DC 37, 6 OCB2d 2 (BCB 2013)

(IP) (Docket No. BCB 3032-12)

Summary of Decision*:** The Union claimed that the City violated NYCCBL § 12-306(a)(1), (a)(4), and (c)(4) by refusing to provide information concerning the decision to create, modify, or delete the parameters of layoff units within DOHMH and HPD. The City argued that the request was for information that is not relevant to or reasonably necessary for contract administration. The City further argued that to the extent that the Board finds that it is required to disclose the information requested, it has already done so. The Board found that the information requested was reasonably necessary for contract administration, that the City was obligated under NYCCBL § 12-306(c)(4) to provide such requested information, and that it had not yet done so. Accordingly, the petition was granted. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and its affiliated LOCALS 371, 375, 420, 924, and 1549,

Petitioners,

-and-

THE NEW YORK CITY OFFICE OF LABOR RELATIONS,
THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES,
THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, and THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

Respondents.

DECISION AND ORDER

On July 10, 2012, District Council 37, AFSCME, AFL-CIO, filed a verified improper practice petition on behalf of itself and its affiliated Locals 371, 375, 420, 924, and 1549

(collectively, "DC 37" or "Union") against the New York City Office of Labor Relations ("City" or "OLR"), the New York City Department of Citywide Administrative Services ("DCAS"), the New York City Department of Health and Mental Hygiene ("DOHMH"), and the New York City Department of Housing Preservation and Development ("HPD").[1] In the petition, the Union alleges that the City violated § 12-306(a)(1), (a)(4), and (c)(4) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") by refusing to provide information requested on March 14, 2012, concerning the decision to create, modify, or delete the parameters of layoff units within DOHMH and HPD. The City argues that the request is for information that is not relevant to or reasonably necessary for contract administration. The City further argues that to the extent that the Board finds that it is required to disclose the information requested, it has already done so. This Board finds that the information requested is reasonably necessary for contract administration, that the City is obligated under NYCCBL § 12-306(c)(4) to provide such requested information, and that the City has not yet done so. Accordingly, the petition is granted.

BACKGROUND

DC 37 is an amalgam of 55 local unions representing approximately 120,000 public employees in various authorities, boards, corporations and agencies throughout the City of New York, including DOHMH and HPD. OLR represents the Mayor in the conduct of labor relations between City agencies and labor organizations representing employees of the City. DCAS is a

[1] The City argued that because the information request at issue was not addressed to anyone employed by DOHMH or HPD, the agencies should be dismissed from the matter. However, the petition concerns a failure to provide information regarding bargaining unit members employed by DOHMH and HPD, and the complained-of inaction by OLR and DCAS was taken on behalf of those agencies. Therefore, we find that DOHMH and HPD are proper parties to the instant proceeding.

mayoral agency that supports City agencies' workforce needs in recruiting, hiring, and training City employees.

On February 6, 2012, OLR Commissioner James Hanley notified the Union, by a letter addressed to DC 37 Executive Director Lillian Roberts, of proposed layoffs of certain DC 37 bargaining unit members employed by HPD. Attached to this letter was a list of the affected members. On February 7, 2012, the Commissioner of OLR sent Roberts a similar letter, notifying the Union of proposed layoffs of certain DC 37 bargaining unit members employed by DOHMH, along with an attached list of the affected employees' names. Both sets of layoffs were scheduled to go into effect on March 23, 2012.

On February 10, 2012, Evelyn Seinfeld, DC 37's Director of Research and Negotiations, sent the Commissioner of OLR a letter acknowledging receipt of the layoff notices and stating:

> It appears [DOHMH and HPD] have delineated separate layoff units smaller than the agency and unit of appropriation for non[-]competitive and labor class employees. However, we cannot identify these units because they only appear by four[-]digit codes.
>
> We appeal these designations of the smaller units pursuant to the Citywide Agreement. However, until you identify for the Union the actual names of the layoff units we cannot fully exercise our rights under the contract. Please provide the Union the information we have requested along with the seniority roster of the individuals in the proposed layoff titles.

(Pet., Ex. A)

On February 13, 2012, OLR Associate Commissioner Jean Brewer sent an email to Moira Dolan, an Assistant Director of Research and Negotiations at DC 37, listing the names of the work units by their four-digit codes. On February 16, 2012, a meeting regarding the proposed layoffs at DOHMH was held between the City and the Union pursuant to Article XVII,

§ 1(b) of the Citywide Agreement.[2] A similar meeting regarding the proposed layoffs at HPD was held on March 8. Seniority rosters were provided to the Union at these meetings.

According to the Union, on or about February 16, 2012, its Director of Research and Negotiations received a copy of a memorandum previously sent to City Agency Heads by DCAS Commissioner Edna Wells Handy on March 13, 2011. The memorandum referenced the "Mayor's Workforce Reform Task Force Report" which was released in January 2011 and included "23 recommendations to modernize work rules, cut costs, and empower City workers." (Pet., Ex. B) According to the memo, one of these recommendations was to instruct agencies to conduct any necessary layoffs on the basis of "'Work Units' which organize personnel based on the nature and type of work being performed. . . . [in order to] enable agencies to conduct layoffs in a specific business area rather than across the entire agency, thereby avoiding significant operation disruptions." (*Id*.) The memo goes on to describe steps that each agency must take in order to implement the above recommendation. Specifically, the agencies were instructed to review current work units and individual employee assignments and to prepare a memorandum indicating whether the agency would create, delete, or modify the parameters of any work unit, or, alternatively, whether the employee assignments within work units were up-to-date and not in need of change. This memorandum was to be approved in writing by each agency's Personnel Officer and General Counsel "to confirm that the proposed changes are based on the agency's organizational structure and are rationally based." (*Id*.) Furthermore, the agencies were instructed that:

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[2] Article XVII, § 1(b) of the Citywide Agreement states, in pertinent part,

> "Within such 30-day period designated representatives of the Employer will meet and confer with the designated representatives of the appropriate union with the objective of considering feasible alternatives to all or part of such scheduled layoff . . ."

> The document must be dated and available for review as necessary. In the future, agencies wishing to change the parameters of any Work Unit (e.g. by subdividing a division sized Work Unit into several bureaus) must update this document and obtain the approval in writing of the Agency Personnel Office and Agency General Counsel in each instance, and retain a copy for review. Please note, this document need not be updated every time an agency changes an individual's (*sic*) employee's assignment to a Work Unit.

(*Id*.) (emphasis in original) The agencies were additionally instructed to forward a copy of the memorandum to the Mayor's Office of Operations by May 27, 2011.

On March 14, 2012, DC 37's Director of Research and Negotiations sent the Commissioner of OLR a letter requesting a copy of the memos created by DOHMH and HPD regarding work units, as was required by the March 13, 2011 letter from DCAS. The Commissioner of OLR did not provide the requested memoranda. However, on May 15, 2012, he provided the Union with memoranda from HPD and DOHMH's Office of the Chief Medical Examiner ("OCME") "detailing the business reasons for their respective work units."[3] (Ans., Ex. 9) HPD's memo was dated May 3, 2012, and addressed to the Associate Commissioner of OLR. The memo states that "[w]e are following up on your request for a snapshot of the work unit list that will reflect the changes that were made in the spring of 2011." (*Id*.) The memo then provides "a summary of the business reasons for the creation of the new work units." (*Id*.) OCME's memo was also addressed to the Associate Commissioner of OLR and was dated May 9, 2012. It describes the layoff of one employee, the correction of another employee's work unit,

[3] The Union asserted in its Reply that the Commissioner of OLR responded to its March 14, 2012 letter on March 15, but did not provide any of the information requested. However, it is clear from the content of the March 15 letter that it is not a response to the Union's March 14 request, but, rather, is a response to a February 24, 2012 letter from the Union regarding its appeal of the layoff units established by DOHMH and HPD. (*See* Pet., Ex. D)

and the transfer of a third employee's work unit. It states that none of these changes affected seniority for layoff purposes.

Additionally, on July 5, 2012, Rosa Gomez, DCAS' Executive Director of the New York City Automated Personnel System ("NYCAPS") Central, emailed DC 37's Assistant Director of Research and Negotiations a copy of a July 3, 2012 memo from DOHMH describing the business justification for a number of work units.[4] Gomez also attached a spreadsheet containing the names of the employees in each work unit that contained a proposed layoff of a DC 37 member.

On June 13, 2012, prior to receiving the above information, the Union filed a Step III grievance request with OLR concerning alleged violations of the layoff provisions in the Citywide Agreement. Specifically, the grievance states that:

> [T]he City of New York, by and through [HPD], the Department of Information Technology and Telecommunications and [DOHMH] has violated the Citywide Agreement by failing to provide a summary by layoff unit of proposed layoffs as required by Article XVII Section 1(a) and by creating layoff units which are not clearly identifiable subdivisions for non-competitive and labor class employees as required by Article XVII, Section 3(e).[5]

[4] The Union demanded the business justification for 17 work units within DOHMH in a June 8, 2012 letter to the Commissioner of DCAS appealing the designation of the units. The Union did not assert in its petition that this request was not responded to.

[5] Article XVII, § 1(a), of the Citywide Agreement states that:

> Notice shall be provided by [OLR] to the appropriate union(s) not less than thirty (30) days before the effective dates of projected layoffs. Such notification(s) shall apply to all proposed layoffs and shall include a summary by layoff unit of the number of affected positions by title (including title code number and civil service status) and shall also include in addition to the above information the name, social security number, city start date, and title start date of each affected employee.

Article XVII, § 3(e), of the Citywide Agreement states that:

(Pet., Ex. F) As a remedy, the Union requested:

> Compliance with the collective bargaining agreement. Provision of information as to proposed layoff unit within the 30 day notice. Creation of layoff units in good faith and which are clearly identifiable subdivisions. Cease and desist creation of inappropriately small layoff units which may target more senior employees[.][6]

(*Id*.)

On July 10, 2012, prior to receiving a decision regarding the Step III grievance, the Union filed the instant improper practice petition, claiming that the City violated the NYCCBL by refusing to provide information concerning the City's decision to create, modify, or delete the parameters of layoff units within DOHMH and HPD.

POSITIONS OF THE PARTIES

Union's Position

The Union asserts that the City has failed and refused to provide information that is relevant and necessary for it to fulfill its statutory obligation to represent employees in the administration and enforcement of its collective bargaining agreements, in violation of

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> In the case of non-competitive or labor class employees, the Employer may determine the layoff unit (agency, unit of appropriation, department, bureau, division, or other clearly identifiable subdivision). In such case, layoff shall be made from among incumbents in the same class of positions in each such layoff unit.

[6] On August 1, 2012, a Step III conference was held regarding the Union's group grievance. On September 6, 2012, the Step III Review Officer wrote four separate but identical decisions, one for each of the agencies named in the grievance and one for OLR. The Review Officer found that there was no violation of the Citywide Agreement, explaining that the Union was given proper notice of the layoffs and that the agencies were within their rights to determine the size of the layoff units.

NYCCBL § 12-306(a)(1), (a)(4), and (c)(4).[7] The Union's claim relates specifically to the request it made to the Commissioner of OLR in the letter dated March 14, 2012, in which it asked for copies of the 2011 memoranda submitted by DOHMH and HPD that were "used to create, delete or modify the parameters of any work unit" in the two agencies. (Pet., Ex. C) The Union contends that, to date, it has not received the requested information.

The Union argues that the City's duty to provide requested information extends to information that is relevant to and reasonably necessary for the processing of grievances. Additionally, the Union is entitled to data that is normally maintained in the regular course of business, reasonably available, and necessary for full and proper discussion and negotiation of subjects within the scope of collective bargaining. While the decision to lay off employees is a managerial right, the Union asserts that seniority, the order of layoffs, and the impact of layoffs are mandatory subjects of bargaining. Furthermore, the Union's request for information does not have to relate to any specific grievance that it has previously filed. Rather, the information

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[7] NYCCBL § 12-306(a) provides, in pertinent part:

> It shall be an improper practice for a public employer or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
>
> * * *
>
> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees[.]

NYCCBL § 12-306(c)(4) provides that:

> The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation: . . . .(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining[.]

requested may indicate that the City has committed separate and additional violations for which the Union may wish to file a future grievance.

Because the requested memoranda are necessary for it to ensure that the seniority rights of its members are properly protected throughout the course of layoffs, the Union argues that the failure to provide the memoranda constitutes an improper practice. The Union asserts that the information that the City has provided, specifically the May 3, 2012 and May 9, 2012 memoranda from HPD and OCME, as well as the July 3, 2012 memorandum from DOHMH, are not responsive to its request. These clearly are not the memoranda that were created pursuant to DCAS' May 2011 instructions, nor were they created before layoffs were implemented. Therefore, the Union is not able to assess whether the agencies conducted the layoffs according to the work units that were specified in these 2011 memoranda.

The City has not argued that these memoranda do not exist. Furthermore, the information sought is in the form of documentation created by the employer, maintained in the normal course of business, not available elsewhere, and non-confidential. The Union therefore argues that the City's failure to provide the information violates its duty to bargain collectively in good faith.

The Union further argues that by not providing the requested information, the City has interfered with, restrained and coerced its employees in the exercise of their rights under the NYCCBL, in violation of § 12-306(a)(1).

City's Position

The City argues that the Union is not entitled to the information that it requested because such information pertains to decisions made pursuant to the City's express managerial right under NYCCBL § 12-307(b) to direct its employees and to maintain the efficiency of its

governmental operations.[8] In this case, the Union has not claimed that it sought to bargain over the designation of layoff units or that the City made a unilateral change to the layoff procedure articulated in the Citywide Agreement. Rather, the Union has already bargained with the City regarding the designation of layoff units, and the City has complied with the provisions of the Citywide Agreement that pertain to layoffs.[9] Consequently, the City argues that because the

[8] NYCCBL § 12-307(b) provides, in pertinent part:

> It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; . . . ; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; . . . ; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

[9] The City cites to Article XVII of the Citywide Agreement (entitled "Job Security"), § 3, "Non-Competitive Class and Labor Class Layoff Procedures, which states, in pertinent part :

> e. In the case of non-competitive or labor class employees, the Employer may determine the layoff unit (agency, unit of appropriation, department, bureau, division, or other clearly identifiable subdivision). In such case, layoff shall be made from among incumbents in the same class of positions in each such layoff unit.
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> f. If the Employer designates a subdivision smaller than a unit of appropriation, department, bureau, or division as a non-competitive layoff unit . . . the affected union may appeal such designation within 3 days of the receipt of the layoff notice to Commissioner of Citywide Administrative Services who will issue a final and binding determination within 3 days of the receipt of such appeal.

Union assented to assign the decision-making authority regarding the size of layoff units to DCAS, there is nothing for the Union to administer since the Commissioner of DCAS has already denied the Union's appeal.

The City acknowledges that the duty to provide information extends to grievances, but it argues that even if the Union possessed the right to grieve the City's interpretation of the contract, the plain language of these provisions "is so clear that there is no possible interpretation that would result in the Union's grievance being sustained." (Ans. ¶ 77) Indeed, the Union's grievance alleging violations of §§ 1(a) and 3(e) of Article XVII was denied at Step III.

Furthermore, the City construes the Union's information request as a request for justification for the designation of layoff units. Since the Board has determined that public employers are not under a duty to respond to such requests for specific reasons why an employer engaged in a particular action, the City asserts that the Union is not entitled to this information. Additionally, the City argues that the Union has not demonstrated that the requested memoranda actually contain any data which will enable it to understand why the agencies are conducting layoffs by work units or whether the Union's senior members are actually being targeted for layoff. According to the City, the memoranda merely show that the agencies' general counsels have reviewed the work units and have determined that they are rationally based on the agency's organizational structure.

The City also asserts that the petition must be dismissed because if it is required to disclose the information requested by the Union, it has already complied. Specifically, it argues that the Union's March 14, 2012 request was satisfied by the Commissioner of OLR's May 15, 2012 letter, which provided memos from HPD and OCME detailing the business reasons for

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(*See* Ans., Ex. 7)

their respective work units, as well as a memorandum provided to the Union on July 5, 2012. The City argues that although these are not the exact memos that the Union requested, they are nevertheless responsive. It contends that the New York State Public Employment Relations Board ("PERB") has held that the information supplied need not be in the form requested as long as it satisfies a demonstrated need.

As to the alleged independent violation of NYCCBL § 12-306(a)(1), the City argues that the Union has not demonstrated that the City's actions were inherently destructive of employees' rights under the NYCCBL.

DISCUSSION

This Board has repeatedly held that, pursuant to NYCCBL § 12-306(c)(4), the duty to bargain in good faith includes the obligation "to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." *NYSNA*, 4 OCB2d 42, 10-11 (BCB 2011) (quotation marks and additional citations omitted); *see also SSEU, L. 371*, 1 OCB2d 11, at 9-10 (BCB 2008); *COBA*, 63 OCB 9, at 12 (BCB 1999). "[A] failure to supply information in violation of NYCCBL § 12-306(c)(4) necessarily constitutes a violation of the duty to bargain in good faith pursuant to NYCCBL § 12-306(a)(4)." *NYSNA*, 4 OCB2d 42, at 11 (quotation marks and citation omitted); *see also COBA*, 75 OCB 17, at 8 (BCB 2005). Further, "since the denial of information to which the [u]nion is entitled renders the [u]nion less able effectively to represent the interests of the employees in the unit, the employer's failure to supply the information also interferes with the statutory right of employees to be represented, in violation of NYCCBL § 12-306(a)(1)." *NYSNA*, 4 OCB2d 42, at 11 (quotation marks and citation omitted); *see also PBA*, 79 OCB 6, at

17 (BCB 2007); *Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 42 PERB ¶ 4570, at 4773 (ALJ 2009).

The duty to disclose documents "extends to information which is relevant to and reasonably necessary for purposes of collective negotiations or contract administration." *NYSNA*, 3 OCB2d 36, at 13 (quoting *DC 37, L. 2507* 73 OCB 7, at 21 (BCB 2004) (quotation marks omitted)). This disclosure obligation includes information regarding the "consideration of a potential grievance, or to determine if an improper practice occurred." *NYSNA*, 4 OCB2d 42, at 11-12 (citing *DC 37, L. 376*, 1 OCB2d 37 (BCB 2008), *affd., Matter of City of New York v. NYC Bd. of Collective Bargaining*, Index. No. 403010/08 (Sup. Ct. N.Y. Co., Oct. 23, 2009) (Lehner, J.)). As we have previously noted, the Union's burden to establish that it is entitled to receive specific information "is not an exceptionally heavy one, requiring only a showing of probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NYSNA*, 3 OCB2d 36, at 13 (quoting *Comar, Inc.*, 349 NLRB 342, 354 (2007) (quotation marks omitted)). However, the duty to provide information does not apply to requests involving a non-mandatory subject of bargaining or information that cannot be used in contract administration. *See id*. (citing *COBA*, 63 OCB 9, at 14). Additionally, "[r]equests that seek documents that are irrelevant, burdensome to provide, available elsewhere, confidential, or do not exist, are deemed to fall outside the scope of the duty by the public employer to disclose." *Id*. at 13-14 (citing *State of New York (Office of the State Comptroller)*, 35 PERB ¶ 4565, at 4717 (ALJ 2002)).

In the instant matter, the Union seeks to obtain copies of memoranda that DOHMH and HPD were required to submit to the Mayor's Office of Operations in May 2011, regarding any decision to create, delete, or modify the parameters of work units for use in layoff plans. For the

reasons articulated below, we find that the City violated NYCCBL § 12-306(a)(1), (a)(4), and (c)(4), when it failed to supply the requested information.

The Board has repeatedly stated that decisions regarding the allocation of duties among employees as well as decisions regarding the termination of employees for economic or other legitimate reasons fall outside the scope of mandatory bargaining. *See* NYCCBL § 12-307(b); *Local Union 1969, DC 9*, 3 OCB2d 42, at 13 (BCB 2010); *SSEU, L. 371*, 2 OCB2d 16, at 10-11 (BCB 2009). However, "questions concerning the practical impact of management's decision to [lay off] employees are bargainable." *NYSNA*, 4 OCB2d 42, at 14 (quoting *Local Union 1969, DC 9*, 3 OCB2d 42, at 11 n. 8); *see also UPOA*, 41 OCB 70, at 14 (BCB 1988) ("[A]ny exercise by management of its prerogative to lay off employees is deemed to have [a practical] impact per se.")). In this case, the information the Union seeks pertains to the order of layoffs, as well as the seniority rights of its members. This information does not implicate in any way the City's *decision* to engage in layoffs, but, rather, concerns the practical impact of the layoffs. Consequently, the Union's request for information concerns mandatory subjects of bargaining.

As we have previously stated, the Union has the right "to request information that is relevant to and reasonably necessary for consideration of a potential grievance, or to determine if an improper practice occurred, as a matter of contract administration." *NYSNA*, 4 OCB2d 20, at 10 (BCB 2010) (citing *SSEU, L. 371*, 1 OCB2d 11, at 7-10). Although the Commissioner of DCAS has the authority under the Citywide Agreement to determine whether an agency's designation of layoff units is proper in the first instance, if the Union believes that the composition of the layoff units violates some other provision of the parties' Agreement it has the right to file a grievance in this regard. The Union states that it is seeking the memoranda in order to ensure that the seniority rights of its members are not being violated. The Union is not able to

assess this concern without first obtaining the memoranda. We have previously stated that "the statutory policy in favor of bargaining would be frustrated by placing the burden of proof on the Union to establish to our satisfaction a unilateral change absent bargaining without the benefit of specific germane information which is acknowledged to be within the employer's possession and which would shed light on the employer's compliance with, or frustration of, the statute." *SSEU, Local 371*, 1 OCB2d 11, at 10 (BCB 2008) (citing *UFA*, 71 OCB 19, at 13 (2003)). The same proposition is true in the context of filing a grievance. Therefore, we need not determine whether the Union will be successful in a potential grievance in order to decide whether the City must provide it with relevant information. *See also Island Creek Coal Co.*, 292 NLRB 480, 487 (1989) (citing *W-L Molding Co.*, 272 NLRB 1239, 1240 (1984)) ("[I]n assessing the relevance of the information, the Board does not pass on the merits of the union's claim that the employer breached the collective-bargaining contract or committed an unfair labor practice; thus, the union need not demonstrate that the contract has been violated in order to obtain the desired information.").

We are also not persuaded that the Union seeks information regarding a justification for the Commissioner of DCAS' approval of work units. In *NYSNA*, 3 OCB2d 36, this Board stated that "public employers are not under a duty to respond to 'requests for specific reasons' why an employer engaged in a particular action because these types of requests 'are not for documents which contain information that will enable [the union] to negotiate more effectively . . ., but are more in the nature of conclusions to be drawn by [the employer].'" *Id.*, at 14 (quoting *Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 42 PERB ¶ 4570, at 4774). Contrary to the City's assertions, the Union is not seeking documents in which the Commissioner of DCAS justifies or explains the decision to approve DOHMH's and HPD's proposed work units. Rather, the Union

requested memoranda that were required to be created by these agencies and submitted to the Mayor's Office of Operations by March 27, 2011. Therefore, we find unpersuasive the assertion that the Union is not entitled to the information on the basis that it is improperly seeking justification for a management decision. *See County of Ulster*, 43 PERB ¶ 4502 (2010) (requiring disclosure of requested information and stating that, by disclosing certain empirical data to the union, the union is placed in a position where it would be privy to the information relied upon by the employer; then the union, by its own review, can determine whether that information supported the employer's ultimate decision).[10]

The City's final argument is that if is required to provide the Union with the requested information, it has already done so. It cites *State of New York (Office of the State Comptroller)*, for the proposition that "the information supplied need not be in the form requested as long as it satisfies a demonstrated need." 35 PERB ¶ 4565, at 4717. The City contends that the memoranda that were provided to the Union on May 15, 2012, and July 5, 2012, adequately satisfy the Union's request as they provide business justifications for the composition of the relevant work units. However, in the request at issue, the Union did not ask for business justifications for the work units as of May 15, 2012, and July 5, 2012. It specifically requested memoranda that were required to be created and submitted to the Mayor's Office of Operations by March 27, 2011. The City has not argued that the documents that the Union seeks do not exist, are available elsewhere, are confidential, or would be burdensome to provide.

[10] The City also argues that the information sought by the Union, even if provided, "will not inform or reveal to the union whether their most senior members are *actually* being targeted for layoff." (Ans. ¶ 83) (emphasis in original). According to the City, the memoranda merely state that the agencies' general counsels have reviewed the work units and have determined that they are rationally based on the particular agency's organizational structure. Therefore, the City argues that the memoranda do not contain *data* as defined by the NYCCBL. However, without having seen the memoranda at issue, the Board cannot make a determination as to their substance.

Furthermore, we find that the memoranda created in 2011 are clearly relevant to the Union's concerns over the mandatory subject of bargaining regarding the impact of layoffs that were scheduled to go into effect in March 2012. Consequently, we find that the Union was entitled to receive copies of the requested memoranda, and that the City's failure to provide the information violates NYCCBL § 12-306(a)(1), (a)(4), and (c)(4). Accordingly, we order the City to provide the requested memoranda.

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 Verified Improper Practice Petition docketed as BCB-3032-12, is granted; and it is further

ORDERED, that the City produce to the Union copies of the memoranda from the New York City Department of Health and Mental Hygiene and the New York City Department of Housing Preservation and Development that were submitted pursuant to the March 13, 2011 instructions from the New York City Department of Citywide Administrative Services, regarding the creation, deletion, or modification of the parameters of any work unit and/or individual assignments to any work unit; and it is further

ORDERED, that the City produce, to the Union, said information within 30 days of the issuance of this Decision and Order;

Dated: January 31, 2013
New York, New York

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

PETER PEPPER
MEMBER