receive the bonus issued on January 8, 2021. However, it is undisputed that Abreu and Bowman were paid

the 2019 bonus on January 8, 2021. The first time that Abreu and Bowman failed to receive the bonus was January 21, 2022. Therefore, at the earliest, the two employees had constructive notice of the change when the 2020 bonuses were issued. This Board has previously refused to impute constructive notice from an employee to a Union unless "*some responsible agent* of the union has actual or constructive knowledge of a change in prevailing terms and conditions of employment." *USA, Local 831, 3* OCB2d 27 at 9 (BCB 2010) (quoting *Otselic Valley Cent. Sch. Dist*., 29 PERB ¶ 3005, at 3014 (1996) (emphasis added)). There is no evidence that the Union was informed of the Board of Election's 2019 bonus modification. Further, it is undisputed that shortly after Abreu and Bowman failed to receive the 2020 bonus on January 22, 2022, they contacted their Union President. We therefore find that the Union first learned of the bonus modification from Abreu and Bowman. While the record does not reflect the exact date of this communication, it is clear that it occurred sometime between January 21, 2022, and early February 2022, while the Board of Election's actual notice of modification to the Union did not occur until the parties met in April 2022. As a result, the City has not shown the Union's claims are untimely since the petition was filed on May 20, 2022, within four-months of its actual notice of the complained of change.

We next address the City's argument that the instant petition should be deferred to arbitration because the underlying dispute involves an interpretation of the Agreement. This Board's prior cases have made clear that we will defer disputes to arbitration "where the circumstances are such that the contractual arbitration procedure provides an appropriate means of resolving the matter, consistent with the declared policy of the NYCCBL to favor and encourage . . . final, impartial arbitration of grievances between municipal agencies and certified employee organization." *DC 37, L. 1508*, 79 OCB 21, at 21 (BCB 2007) (internal quotations omitted). Furthermore, the Board will "defer improper practice claims where the improper practice

allegations arise from and require interpretation of a collective bargaining agreement and in cases where it appears that arbitration would resolve both the claims that arise under the NYCCBL and the agreement." *DC 37*, *L. 1322* 1 OCB2d 4, at 8-10 (BCB 2008); *see DC 37, L. 1508*, 79 OCB 11, at 10. However, deferral is inappropriate where the Union "asserts as the source of the rights at issue not the contract between the parties but rather the failure to bargain over the Union's demand for a benefit outside of the [collective bargaining agreement]." *Assistant Deputy Wardens*, 3 OCB2d 8, at 12-13 (BCB 2010). In such circumstances, "we have found that the claim of failure to bargain is properly resolved by this Board, and deferral is not warranted." *Id*. (citing cases).

Where, as here, an improper practice claim exists that would in any event not be resolved by the arbitration of contractual claims arising out of the same transactions, we have held that "such statutory claims are committed to adjudication under the NYCCBL rather than the arbitral forum." *Id*. (quoting *SSEU, L. 371 (Abualroub)*, 79 OCB 34, at 8 (BCB 2007) (editing marks omitted); *see also CSBA, L. 237*, 71 OCB 24, at 11 (BCB 2003); *CWA, L. 1182*, 59 OCB 3, at 7 (BCB 1997).

The parties' Agreement expressly contemplates the issuance of merit pay and the parties do not dispute the Board of Elections' authority to issue merit pay or bonuses. Rather, the Union claims that the Board of Elections unilaterally altered the criteria or procedures that determine which employees are eligible to receive a bonus, a subject that the Agreement simply does not address. *See ADW/DWA*, 3 OCB2d 8, at 12. Moreover, there is no evidence that the Union filed a grievance concerning the unilateral change at issue. We therefore find that the Union's claim that the City failed to bargain over a change to the eligibility criteria for the bonus falls outside the provisions of the Agreement. *Id.* Accordingly, we decline to defer Petitioner's claims to arbitration.

Next, we turn to the substantive issues raised by the Union's claim. 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)).

We have previously addressed issues concerning the granting of merit pay and find that the granting of bonuses is analogous. In *Local 371, SSEU*, 69 OCB 22, at 7 (BCB 2007), we stated that "[i]t is well settled that the decision to grant merit increases and the aggregate amount thereof are within the scope of management's rights set forth in NYCCBL § 12-307(b), and that the criteria and procedures for determining eligibility for merit increases are mandatory subjects of bargaining." The Public Employment Relations Board ("PERB") has similarly held that the issuance of discretionary pay is a mandatory subject of bargaining. *See Brookhaven-Comsewoque Union Free Sch. Dist.*, 22 PERB ¶ 4503, at 4508 (ALJ 1989), *affd*., 22 PERB ¶ 3037 (1989) (unilateral grant of per annum salary stipends to certain employees based upon additional work responsibilities and outstanding work performance violated the Taylor Law.)

Here, we find that the Board of Elections made a unilateral change to the eligibility criteria used in granting annual bonuses. The record establishes that sometime prior to August 20, 2019,

the Board of Commissioners of the Board of Elections voted to change which bargaining unit members were eligible to receive an annual bonus. Following this unilateral change, Trainer Assistants were no longer eligible for the bonus, in contrast to the prior years when no such exclusion existed. Whether the Board of Elections' decision to exclude Trainer Assistants from the bonus is characterized as a change to the eligibility criteria for the existing annual bonus or as an entirely new bonus with different eligibility criteria determined unilaterally does not alter the result. The modification concerned criteria for discretionary compensation for bargaining unit members, specifically Trainer Assistants, who were eligible to receive annual bonuses prior to August 2019. Therefore, it was a change to a mandatory subject of bargaining. *See Local 371, SSEU*, 9 OCB 22, at 7. Accordingly, the Board of Elections' unilateral action violate § 12-306(a)(4), and derivatively, § 12-306(a)(1) of the NYCCBL.

Finally, the City argues that the Union's failure to raise the issue of discretionary bonuses during the last round of bargaining was a waiver of its right to challenge the City's discretionary bonuses. Because the Agreement recognizes the City's right to pay bonuses for outstanding performance, the City argues, the parties have already bargained over issuance of bonuses, and the Union is now attempting to engage in mid-term bargaining. As noted earlier, while the City's right to issue bonuses is expressly contemplated by the Agreement, there is no evidence that the parties bargained over which employees are eligible to receive bonuses or other criteria for eligibility. *See NYSNA,* 4 OCB2d 23, at 11-12 (BCB 2011) ("Absent evidence showing that the subject here was fully discussed or consciously explored by the parties during prior bargaining, we cannot find that the Union waived its right to bargain or that the City exhausted its duty to bargain."). Thus, we reject the City's waiver argument.

We acknowledge that, effective January 2023, the City reinstated the prior criteria that all civil service titles serving in the position of VMF Supervisor, including Trainer Assistant, are eligible for the annual bonus. Accordingly, an order to reinstate the *status quo ante* is unnecessary. We order that the City maintain the reinstated eligibility criteria and cease and desist from implementing changes to the eligibility criteria for the annual bonus until such time as the parties bargain to resolution or impasse over any such changes. Further, in accordance with the criteria utilized for VMF Supervisors in the civil service titles of Administrative Assistant and Administrative Associate, and consistent with the bonuses awarded previously, we order that the City pay the $7,500 bonuses to Abreu, Bowman, and any other Trainer Assistants who were otherwise eligible and did not receive bonuses for the work they performed in 2020 and 2021. We further order that the City post the attached Notice.

**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 filed by the Communication Workers of America, Local 1183, against the City of New York and the New York City Board of Elections, docketed as BCB-4487-22, be, and the same hereby is, granted; and it is further

ORDERED, that the City maintain the reinstated eligibility criteria for annual bonuses, and cease and desist from implementing changes to the eligibility criteria for the VMF Supervisor bonus until such time the parties bargain to resolution or impasse over any changes to eligibility criteria; and it is further

ORDERED that, in accordance with the criteria utilized for VMF Supervisors in the civil service titles of Administrative Assistant and Administrative Associate, the City pay $7,500 bonuses to Abreu, Bowman and any other Trainer Assistants who were otherwise eligible and did not receive bonuses for the work they performed in 2020 and 2021; and it is further

ORDERED, that the Board of Elections post or distribute the attached Notice in the manner that it customarily communicates information to employees. If posted, the Notice must remain for a minimum of thirty days.

Dated: May 9, 2024
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

CAROLE O'BLENES
MEMBER

PETER PEPPER
MEMBER

PAMELA S. SILVERBLATT
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# NOTICE TO ALL EMPLOYEES PURSUANT TO THE DECISION AND ORDER OF THE BOARD OF COLLECTIVE BARGAINING OF THE CITY OF NEW YORK and in order to effectuate the policies of the NEW YORK CITY COLLECTIVE BARGAINING LAW

We hereby notify:

That the Board of Collective Bargaining has issued 17 OCB2d 7 (BCB 2024), determining an improper practice petition between the Communications Workers of America, Local 1183, and the New York City Board of Elections.

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-4487-22, is granted in its entirety; and it is further

ORDERED, that the City maintain the reinstated eligibility criteria, and cease and desist from implementing changes to the eligibility criteria for the VMF Supervisor bonus until such time until such a time as the parties bargain to resolution or impasse over any such changes to criteria and procedures for determining eligibility; and it is further

ORDERED, that, in accordance with the criteria utilized for VMF Supervisors in the civil service titles of Administrative Assistant and Administrative Associate, the City pay bonuses to Abreu, Bowman and similarly situated Trainer Assistant who were otherwise eligible and who did not receive bonuses for the work they performed in 2020 and 2021; and it is further

ORDERED, that the Board of Elections post or distribute the attached Notice in the manner that it customarily communicates information to employees. If posted, the Notice must remain for a minimum of thirty days.

The New York City Board of Elections
(Department)

Dated:

_____ (Posted By)
(Title)

*This Notice must remain conspicuously posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.*