

**DC 37, 2 OCB2d 14 (BOC 2009)**

(Rep) (Docket Nos. RE-178-07, RU-1249-05, RU-1250-05, RU-1255-08, and AC-36-07).

**Summary of Decision:** The City sought to consolidate into a single bargaining unit 26 titles, represented by seven unions in ten bargaining units, that Local Law 56 added to the uniformed or “similar-to-uniformed” levels of bargaining. The Board found that the City’s petition raised a question concerning representation and was timely because of the unusual and extraordinary circumstances of the statutory amendments, granted a motion to intervene, and ordered a hearing to determine the appropriate unit placement of all Local Law 56 titles. *(Official decision follows.)*

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION**

**In the Matter of the Certification Proceeding**

*-between-*

**THE CITY OF NEW YORK,**

*Petitioner,*

*-and-*

**DISTRICT COUNCIL 37;  
CIVIL SERVICE TECHNICAL GUILD, LOCAL 375, DISTRICT COUNCIL 37;  
ORGANIZATION OF STAFF ANALYSTS;  
UNITED FEDERATION OF TEACHERS;  
COMMUNICATIONS WORKERS OF AMERICA;  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 237;  
NEW YORK CITY DEPUTY SHERIFFS’ ASSOCIATION;**

*Respondents,*

*-and-*

**LAW ENFORCEMENT EMPLOYEES BENEVOLENT ASSOCIATION,**

*Intervenor.*

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**INTERIM DECISION AND ORDER**

On March 9, 2007, the City of New York (“City”) filed a petition, docketed as RE-178-07,

seeking to consolidate into a single bargaining unit the following 26 titles (“Local Law 56 titles”), currently represented by seven unions in ten bargaining units, that have been added to the uniformed level of bargaining or the newly created level of bargaining by Local Law 56 of 2005 (“Local Law 56”), which amended the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”):<sup>1</sup>

Administrative School Safety Manager (Title Code No. 10083)  
Administrative Sheriff (Title Code No. 10060)  
Administrative Traffic Enforcement Agent (Title Code No. 10042)  
Associate Fire Protection Inspector (Title Code No. 31662)  
Associate Parking Control Specialist (Title Code No. 41122)  
Associate Sanitation Enforcement Agent (Title Code No. 71682)  
Associate Supervisor of School Security (Title Code No. 60821)  
Associate Taxi and Limousine Inspector (Title Code No. 35143)  
Associate Traffic Enforcement Agent (Title Code No. 71652)  
Associate Urban Park Ranger (Title Code No. 60422)  
Deputy City Sheriff (Title Code No. 30312)  
Fire Protection Inspector (Title Code No. 31661)  
Parking Control Specialist (Title Code No. 41120)  
Principal Special Officer (Title Code No. 70820)  
Sanitation Enforcement Agent (Title Code No. 71681)  
School Safety Agent (Title Code No. 60817)  
Senior Special Officer (Title Code No. 70815)  
Senior Taxi and Limousine Inspector (Title Code No. 35136)  
Special Officer (Title Code No. 70810)  
Supervising Deputy Sheriff (Title Code No. 30315)  
Supervising Special Officer (Title Code No. 70817)  
Supervising Taxi and Limousine Inspector (Title Code No. 35142)  
Supervisor of School Security (Title Code No. 60820)  
Taxi and Limousine Inspector (Title Code No. 35116)  
Traffic Enforcement Agent, Levels I, II, III, and IV (Title Code Nos. 71651, 7165A, 7165B)  
Urban Park Ranger (Title Code No. 60421)

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<sup>1</sup> Only those Special Officers, Senior Special Officers, Supervising Special Officers, and Principal Special Officers employed at the Administration for Children’s Services (“ACS”), the Department of Health and Mental Hygiene (“DOHMH”), the Department of Homeless Services (“DHS”), the Department of Juvenile Justice (“DJJ”), and the Human Resources Administration (“HRA”) are covered by Local Law 56. The City seeks only those employees subject to Local Law 56 to be in the proposed consolidated unit.

The appropriate placement of seven of these titles is also at issue in four other pending petitions, filed by two unions, that were recently consolidated with the City's petition. The unions oppose the City's petition on several grounds, including that it does not raise a question concerning representation, that the petition is barred by the unions' respective contracts, and that the titles are appropriately placed in their current bargaining units. The Law Enforcement Employees Benevolent Association ("LEEBA") moved to intervene in the City's petition. The City and the International Brotherhood of Teamsters, Local 237 ("Local 237") object to LEEBA's motion to intervene.

Addressing the preliminary issues raised by the parties, this Board finds that (1) the City's consolidation petition raises a question concerning representation; (2) the contract bar is not applicable to the City's consolidation petition given the unusual and extraordinary circumstances of Local Law 56's amendments to uniformed level of bargaining and its creation of a new level of bargaining; and (3) LEEBA may intervene in the City's petition. The Board orders a hearing regarding the appropriate unit placement of all the Local Law 56 titles.

## **BACKGROUND**

### **Local Law 56's Amendment of the NYCCBL**

The NYCCBL provides for different levels of bargaining. The "Citywide" level of bargaining, set forth in NYCCBL § 12-307(a)(2), provides that "matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with . . . the certified representative or representatives of bargaining units which include more than fifty percent of all such employees." In contrast, the "uniformed" level of bargaining, set forth in NYCCBL § 12-307(a)(4), provides that "all matters, including but not limited

to pensions, overtime and time and leave rules which affect employees in the uniformed police, fire, sanitation and correction services . . . shall be negotiated with the certified employee organizations representing the employees involved.”

Enacted on May 25, 2005, Local Law 56 amended NYCCBL § 12-307(a)(4) to add certain titles to the uniformed level of bargaining:

*(i) employees of the uniformed fire service shall also include persons employed at any level of position or service by the fire department of the city of New York as fire alarm dispatchers and supervisors of fire alarm dispatchers, fire protection inspectors and supervisors of fire protection inspectors, emergency medical technicians and advanced emergency medical technicians, as those terms are defined in section three thousand one of the public health law, and supervisors of emergency medical technicians or advanced emergency medical technicians;*

*(ii) employees of the uniformed police service shall also include persons employed at any level of position or service by the police department of the city of New York as traffic enforcement agents and supervisors of traffic enforcement agents, and school safety agents and supervisors of school safety agents; and*

*(iii) employees of the uniformed sanitation service shall also include persons employed at any level of position or service by the sanitation department of the city of New York as sanitation enforcement agents and supervisors of sanitation enforcement agents;*

(Emphasis in original).

In addition, Local Law 56 created a new (“similar-to-uniformed”) level of bargaining in NYCCBL § 12-307(a)(5)<sup>2</sup> for “employees working in various departments and agencies in the City of New York [who] have certain job characteristics similar to those of employees working in the City’s uniformed services, such as police, fire, sanitation and correction services,” and who “should be afforded the same unique bargaining rights as those afforded to individuals working in such

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<sup>2</sup> Pursuant to Local Law 56, the former NYCCBL § 12-307(a)(5) was renumbered NYCCBL § 12-307(a)(6).

services”:

(5) all matters, including but not limited to pensions, overtime and time and leave rules which affect the following employees at any level of position or service in the following agencies shall be negotiated with the certified employee organization representing the employees involved:

(i) persons employed by the department of homeless services of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(ii) persons employed by the department of health and mental hygiene of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(iii) persons employed by the department of juvenile justice of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(iv) persons employed by the human resources administration of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(v) persons employed by the administration for children’s services of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(vi) persons employed by the taxi and limousine commission of the city of New York as taxi and limousine inspectors, supervising taxi and limousine inspectors, senior taxi and limousine inspectors and associate taxi and limousine inspectors;

(vii) persons employed by the department of transportation of the city of New York as parking control specialists and associate parking control specialists;

(viii) persons employed by the department of parks and recreation of the city of New York as urban park rangers and associate urban park rangers; and

(ix) persons employed by the department of finance of the city of New York as deputy sheriffs, supervising deputy sheriffs and administrative sheriffs.

(Emphasis omitted).

On September 22, 2005, the City filed a lawsuit challenging the validity of Local Law 56. This lawsuit was subsequently withdrawn after the Court of Appeals upheld the validity of Local Laws 18 and 19 of 2001, which had also added titles to the uniformed level of bargaining. *See*

*Mayor of the City of New York v. Council of the City of New York*, 9 N.Y.3d 23 (2007).

Local Law 18 of 2001 added Fire Alarm Dispatchers and Supervising Fire Alarm Dispatchers, who were already represented in a separate bargaining unit, to the uniformed fire service; Local Law 19 of 2001 (“Local Law 19”) added various Emergency Medical Services (“EMS”) titles, who were represented in a bargaining unit that included titles in the Citywide level of bargaining, to the uniformed fire service. In addressing a request by District Council 37 (“DC 37”) for a separate bargaining unit for EMS titles, the Board “conclude[d] that the inclusion of the petitioned-for employees in NYCCBL § 12-307(a)(4) does not compel the establishment of a separate bargaining unit for them.” *DC 37*, 72 OCB 1, at 5-6 (BOC 2003). However, the Board found that “[g]iven that the statutory amendment now allows the petitioned-for employees the right to bargain independently, their inclusion in the existing unit is no longer appropriate” and remanded the case for consideration of the appropriate bargaining unit. *Id.* at 7. As the City did not challenge the appropriateness of a separate bargaining unit for EMS employees, and no other units were proposed, the Board found a separate bargaining unit appropriate. *DC 37*, 72 OCB 4, at 3 (BOC 2003); *see also DC 37*, 75 OCB 9 (BCB 2005) (finding that the City failed to bargain with the new EMS unit), *aff’d sub nom. City of New York v. Dist. Council 37, AFSCME, AFL-CIO*, 12 Misc.3d 1162A (Sup. Ct. N.Y. Co. 2006).

### **Current Bargaining Units**

The 26 titles directly impacted by Local Law 56 are represented by seven unions in ten bargaining units. As a result of Local Law 56, two of those bargaining units now contain titles in the uniformed and Citywide levels of bargaining; another two bargaining units include titles in the similar-to-uniformed and Citywide levels of bargaining; and one bargaining unit is a mix of titles

in the uniformed, similar-to-uniformed, and Citywide levels of bargaining.<sup>3</sup>

Fire Protection Inspector and Associate Fire Protection Inspector, added by Local Law 56 to the uniformed fire service, are represented by the Civil Service Technical Guild, Local 375, DC 37 (“CSTG”) in Certification No. 26-78.<sup>4</sup> We take administrative notice that this bargaining unit also includes engineering and scientific titles in the Citywide level of bargaining, such as Air Pollution Inspector, Architect, Chemist, Electrical Engineer, and Traffic Control Inspector, and was covered by a collective bargaining agreement covering the period of July 1, 2005, through March 2, 2008.<sup>5</sup>

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<sup>3</sup> DC 37’s Certification No. 46L-75 and CSTG’s Certification No. 26-78 include titles in the uniformed and Citywide levels of bargaining. DC 37’s Certification Nos. 38B-78 and 38A-78 include titles in the similar-to-uniformed and Citywide levels of bargaining. Local 237’s Certification No. 67-78 includes titles in the uniformed, similar-to-uniformed, and Citywide levels of bargaining.

<sup>4</sup> In 2007, AFSCME changed the internal jurisdiction of the Fire Protection Inspector and Associate Fire Protection titles from CSTG to DC 37, Local 2507.

<sup>5</sup> Pursuant to § 1-02(g) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), which governs the timely filing of representation petitions, the window period in which to file a petition concerning CSTG’s unit was September 4, 2007, through October 4, 2007.

OCB Rule § 1-02(g) provides:

A valid contract between a public employer and a public employee organization will bar the processing of any petition filed outside of the window periods described below. The time period for filing a petition for certification, designation, decertification or revocation of designation pursuant to § 1-02(c), (d), or (e) of these rules shall be: for a contract of no more than three years’ duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract’s expiration date; for a contract of more than three years’ duration, a petition can be filed no less than 150 or more than 180 calendar days before the contract’s expiration date, or not less than 150 or more than 180 calendar days before the end of the third year of that contract. No petition for certification, decertification or investigation of a question or controversy concerning representation

Traffic Enforcement Agent Levels I and II, added by Local Law 56 to the uniformed police service, and Sanitation Enforcement Agent, added by Local Law 56 to the uniformed sanitation service, are represented by the Communications Workers of America (“CWA”) in Certification No. 25-74. Associate Traffic Enforcement Agent, added by Local Law 56 to the uniformed police service, and Associate Sanitation Enforcement Agent, added by Local Law 56 to the uniformed sanitation service, are represented by CWA in Certification No. 26-74. Both of these bargaining units were covered by a single collective bargaining agreement for the period of July 1, 2005, through March 1, 2008.<sup>6</sup>

Traffic Enforcement Agent Levels III and IV, added by Local Law 56 to the uniformed police service, is represented by DC 37 in Certification No. 46L-75, a unit that also includes motor vehicle operator titles subject to the Citywide level of bargaining. We take administrative notice that DC 37’s unit was subject to a collective bargaining agreement for the period of July 4, 2005, through March 15, 2008.<sup>7</sup>

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may be filed after the expiration of a contract. However, in the event that a public employer and a public employee organization sign a successor contract after that [successor] contract has expired, then a petition for certification, decertification or question or controversy concerning representation may be filed in the 30-day period following the date the successor contract is signed by all parties. Moreover, if the Board finds that unusual or extraordinary circumstances exist, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may process a petition otherwise barred by this rule.

<sup>6</sup> Pursuant to OCB Rule § 1-02(g), the window period in which to file a petition concerning CWA’s units was September 3, 2007, through October 3, 2007.

<sup>7</sup> Pursuant to OCB Rule § 1-02(g), the window period in which to file a petition concerning DC 37’s motor vehicle operator unit was September 17, 2007, through October 17, 2007.



Administrative Traffic Enforcement Agent, Associate Supervisor of School Security, and Administrative School Safety Manager, added by Local Law 56 to the uniformed police service, are represented by the Organization of Staff Analysts (“OSA”) in Certification No. 9-2001. On May 30, 2007, OSA and the City negotiated an agreement covering this “School Security/Traffic” unit for the period of August 1, 2002, through December 12, 2008.<sup>8</sup>

Supervisor of School Security, added by Local Law 56 to the uniformed police service, is represented by the United Federation of Teachers (“UFT”) in Certification No. VR-3-98. No other titles are included in this unit, which was subject to a collective bargaining agreement for the period of June 1, 2003, to October 12, 2007.<sup>9</sup> The UFT first negotiated a collective bargaining agreement regarding this title in 1974, when the title was employed by the Board of Education, which is not within the Office of Collective Bargaining’s jurisdiction. The title was functionally transferred to the Police Department on December 20, 1998, and the City voluntarily recognized the UFT as the certified representative of the unit shortly thereafter. Accordingly, this unit was subject to the Citywide Agreement from early 1999 until the enactment of Local Law 56 on May 25, 2005. During this time, the UFT and the City negotiated terms and conditions outside the Citywide Agreement. They agreed to annual leave benefits different from those set forth in the Citywide Agreement and, in accordance with NYCCBL § 12-207(a)(2)’s provision for special and unique considerations, negotiated a variance to the holiday schedules provided in the Citywide Agreement.

School Safety Agent, which was added by Local Law 56 to the uniformed police service, and

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<sup>8</sup> Pursuant to OCB Rule § 1-02(g), the relevant window period in which to file a petition concerning OSA’s unit was June 14, 2008, through July 14, 2008.

<sup>9</sup> Pursuant to OCB Rule § 1-02(g), the relevant window period in which to file a petition concerning the UFT’s unit was April 15, 2007, through May 15, 2007.

Special Officer, Senior Special Officer, Supervising Special Officer, Principal Special Officer, Taxi and Limousine Inspector, Supervising Taxi and Limousine Inspector, Senior Taxi and Limousine Inspector, Associate Taxi and Limousine Inspector, Parking Control Specialist, and Associate Parking Control Specialist, which were added by Local Law 56 to the similar-to-uniformed level of bargaining, are represented by Local 237 in Certification No. 67-78. The unit also includes titles subject to the Citywide level of bargaining, such as Asbestos Handler, Elevator Mechanic, Hospital Security Officer, Maintenance Man, Pipe Laying Inspector, and Water Use Inspector. Local Law 56 does not include all the employees in the titles of Special Officer, Senior Special Officer, Supervising Special Officer, and Principal Special Officer but refers only to those employed at ACS, DOHMH, DHS, DJJ, and HRA. Therefore, employees in the Special Officer titles at the New York City Health and Hospitals Corporation and other City agencies remain in the Citywide level of bargaining.<sup>10</sup> On March 29, 2007, the City and Local 237 negotiated a collective bargaining agreement covering this unit for the period of September 23, 2006, through September 12, 2008.<sup>11</sup>

Urban Park Ranger, added by Local Law 56 to the similar-to-uniformed level of bargaining, is represented by DC 37 in Certification No. 38B-78. Associate Urban Park Ranger, also added by Local Law 56 to the similar-to-uniformed level of bargaining, is represented by DC 37 in Certification No. 38A-78. These bargaining units include, respectively, non-supervisory and supervisory blue collar titles subject to the Citywide level of bargaining, such as City Park Worker,

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<sup>10</sup> On several occasions, LEEBA has sought to represent those Special Officers and Senior Special Officers employed at the New York City Health and Hospitals Corporation and the Hospital Security Officer title. *See, e.g., LEEBA, 78 OCB 9 (BOC 2006)* (upholding the dismissal of the petition as untimely). These employees are not subject to Local Law 56.

<sup>11</sup> Pursuant to OCB Rule § 1-02(g), the window period to file a petition concerning Local 237's unit during the 2006-2008 term was March 16, 2008, through April 15, 2008.

City Security Aide, Gardener, Park Supervisor, and Supervisor (Watershed Maintenance). Both units were covered by a single collective bargaining agreement for the term July 1, 2005, through March 2, 2008.<sup>12</sup>

Deputy City Sheriff, Supervising Deputy Sheriff, and Administrative Sheriff, added by Local Law 56 to the similar-to-uniformed level of bargaining, are represented by the New York City Deputy Sheriffs' Association ("Deputy Sheriffs' Association") in Certification No. 94-73. We take administrative notice that this bargaining unit was subject to a collective bargaining agreement for the period of November 26, 2002, through April 30, 2007, and that, on January 23, 2009, the City and the Deputy Sheriffs' Association negotiated an agreement for the period of May 1, 2007, through April 30, 2011.<sup>13</sup>

### **Petitions Filed**

On September 22, 2005, DC 37 filed a petition, docketed as RU-1249-05, seeking to remove the titles Urban Park Ranger and Associate Urban Park Ranger from Certification Nos. 38B-78 and 38A-78, respectively, and create a separate bargaining unit for these titles.

On September 29, 2005, DC 37 filed a petition, docketed as RU-1250-05, seeking to remove Traffic Enforcement Agent Levels III and IV from Certification No. 46L-75 and create a separate bargaining unit for the title. Both of these DC 37 petitions were based on changes to the NYCCBL

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<sup>12</sup> Pursuant to OCB Rule § 1-02(g), the window period in which to file a petition concerning DC 37's blue collar units was September 4, 2007, through October 4, 2007.

<sup>13</sup> The relevant time period in which to file a petition concerning the Deputy Sheriffs' Association during the 2002-2007 term was from November 1, 2006, through December 1, 2006. The next window period in which to file a petition regarding this unit is November 1, 2009, through December 1, 2009. *See* OCB Rule § 1-02(g) (providing two window periods during contracts of more than three years' duration).

enacted in Local Law 56.

On March 9, 2007, the City filed a petition, docketed as RE-178-07, to consolidate all the Local Law 56 titles into a single bargaining unit, a position it had raised in opposition to DC 37's petitions. Several extensions of time to answer this petition were granted to allow the parties to explore the possibility of settlement. On April 24, 2007, before the unions filed answers to the City's petition, LEEBA filed a motion to intervene in the City's petition based on a then-pending petition regarding School Safety Agents.

On August 15, 2007, DC 37 filed a petition, docketed as AC-36-07, seeking to remove the Fire Protection Inspector and Associate Fire Inspector titles from CSTG's Certification No. 26-78 because of the changes enacted by Local Law 56 and to add those titles to DC 37's Certification No. 4-2003, a bargaining unit of EMS titles added to the uniformed fire service by Local Law 19. In its answer, the City asserted that the appropriate bargaining unit was the one it sought in RE-178-07.

On April 14, 2008, subsequent to the unions' filing answers to the City's petition, LEEBA filed a petition, docketed as RU-1255-08, seeking to remove the Taxi and Limousine Inspector and Associate Taxi and Limousine Inspector titles from Local 237's Certification No. 67-78 and to represent the titles in a separate bargaining unit.<sup>14</sup> Again, the City's position was that the titles were more appropriately placed in the consolidated unit it requested in RE-178-07.

On April 13, 2009, pursuant to OCB Rule § 1-12(m)(1), the Director of Representation consolidated all five of these Local Law 56 petitions in light of the common factual and legal issues raised.

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<sup>14</sup> LEEBA does not seek to represent the Senior Taxi and Limousine Inspector and Supervising Taxi and Limousine Inspector titles, which are also covered by Local Law 56.

## POSITIONS OF THE PARTIES

### City's Position

The City seeks the consolidation of all Local Law 56 titles into a single “Public Health, Safety, and Enforcement” bargaining unit. The City argues that such consolidation is consistent with the Board’s policy discouraging proliferation of bargaining units and favoring consolidation of bargaining units along broad occupational lines, is appropriate because of the community of interest among these titles, and also furthers the efficient operation of public service and sound labor relations. The City requests that an election be held to determine the collective bargaining representative of the Local Law 56 titles.

In support of its position, the City notes that Local Law 56 has already led to several petitions to create new, relatively small bargaining units and opens the door to petitions for additional bargaining units.<sup>15</sup> The City argues that granting these petitions will lead to a proliferation of bargaining units, will require the City to negotiate and administer multiple new collective bargaining agreements, and will result in delay and duplication in bargaining.

Further, the City argues that removal of Local Law 56 titles from bargaining units that also include non-uniformed titles is warranted because Local Law 56 constituted a change in circumstances that rendered their current placement inappropriate. Under Board precedents, titles with the right to bargaining independently are not appropriately included in a unit with titles that are subject to Citywide bargaining. Further, the City asserts that those Local Law 56 titles added to the

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<sup>15</sup> In addition to the initial two DC 37 petitions, CSTG had filed a petition on February 2, 2006, to represent the Fire Protection Agent titles in a separate bargaining unit because of the changes to the NYCCBL enacted by Local Law 56. Subsequent to the City’s filing of RE-178-07, CSTG withdrew this petition.

uniformed level of bargaining under NYCCBL § 12-307(a)(4) are appropriately placed with those titles Local Law 56 added to the similar-to-uniformed level of bargaining under NYCCBL § 12-307(a)(5) because they have identical bargaining rights.

Regarding the community of interest, the City observes that the City Council identified the Local Law 56 titles as sharing similar job characteristics to those employees in the uniformed services. In addition, the job specifications indicate that the titles have similar public health and safety duties. They provide or supervise security at City facilities and schools and/or enforce City and state laws, rules, regulations, and codes. Most of the titles are defined as Peace Officers under the New York State Criminal Procedure Law or must qualify for deputization as Special Patrolmen. The City asserts that the Local Law 56 titles have a greater community of interest with each other than with the titles in their existing bargaining units.

Should the Board deny its request for a single bargaining unit, the City requests the opportunity to propose alternative bargaining units. For instance, in the event that the Board finds that NYCCBL § 12-314(b) prohibits inclusion of Police Department employees in the City's proposed bargaining unit, the City seeks to consolidate the Local Law 56 titles employed at the Police Department in a separate bargaining unit.<sup>16</sup>

Anticipating the unions' arguments, the City contends that its petition is not barred by the

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<sup>16</sup> NYCCBL § 12-314(b) provides:

No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department, or (ii) advocates the right to strike.

contract bar rule. First, the City argues that Local Law 56 presents an unusual and extraordinary circumstance of first impression that warrants processing the petition. The City asserts that Local Law 56 does not enhance sound labor relations because it obligates the City to bargain matters outside the Citywide Agreement, increases the number of bargaining units with which the City must negotiate, and increases the number of collective bargaining agreements that the City must administer. According to the City, it has not faced legislation affecting the bargaining rights of so many classes of employees since the creation of the NYCCBL. Second, the City asserts that, under *Municipal Guild of Radio and Television Technicians*, 16 OCB 22 (BOC 1975), the Board may process its petition without deciding the timeliness issue because the appropriate unit placement of the Local Law 56 titles is already before it. As is its right, the City raised the consolidated unit as an alternative to the bargaining units sought in DC 37's petitions. Thus, the appropriate unit issue must be determined pursuant to DC 37's petitions even if Local Law 56 is not deemed an unusual or extraordinary circumstance. Third, the City notes that consolidation of titles and bargaining units would be subject to existing contracts.

Lastly, the City opposes LEEBA's motion to intervene because it is not an interested party. Since the filing of its motion to intervene, the Board found that LEEBA's challenge to Local 237's representation of School Safety Agents was not properly raised.<sup>17</sup> In addition, LEEBA does not represent any of the Local Law 56 titles.

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<sup>17</sup> On October 12, 2006, LEEBA objected to the City's notice of voluntary recognition in which it sought to amend Local 237's bargaining unit to reflect the change in nomenclature from School Guard to School Safety Agent. *See CEU, Local 237*, 80 OCB 8, at 15 (BOC 2007) (finding that LEEBA's objection was improperly raised).

**CSTG's Position**

CSTG argues that its Fire Inspection Agents and Associate Fire Inspection Agents are appropriately accreted to DC 37's bargaining unit containing EMS titles, which were added to the uniformed fire service by Local Law 19.

**CWA's Position**

CWA seeks the dismissal of the City's petition. CWA asserts that the City's petition does not raise a question or controversy regarding representation and is untimely and contract-barred. According to CWA, their current bargaining units assure their members the fullest freedom in the exercise of their rights under the NYCCBL, promote the efficient operation of public service and sound labor relations, and are consistent with the Board's decisions and policies.

**DC 37's Position**

DC 37 argues that the purposes of the NYCCBL are best served by creating the bargaining units DC 37 seeks in its petitions and denying the City's petition to consolidate all Local Law 56 titles. According to DC 37, the proposed consolidation would deprive employees of their long-standing bargaining representatives, undermine the policies of the NYCCBL, and prevent employees from exercising the rights granted by Local Law 56 in a timely fashion and in the manner intended by the legislature and the unions. DC 37 asserts that the City's concerns regarding unit proliferation are unfounded because only DC 37 and Local 237 have "mixed" units. DC 37's petitions are consistent with Board precedent finding that employees added to the uniformed level of bargaining are no longer appropriately placed in a "mixed" unit and with PERB precedent holding that employees with law enforcement duties are appropriately placed in a separate bargaining unit. DC 37 asserts that the City's displeasure with Local Law 56 does not render any petitions to create



separate bargaining units for Local Law 56 titles inconsistent with the NYCCBL.

Further, DC 37 contends that there is no community of interest among Local Law 56 titles that would require a single bargaining unit because the employees do not have the same goals, working conditions, or salary structure. Being covered under the same law does not create a community of interest. According to DC 37, applying the City's argument citywide would justify a single unit of police officers, firefighters, correction officers, and sanitation workers, which would be a unit configuration as absurd as the City's proposed unit.

Lastly, DC 37 argues that the City's proposed unit is contrary to the wishes of the employees and disrupts long-standing bargaining units. Traffic Enforcement Agents Levels III and IV, Urban Park Rangers, and Associate Urban Park Rangers submitted signed cards demonstrating their desire both for a separate bargaining unit and for continued representation by DC 37. The unions representing Local Law 56 titles sought to enhance the employees' bargaining rights, not to submerge their interests to a larger group of employees, as would result from granting the City's petition. DC 37 asserts that disrupting long-standing bargaining units serves neither the employees' interests nor the efficient operation of public service.

### **OSA's Position**

OSA requests the dismissal of the City's petition. First, OSA argues that the City has failed to state a claim that OSA's School Security/Traffic bargaining unit should be disrupted. In reviewing the history of this unit, OSA notes that the Board adopted the parties' stipulation that the Administrative Traffic Enforcement Agent, Administrative Supervisor of School Security, and Associate Supervisor of School Security titles constituted an appropriate bargaining unit because it found that the stipulation's terms and conditions were consistent with the rules governing appropriate

bargaining units. In other words, OSA asserts, the Board recognized that the School Security/Traffic unit provides employees the fullest freedom in the exercise of their rights under the NYCCBL, shares a community of interest, and is consistent with the efficient operation of the public service and sound labor relations. OSA argues that since all three titles in the unit are covered by Local Law 56, the bargaining unit remains appropriate.

Second, OSA argues that the petition is contract-barred. The relevant unit collective bargaining agreement expired on July 31, 2002. Since the contract bar rule prohibits the filing of a petition after the expiration of the collective bargaining agreement, the petition was untimely when filed on March 9, 2007.

Third, OSA claims that the petition is untimely because it was not filed in the 30-day period following the May 30, 2007, signing of the 2002-2008 collective bargaining agreement.<sup>18</sup>

### **UFT's Position**

The UFT argues that its Supervisor of School Security unit should not be disrupted. According to the UFT, Local Law 56 does not constitute changed circumstances that would warrant disrupting long-standing bargaining units. The UFT contends that Local Law 56 resulted in only a minor change to the City's bargaining structure and obligations because all the bargaining units at issue have separate bargaining histories, i.e., the City already bargains individually with each of the unions concerning terms and conditions that are not statutorily required to be uniform, and the parties already bargain variances on Citywide terms. For example, the Supervisor of School Security unit

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<sup>18</sup> The provision cited by OSA in support of this position refers to situations in which the parties sign a successor agreement that has already expired. *See* OCB Rule § 1-02(g). Since the successor agreement at issue here expires on December 12, 2008, the appropriate window period is 150 to 180 days before December 12, 2008.

had only been subject to the Citywide Agreement for six and a half years of its 33-year bargaining history. During that time, the UFT and the City bargained terms and conditions outside the Citywide Agreement and modified some of the terms and conditions of the Citywide Agreement, such as annual leave and holiday schedules. According to the UFT, the only change resulting from Local Law 56 is that the UFT and the City will bargain a “slightly wider array” of terms and conditions, and any adjustments will be familiar to both sides as a result of the nearly 30-year history of bargaining that preceded the unit’s inclusion in the Citywide Agreement.

The UFT asserts that, even if Local Law 56 constitutes changed circumstances, the Supervisor of School Security unit is still appropriate. The City’s anti-proliferation argument is inapplicable as the unit is entirely covered by Local Law 56. The employees still have the same community of interest, duties, and terms and conditions of employment, and there are no allegations of a conflict of interest or a lack of cohesion. In the absence of a finding that the current unit is inappropriate, the appropriateness of the City’s proposed unit is irrelevant.

The UFT argues that absorbing the Supervisor of School Security unit into the City’s proposed “uberunit” would unduly restrict the employees’ exercise of their rights under the NYCCBL and smother their legitimate interests. According to the UFT, consolidation would deprive the Local Law 56 titles of important bargaining rights and the ability to be represented by the union of their choosing, while the denial of consolidation would result in the continuation of the current bargaining procedures and no additional negotiations.

Further, the UFT contends that the Local Law 56 titles are too disparate to function as a cohesive unit. The UFT claims that the City’s selection of quotations from job specifications is misleading in that it does not indicate the material aspects of the titles, differentiate between primary

and generic duties, depict the drastically different work environments, or take into account the various workflow patterns that would make it impossible to agree to a single overtime schedule. The titles have different codes of conduct, benefit plans, training, education levels, and supervisors. The proposed unit would also mix supervisory and non-supervisory personnel. According to the UFT, just as it would be inappropriate to combine police officers and firefighters on the grounds that both protect the public, Local Law 56 titles should not be placed in a single unit simply because they can be generalized as providing code enforcement.

The UFT asserts that the City's petition is untimely because it was filed after the expiration of the unit's collective bargaining agreement. The UFT claims that Local Law 56 is not an unusual or extraordinary circumstance that would warrant processing a petition otherwise barred by the contract bar rule. According to the UFT, the City exaggerated the impact of Local Law 56 as the City has always bargained matters inside and outside the scope of the Citywide Agreement with the unions and there is no proliferation of units without Board approval. Local Law 56 did not cause what the Board has previously identified as unusual or extraordinary circumstances, such as when the status of bargaining representative is unclear or when there is a loss or abandonment of representation. Moreover, the City has not cited authority to support its assertion that Local Law 56 qualifies as an unusual or extraordinary circumstance.

Further, DC 37's petitions did not open the door for the City to file a petition concerning the UFT's unit, whose employees have little in common with the DC 37 titles. Responding to DC 37's petitions does not give the City an unfettered ability to undermine other units represented by different unions. Applying *Municipal Guild of Radio and Television Technicians*, 16 OCB 22, a 30-year-old decision that was not subsequently cited by the Board for such a broad proposition, would eviscerate

the contract bar rule by allowing the City to challenge any unit whenever another union files a representation petition. DC 37 cannot strip seven other unions of the protection of the contract bar rule by filing petitions regarding its own members. Notably, the Board's other consolidation decisions involved units represented by the same union.

**Local 237's Position**

Local 237 argues that the City's petition fails to state a claim because the City asserts no facts to support that there is a question concerning representation of the Local Law 56 titles or that the City has a good faith doubt regarding the majority status of any of the certified unions.

Further, Local 237 asserts that the City's petition is barred by the contract bar rule because it was filed after the collective bargaining agreement had expired and before the appropriate window period for the successor agreement. Local 237 argues that there are no unusual or extraordinary circumstances that would warrant waiving the contract bar rule. According to Local 237, the "unusual or extraordinary circumstances" exception referenced in the rule does not apply to any situation creatively described as unusual or extraordinary. Rather, it is limited to situations in which the union is defunct or has abandoned represented. It is undisputed that neither situation applies here. Local 237 distinguishes *Municipal Guild of Radio and Television Technicians*, 16 OCB 22, because here the Local Law 56 petitions filed by DC 37 are untimely, the current units are not small and fragmented, and there is a 30-year bargaining history. Moreover, a failure to apply the contract bar rule would contravene the purpose of the rule by making the unions' representative status vulnerable to challenge from each other and from LEEBA.

Local 237 contends that its unit is appropriate because its members share a community of interest that has been recognized in multiple representation proceedings over the course of 30 years

of representation history. The community of interest includes both those employees who are subject to Local Law 56 and those who are not, such as Special Officers and Senior Special Officers employed at the New York City Housing Authority and the New York City Health and Hospitals Corporation. The City's proposed unit would separate employees in the same title, who share a community of interest, and fail to simplify bargaining because the City would have to negotiate with Special Officers and Senior Special Officers in the Local Law 56 unit as well as those Special Officers and Senior Special Officers who would remain in Certification No. 67-78. Since Local 237 and the City already bargain issues outside the Citywide Agreement as well as variations on Citywide issues, Local Law 56 is not a drastic change to the bargaining process that warrants restructuring a stable and effective bargaining relationship. Contravening the Board's policies and the NYCCBL, the City's proposed monolithic unit would deprive employees of meaningful bargaining and deny them the fullest freedom in choosing their bargaining representative.

Finally, Local 237 argues that LEEBA's motion to intervene should be denied for lack of standing. According to Local 237, LEEBA does not fit the NYCCBL's definition of a public employee organization because it represents private sector employees.<sup>19</sup> In addition, LEEBA is no longer a party in interest because the Board has since dismissed LEEBA's challenge to Local 237's representation of School Safety Agents.

### **Deputy Sheriffs' Association's Position**

The Deputy Sheriffs' Association objects to the consolidation and argues that the City's

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<sup>19</sup> NYCCBL § 12-303(j) provides that "[t]he term 'public employee organization' shall mean any municipal employee organization and any other organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours, and working conditions."

petition is a ploy to reduce the Deputy Sheriffs' Association's effectiveness at the next bargaining session. Further, the Deputy Sheriffs' Association argues that there is no question or controversy regarding representation, that the City's petition is contract-barred and untimely, that the current unit assures their members' right to bargain collectively and is consistent with the Board's decisions and policies, and that its members' rights should not be abridged or suspended during this proceeding. Accordingly, the City's petition should be dismissed.

**LEEBA's Position**

In support of its motion to intervene, LEEBA asserts that it is a party in interest because it objected to the City's voluntary recognition of Local 237 as the certified representative of School Safety Agents and sought an election to determine the representative of those employees. LEEBA seeks to be on the ballot if any election is held as a result of these proceedings. LEEBA notes that it is qualified to be included in any such election because it is a law enforcement representation association.

**DISCUSSION**

Before we consider the appropriate unit placement of the titles at issue, we address three preliminary matters: whether the City's petition raises a question concerning representation, whether the City's petition is timely, and whether LEEBA may properly intervene.

**Question Concerning Representation**

Section 12-309(b)(1) of the NYCCBL provides that this Board shall have the power and duty "to make final determinations of the units appropriate for purposes of collective bargaining." This Board has found that "[a] request for consolidation of units, whether raised by petition or in response

to a representation petition relating to a component of a proposed consolidated unit, constitutes a question or controversy as to appropriate unit.” *Mun. Guild of Radio and Television Technicians*, 16 OCB 22, at 19 (finding that the employer “clearly has standing to raise such issues, including the right to initiate proceedings by petition”). Accordingly, the unions’ arguments that the City’s petition to consolidate Local Law 56 titles into a single bargaining unit does not raise a question concerning representation are without merit.

### **Timeliness**

With respect to unit placement issues, “[t]he Board has the continuing power to review and restructure bargaining units with the purpose of providing more appropriate units and of promoting a more rational bargaining structure for the City of New York. For such a process to exist, interested parties must be free, as the Board is, to examine and revise unit positions previously taken.” *Id.* (declining to reach the timeliness of the City’s petition to consolidate bargaining units represented by different unions when the issue of the appropriate bargaining unit was already before the Board because the City had raised the appropriateness of the consolidated unit in response to a timely decertification petition and a timely representation petition); *see also DC 37*, 14 OCB 68, at 3 (BOC 1974) (consolidation proceeding initiated by the Board).

The City’s petition to consolidate the Local Law 56 titles into one bargaining unit was not filed during the window periods provided by OCB Rule § 1-02(g).<sup>20</sup> Nevertheless, we find that there are unusual and extraordinary circumstances that warrant processing this petition even though it would be otherwise barred by the contract bar rule. *See* OCB Rule § 1-02(g); *see also DC 37*, 34

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<sup>20</sup> The City’s petition was filed 37 days before the UFT’s window period and approximately three months after the Deputy Sheriffs’ Association’s most recent window period.



OCB 7, at 6 (BOC 1984) (declining to apply the contract bar to the City’s petition to designate sections of an agency managerial or confidential). Local Law 56 has changed the level of bargaining for the 26 affected titles, resulting in significant changes to the landscape of collective bargaining in the City of New York. The appropriateness of several existing bargaining units has been called into question by the amendments, and, as a result, several petitions seeking to fragment bargaining units have been filed. *See DC 37, 72 OCB 1*, at 7 (finding that similar changes to the level of bargaining made by Local Law 19 resulted in the composition of a bargaining unit being no longer appropriate). In response, the City’s petition asserts that a single bargaining unit of all Local Law 56 titles would be appropriate. In light of the considerable changes to the levels of bargaining made by Local Law 56 and the complex unit placement issues that have resulted from those changes, we find that the stability of labor relations has already been disrupted and that it is in the best interest of the parties to address these unit placement issues now.<sup>21</sup> *See Union County Coll.*, 9 NJPER 584 (1983) (New Jersey Public Employment Relations Commission affirmed that the contract bar rule did not bar a consolidation petition under the “unique circumstances” of the merger of two employers and noted that “labor stability will best be promoted if the contract bar rule is not mechanically applied”).

Moreover, we note that the window periods in which to file a petition concerning nine of the ten bargaining units at issue have opened and closed in the intervening time since the City’s petition

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<sup>21</sup> We take administrative notice that another bill is pending before the City Council that would further amend the NYCCBL to provide that Environmental Police Officers, represented by LEEBA, be added to the uniformed police service. Int. No. 655 of 2007.

was filed.<sup>22</sup> To now delay the process by approximately six months for the City to re-file its petition during the applicable window period for the tenth bargaining unit would not serve the interests of labor relations.<sup>23</sup> *See PBA*, 24 OCB 29, at 11 (BOC 1979) (noting, in dicta, that the policies of the NYCCBL and the contract bar rule are not served by dismissing a petition filed less than one month before the window period because dismissal would “accomplish nothing more than a short delay in examining this dispute” and addressing the merits would resolve “an unstable condition”).

### **LEEBA’s Motion to Intervene**

LEEBA previously expressed an interest, which was improperly raised, in representing School Safety Agents. *See CEU, Local 237*, 80 OCB 8, at 15. Subsequent to the unions’ filing answers to the City’s petition, LEEBA filed a timely petition, supported by a sufficient showing of interest, to remove the Taxi and Limousine Inspector and Associate Taxi and Limousine Inspector titles from Local 237’s bargaining unit and represent them in a stand-alone bargaining unit. In response to that petition, the City argued that the Taxi and Limousine Inspector and Associate Taxi and Limousine Inspector titles were more appropriately placed in the consolidated unit of all Local Law 56 titles that it seeks in RE-178-07. As LEEBA has an interest in representing some of the titles at issue in RE-178-07, it may intervene in the City’s consolidation petition. *See Local 1199, Drug and Hospital Union*, 14 OCB 33, at 12-13 (BOC 1974) (“[A] party having a bona fide interest

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<sup>22</sup> DC 37, CSTG, OSA, the UFT, CWA, and Local 237 were all on notice of the City’s petition during the window periods in which to file a petition concerning their respective bargaining units. The window period in which to file a petition concerning the Deputy Sheriffs’ Association’s unit will open on November 1, 2009.

<sup>23</sup> Due to the complexity of the issues and the number of parties involved in the Local Law 56 cases, a resolution will require numerous hearing dates over a considerable number of months. Permitting that process to begin now will result in effectuation of the legislative changes sooner.

in a proposed consolidated unit, or a segment thereof, should intervene during the pendency of the consolidation proceeding to set forth its unit views. Such intervention will be limited solely to challenging the appropriateness of the unit, unless otherwise timely under [OCB Rule § 1-02(g)].”); *see also Civil Service Forum, Local 300*, 20 OCB 4, at 3 (BOC 1977) (dismissing a petition to represent a fragment of a recently consolidated bargaining unit where the petitioner did not intervene in the consolidation proceeding).

Local 237’s argument that LEEBA is not a public employee organization is without merit. This Board has previously found that “the fact that an organization seeks to represent employees in both the public and private sectors in no way makes it strictly a private sector employee organization,” and that “nothing in the NYCCBL prohibits a public sector employee organization from having a dual function and also being a private sector employee organization.” *Local 437, IBT*, 14 OCB 18, at 4 (BOC 1974). Accordingly, LEEBA’s representation of private sector employees in addition to its bargaining unit of Environmental Police Officers does not preclude it from being a public employee organization as defined in the NYCCBL.

Regarding LEEBA’s request to appear on the ballot of any election this Board may order, we note that OCB Rule § 1-02(n)(1) provides that “[a]n intervening public employee organization, other than a certified public employee organization [representing employees eligible to vote in the election], shall not be entitled to appear on the ballot except upon a showing of interest, satisfactory to the Board, of at least 10 percent of the employees in the unit found to be appropriate.” The Board has yet to determine the appropriate bargaining unit or units or determine whether any election is necessary. Therefore, LEEBA’s request cannot be considered at this time.

**Appropriate Unit Placement**

The parties have very divergent positions on the appropriate unit placement of Local Law 56 titles. DC 37 seeks to create two new bargaining units: one for Traffic Enforcement Agent Levels III and IV, and another for the Urban Park Ranger titles. The City seeks one single bargaining unit composed of all Local Law 56 titles. OSA, the UFT, CWA, Local 237, and the Deputy Sheriffs' Association seek to maintain their bargaining units as they currently exist. LEEBA seeks to fragment two of the four Taxi and Limousine Inspector titles from Local 237's bargaining unit and represent them in a separate bargaining unit. DC 37 and CSTG seek to add CSTG's Fire Protection Inspector titles to DC 37's unit of EMS titles added to the uniformed fire service by Local Law 19.

Any determination made by this Board must take into account our prior decision in *DC 37*, 72 OCB 1, at 7, in which we held that titles added by local law to the uniformed level of bargaining are no longer appropriately included in a unit that includes titles in the Citywide level of bargaining “[g]iven that the statutory amendment now allows the petitioned-for employees the right to bargain independently.” *See also Unif. Court Officers Ass’n, Local 598, SEIU*, 14 OCB 38, at 15-16 (BOC 1974) (noting that the “Board’s policy of not combining members of a uniformed force in the same unit with non-members applies only to members of the uniformed forces as defined in § [12-307(a)](4) of the NYCCBL: these include the ‘uniformed police, fire, sanitation and correction services’ for whom the scope of bargaining is governed by a different section of the [NYCCBL]”); *Doctors Ass’n of the City of New York*, 12 OCB 31, at 12 (BOC 1973). In addition, the Board will have to evaluate which Local Law 56 titles share a community of interest and consider this Board’s long-standing policy in favor of consolidation of bargaining units and against the proliferation of bargaining units. *See, e.g., Dist. 1199, Nat’l Union of Hospital and Health Care Employees*, 22

OCB 66, at 6 (BOC 1978).

The parties' variant positions on appropriate unit placement raise significant issues, including (1) whether titles added to the newly created similar-to-uniformed level of bargaining are appropriately placed with either (a) uniformed service titles or (b) non-uniformed titles; (2) whether it is appropriate to split the Special Officer, Senior Special Officer, Supervising Special Officer, and Principal Special Officer titles by agency; (3) whether all or some of the bargaining units comprised solely of Local Law 56 titles should be consolidated; (4) whether it is appropriate for titles in the uniformed police, fire, or sanitation services to be in the same unit with titles in a different uniformed service; and (5) whether Local Law 56 titles share a community of interest with titles added to the uniformed level of bargaining by other local laws. As a result, the Board must order a hearing to determine the appropriate unit placement of the Local Law 56 titles. We note that the inquiry into the appropriate bargaining unit or units in light of changes to the levels of bargaining for participating titles may result in the removal of titles from their current bargaining units, the creation of one or more new bargaining units, and/or the consolidation of bargaining units.

### **ORDER**

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED that a hearing be held to determine the appropriate unit placement of employees in the titles of Administrative School Safety Manager, Administrative Sheriff, Administrative Traffic Enforcement Agent, Associate Fire Protection Inspector, Associate Parking Control Specialist, Associate Sanitation Enforcement Agent, Associate Supervisor of School Security, Associate Taxi

and Limousine Inspector, Associate Traffic Enforcement Agent, Associate Urban Park Ranger, Deputy City Sheriff, Fire Protection Inspector, Parking Control Specialist, Sanitation Enforcement Agent, School Safety Agent, Senior Taxi and Limousine Inspector, Supervising Deputy Sheriff, Supervising Taxi and Limousine Inspector, Supervisor of School Security, Taxi and Limousine Inspector, Traffic Enforcement Agent, Levels I, II, III, and IV, and Urban Park Ranger and those employees in the titles of Principal Special Officer, Special Officer, Senior Special Officer, and Supervising Special Officer employed at the Administration for Children's Services, the Department of Health and Mental Hygiene, the Department of Homeless Services, the Department of Juvenile Justice, and the Human Resources Administration.

Dated: April 22, 2009  
New York, New York

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

CAROL A. WITTENBERG  
MEMBER