

DC L. 10MD, SEIU, 18 OCB2d 12 (BCB 2025)

(IP) (Docket No. BCB-4590-24)

Summary of Decision: The Union alleged that DOHMH violated NYCCBL § (a)(1), (4), and (5) by unilaterally increasing the duration of on-call assignments and removing the option to work on-site while the City and Union were negotiating a new contract. The Union claimed that the change affected the number of hours worked and the length of the workday and was thus a mandatory subject of bargaining. The City argued that the alleged change was merely a reversion to a longstanding policy and thus that any complaint regarding the policy is time-barred. Further, the City contended that the policy was within DOHMH's managerial prerogatives and that the Union had not demonstrated a practical impact that would require bargaining. The Board found that the petition was timely but that the on-call program at issue did not alter or extend the hours of employees' workday or workweek. Accordingly, it did not find a change to a mandatory subject of bargaining and denied the petition. *(Official decision follows.)*

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

In the Matter of the Improper Practice Proceeding

-between-

DOCTORS COUNCIL, LOCAL 10MD, S.E.I.U.,

Petitioner,

-and-

**THE CITY OF NEW YORK and
THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE,**

Respondents.

DECISION AND ORDER

On December 20, 2024, the Doctors Council, Local 10MD, S.E.I.U. ("Union") filed this verified improper practice petition, as well as a petition for injunctive relief docketed as BCB-4589-24, against the City of New York ("City") and its Department of Health and Mental Hygiene

(“DOHMH”).¹ The Union alleges that DOHMH violated § 12-306(a)(1), (4), and (5) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) when it unilaterally increased the duration of on-call assignments and removed the option to work on-site effective January 10, 2025, while the City and Union were in the process of negotiating a new contract. The Union claims that the change from the on-call program effective July 24, 2023, affects the number of hours worked and the length of the workday and is thus a mandatory subject of bargaining. The City argues that the alleged policy change was merely a reversion to a longstanding earlier policy and thus that any complaint regarding the policy is time-barred. Further, the City contends that on-call policies are within DOHMH’s managerial rights pursuant to NYCCBL § 12-307(b) and that the Union has not demonstrated a practical impact that would require bargaining. After considering the entirety of the record in this matter, the Board finds that the petition was timely but that the on-call program at issue did not alter or extend the hours of employees’ workday or workweek. Accordingly, the Board finds no change to a mandatory subject of bargaining in violation of NYCCBL § 12-306(a)(4) or (a)(5) and denies the petition.

BACKGROUND

The Union represents physicians employed by DOHMH, who are part-time hourly employees working between 30 and 40 hours per week. The Union and the City were parties to a collective bargaining agreement that expired on June 27, 2021.

Since at least the early 2000s, senior physicians who specialize in infectious diseases have been required to be on call for up to four weeks per year in addition to their regularly assigned

¹ The Board denied the Union’s petition for injunctive relief on January 7, 2025.

hours of work.² (Pet. ¶ 4) The on-call program is designed to provide a response to after-hours calls about possible outbreaks of infectious diseases. The specifics of the on-call program have changed over the years, but its basic structure of providing medical resources to consult about possible infectious disease outbreaks during non-business hours has remained consistent. A physician who is on call is required to respond to calls from the Poison Control Center about possible outbreaks of communicable diseases within fifteen minutes of receiving the call and must follow a protocol outlined by DOHMH. This DOHMH protocol requires the physician to have access to their DOHMH laptop computer during an on-call assignment but does not require the physician to remain in their home or physically report to a DOHMH facility. (Ans. ¶ 43) With the exception of the period from July 24, 2023, through January 10, 2025, on-call assignments were a week long, from Friday at 5:00 p.m. to 9:00 a.m. the following Friday. The on-call responsibilities are in addition to the physician's regularly assigned work between the hours of 9:00 a.m. to 5:00 p.m. on Monday through Friday. (Pet. ¶ 8)

Prior to 2021, DOHMH began to schedule primary physicians, in addition to senior physicians, to on-call assignments to ensure that there was full coverage for the weekend and overnight calls.³ (Pet. ¶ 5; Ans. ¶ 8) Primary physicians are scheduled for on-call assignments for one to two weeks per year, while senior physicians are scheduled for four weeks per year.⁴

² A version of the on-call program existed as far back as 1987. *See DC*, 41 OCB 6 (BCB 1988).

³ Beginning in 2020, a stand-by physician was also assigned for each week, in case the assigned physician was unable to cover the assigned shift. (Ans. Ex. 2 ¶ 6)

⁴ DOHMH records show that, between 2018 and 2024, the average number of weeks served in an on-call assignment per year was 1.06 weeks for primary physicians, 3.73 weeks for senior physicians, and 0.97 weeks for standby physicians. (Ans. ¶ 23) Prior to implementing the on-call system on January 10, 2025, DOHMH estimated that the January 2025 change would result in an annual average on-call rotations of 1.1 weeks for primary physicians, 4 weeks for senior physicians, and 1.1 weeks for standby physicians. (Ans. ¶ 24)

Physicians who are scheduled for on-call assignments may exchange shifts or reschedule their shifts, if needed. In addition, physicians may seek a reasonable accommodation regarding on-call assignments under DOHMH's Equal Employment Opportunity Policy. (Ans. Ex. 1 ¶ 7)

On August 9, 2022, DOHMH representative Nina Rothschild emailed DOHMH physicians, announcing a change in the availability of overtime for on-call assignments. The email stated:

I am delighted to inform those of you who are in OT-eligible titles that you can now earn OT for your time on call for DOHMH! If you are not sure whether you are eligible for OT, please check with your supervisor.

In order to earn OT, you must carefully document the amount of time you spend on each call in the ETQ.⁵ The amount of time includes only the time spent on the phone with an external provider; it does not include intervening time filling out the ETQ or doing unrelated work or not working. If, for example, you receive a call at 6:00 pm and have three 20-minute conversations with the external provider over the course of the next twenty-four hours, the call counts as one hour - not as 24 hours.

(Pet., Nair Aff., Ex. C)

DOHMH attached a protocol to the August 9, 2022 email that described the process for obtaining overtime compensation for time spent responding to calls. The protocol provided, among other things, that “[a]ll non-managerial physicians and other providers employed by NYC DOHMH and participating in the Infectious Disease On-call program will be eligible for overtime (OT) compensation for calls handled beyond their regularly scheduled hours.” The protocol specified that:

Physicians and other providers assigned to the On-call program will continue to be required to respond to and document all calls received beyond their regularly scheduled hours. However, to be eligible for compensation, a call must last at least 15 minutes. In addition to the calls lasting at least 15 minutes, the total amount of time spent on

⁵ ETQ is the software system used by DOHMH to log information related to the on-call program.

the phone must equal at least one hour for the week they are assigned to the On-call program in order for the physician or other provider to be eligible for overtime compensation. Please note this time cannot be submitted in City Time for compensation unless the one-hour requirement has been satisfied.

(Pet., Nair Aff., Ex. D)

After implementation of the protocol, some physicians received overtime compensation for work completed as part of their on-call assignments. However, one physician claimed that it was difficult to earn overtime under the protocol because her calls rarely lasted the 15-minute minimum required for compensation. (Pet., Nair Aff., ¶ 1) Another physician claimed not to have been paid despite entering the hours on her timesheet because she was not provided with the required overtime code. She further claimed that, when she asked her supervisor for the code, the supervisor said that she was not eligible for overtime because she had a salary cap and that a waiver for that salary cap would not be approved. (Pet., Murthy Aff., ¶ 10.)

Beginning in 2022, DOHMH was able to use federal COVID-19 grant funds to contract with an outside provider, CURE Staffing Inc., to supplement DOHMH staff in response to COVID-19 and later Monkeypox outbreaks.⁶ Beginning on July 24, 2023, DOHMH was able to use these federal grant funds to have CURE Staffing Inc. provide on-call coverage over weekends and holidays, as well as after 10:00 p.m. on weekdays. This allowed DOHMH to reduce the

⁶ DOHMH estimates that the on-call program receives slightly fewer than ten calls per week when there is no outbreak of infectious disease. During any possible outbreak, the volume of calls greatly increases. At those times, DOHMH designates additional personnel to respond to those calls. According to DOHMH records, in 2019, there were 1,136 calls from providers, of which 73 percent were related to a specific measles outbreak. (Ans. ¶ 26) The agency implemented a surge staff to respond to measles calls to maintain availability of on-call primary physicians to respond to routine, non-outbreak calls. (Ans. ¶ 26) In 2022, DOHMH used volunteer primary physicians along with the contracted staff from CURE Staffing Inc. to handle a large volume of Monkeypox outbreak calls. There were 904 calls in 2022, of which 77% were for Monkeypox. (Ans. ¶ 27) DOHMH records indicate that there were 431 calls in 2023 and 446 calls as of November 10, 2024. (Ans. ¶ 28) The record shows that, for the period of 2022 through 2024, the average time spent on a response by an on-call physician was 77 minutes per call. (Ans. Ex. 2 ¶ 7)

duration of on-call assignments for primary physicians to 5:00 p.m. to 10:00 p.m., from Monday to Friday.

In a July 13, 2023 email to staff titled “Changes to Primary on Call duties and schedule for remainder 2023,” DOHMH informed staff that the schedule for the remainder of 2023 was being revised. (Ans. Ex. 3) In that email, DOHMH announced that physicians would only work on call between 5:00 p.m. and 10:00 p.m. Monday through Fridays. It also stated that those primary doctors who are “eligible for overtime (OT) and are willing to take call” from DOHMH facilities, will be paid their usual rate for those hours. Those not electing to take calls from a DOHMH facility would continue to be paid at a time and a half rate only for time spent on the phone. Non-overtime eligible physicians were informed that they were expected to participate in the on-call program but were not eligible for compensation either for hours spent on-call at the office or for time spent on the phone as part of an on-call assignment. (Pet., Moskin Aff., Ex. C) The Union claims that, once DOHMH made this change, some physicians consistently remained on-site for their on-call assignment and were compensated for those hours. (Pet., Moskin Aff., ¶ 12) The schedule outlined in the July 13, 2023 email remained in effect until January 10, 2025, when DOHMH ended its use of CURE Staffing Inc. to provide weekend and overnight on-call coverage.

Negotiations for a successor agreement began in 2023. On October 19, 2023, the Union made the following proposal regarding on-call pay:

4. On call pay (including pager):

An Employee shall receive the greater of what he/she or what similarly situated Employees are currently receiving when on call as of the effective date of the new agreement, or the rate specified below while on call off premises or having to be available to answer phone calls or perform work or be subject to return to work. On call work shall be on a voluntary basis. In the event there are no volunteers, the employer can assign coverage in inverse order of seniority.

ON CALL PAY MINIMUMS

Department Division/Specialty Minimum Hourly On call pay 100%

of regular base pay

No Employee shall be required to be on call (available in-house or out or answering phone calls) and/or performing duties at the worksite for more than 24 consecutive hours. The Employee then shall have a minimum of twelve hours off-duty following a 24-hour work/call commitment. All time on call or beyond an employee's regular schedule shall accrue annual and sick leave and be pensionable.

(Pet., Bolden Aff., Ex. C)

In July 2024, the City rejected the Union's proposal and countered with a proposal for a flat \$750 stipend for each weeklong on-call assignment. (Pet., Bolden Aff., Exs. G, H) In bargaining, the City explained that the stipend offer included the expectation that physicians would be on call for the entire week and not only for the time outlined in the modified post-July 2023 schedule. (Pet., Bolden Aff., Ex. D) The Union did not accept the City's proposal.

On November 13, 2024, DOHMH emailed the Union a notice that, beginning on January 10, 2025, it would implement a new on-call schedule, which it described as follows:

1. Primary MDs: Primary physicians will now be responsible for the entire duration of their assigned on call week, from Friday at 5:00 pm through the following Friday at 9:00 am. In addition, with regard to the on call work that occurs beyond their regularly scheduled hours, the On call Physicians will no longer be allowed to perform that work on-site, unless specifically directed to by management.

2. Compensation: If we are unable to reach an agreement in bargaining on an On call differential, then Primary MDs will continue to be eligible for overtime compensation, consistent with existing practices, for time spent on calls with external providers as well as for time spent performing actual work related to such phone calls (ie, researching responses, consulting with Supervisors, etc), provided that such time is documented and able to be verified by management.

3. Senior MDs: Senior MDs will continue on call for a full week at a time. Those eligible for overtime will also be compensated as above.

(Pet., Bolden Aff., Ex. J)

On November 19, 2024, DOHMH sent an email to physicians notifying them that the policy described in the November 13, 2024 email would be implemented beginning January 10, 2025. (Ans. Ex. 4) That new policy differs from the pre-July 2023 protocol in that it eliminated the 15-minute minimum per call as well as the one-hour minimum per week required to earn overtime and expanded the type of work that qualified for overtime compensation to include not only the time spent on a call but also supporting work, such as research and consultation.

The parties signed a memorandum of agreement (“MOA”) on December 13, 2024, and all pending proposals that had not been agreed upon were withdrawn at that time. The MOA contains no provision related to on-call scheduling.

POSITIONS OF THE PARTIES

Union’s Position

The Union argues that DOHMH unilaterally changed the terms and conditions of physicians’ employment in violation of NYCCBL § 12-306(a)(1), (4), and (5). The Union notes that a public employer’s duty to bargain in good faith encompasses the obligation to bargain over the number of hours worked per day, the length of the work week, and the number of appearances required by the employee per week. Accordingly, the Union argues that DOHMH may not unilaterally implement an adjusted work schedule that alters the number of work hours per day.⁷

The Union claims that an unequivocal past practice was established when, during an

⁷ Regarding the City’s claim that the Union had not demonstrated a practical impact of the new policy on physicians, the Union argues that there is no need to demonstrate a practical impact when, as here, the City has made a change to mandatory subjects of bargaining. To the extent a demonstration of a practical impact is relevant, the Union argues that it did so in its petition for injunctive relief. We find, however, that the Union’s allegations in the injunctive relief petition regarding irreparable harm are insufficient to sustain a finding of practical impact here.

approximately 18-month period from July 13, 2023, to January 9, 2025, physicians were required to be on call from only 5:00 p.m. to 10:00 p.m., Monday through Friday, during their assigned on-call weeks. The Union claims that the physicians' on-call schedule is a mandatory subject of bargaining because it constitutes a change in the number of hours worked by those physicians. Therefore, the Union argues that the City made a unilateral change to physician work hours in violation of NYCCBL § 12-306(a)(4).

The Union claims that by unilaterally changing the on-call schedule, the City also altered the *status quo* concerning a mandatory subject of bargaining during a period of negotiations for a new collective bargaining agreement. in violation of NYCCBL § 12-306(a)(5). Additionally, the Union argues that making a unilateral change to a term or condition of employment during negotiations interfered with the effectiveness of the Union and thus, derivatively, violated NYCCBL § 12-306(a)(1).

In response to the City's arguments referencing Article IV, § 11 and 12 of the Citywide Agreement, the Union asserts that Article IV, § 11 and 12 do not apply to part-time hourly workers, since the Citywide Agreement defines the term "employee" as a full-time per annum worker.⁸ The

⁸ Article IV, § 11 of the Citywide Agreement states:

a. Employees who volunteer to stand by in their homes, as authorized by competent authority, shall receive compensatory time credit on the basis of one-half (1/2) hour for each hour of standby time.

b. Employees who are required, ordered and/or scheduled on an involuntary basis to stand by in their homes subject to recall, as authorized by the agency head or the agency head's designated representative shall receive overtime payment in cash for such time on the basis of one-half (1/2) hour paid overtime for each hour of standby time. Employees who reside on the work premises or are in post-graduate training status shall not be included in this provision.

Union argues that the Citywide Agreement, therefore, does not contemplate that hourly workers would be subject to on-call assignments and is inapplicable to the present matter.

As a remedy for the unilateral change, the Union seeks an order directing the City to cease and desist from implementing the new on-call schedule, to reinstate the on-call schedule in place prior to January 10, 2025, and to bargain with the Union over any desired changes to the on-call program schedule and compensation.

City's Position

The City argues that Petitioner's claims must be dismissed as untimely on the basis that the on-call program has existed for decades and has applied to all the physicians at issue for at least five years, far beyond the NYCCBL's four-month statute of limitations. The City further argues that claims regarding the January 10, 2025 change to the on-call program were untimely because that change was merely a reversion to the prior practice after the conclusion of the explicitly temporary alternative practice that began in July 2023. The City notes that the July 2023 email in which the policy was announced was titled: "Changes to Primary on Call duties and schedule for remainder 2023." (Ans. Ex. 3) The City argues that the use of the phrase "remainder 2023" implies that the policy was only meant to continue through the end of 2023.

Article IV, § 12 of the Citywide Agreement states:

Employees who are required to carry communication devices (or "beepers") shall not be restricted in their ability to travel. Notwithstanding the above, they may be required to call in or may make other mutually agreeable accommodations with the agency.

Article I § 4 of the Citywide Agreement defines "employee" as follows:

For the purposes of this Agreement, the term "employee" shall mean a full-time per annum worker, unless otherwise specifically indicated herein.

To the extent the petition is found to be timely, the City argues that there is no violation of NYCCBL § 12-306(a)(4) or (5) because the post-July 2023 version of the on-call program was always meant to be temporary, and thus the alleged change on January 10, 2025, was merely a reversion to the original program. Therefore, the City claims that there was no unilateral change to a mandatory subject of bargaining.

To the extent that the Board finds that a change did occur on January 10, 2025, the City argues that there is no violation of NYCCBL § 12-306(a)(4) or (5) because DOHMH has the management right, pursuant to NYCCBL § 12-307(b), to schedule physicians. The City additionally claims that the employer's ability to assign employees to an on-call schedule is recognized in Article IV, § 11 and 12 of the Citywide Agreement. Accordingly, the City contends that DOHMH's scheduling of physicians for certain blocks of on-call time does not constitute a mandatory subject of bargaining. The City notes that, to the extent that physicians scheduled for on-call time are required to work additional hours, they are provided with overtime compensation, and the assignment of overtime is not a mandatory subject of bargaining. The City claims that no practical impact on employees' terms and conditions of employment has been demonstrated by the Union in this case and that, thus, there is no obligation to bargain over non-mandatory subjects such as the provision of overtime.

The City argues that there can be no derivative violation of NYCCBL § 12-306(a)(1) because there is no violation of NYCCBL § 12-306(a)(4). The City further claims that Petitioner has failed to establish a violation of NYCCBL § 12-306(a)(5) as there has been no change to a mandatory subject or any term and condition of employment established in the prior contract.

DISCUSSION

As a threshold matter, we address the timeliness of Petitioner's claims. *See Nardiello*, 2 OCB2d 5, at 28 (BCB 2009) (timeliness is a threshold question). The statute of limitations for filing an improper practice petition is set forth in NYCCBL § 12-306(e), which provides, in relevant part, as follows:

A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence

See also Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") § 1-07(b)(4). Consequently, "[a]ny claims antedating the four[-]month period preceding the filing of the [p]etition are not properly before the Board and will not be considered." *Rondinella*, 5 OCB2d 13, at 15 (BCB 2012) (internal quotation marks omitted) (quoting *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007)). Pursuant to NYCCBL § 12-306(e) and OCB Rule § 1-12(f), the four-month period begins to accrue on the day after the alleged violations occurred.

The Union's petition in this matter was filed on December 20, 2024. Based on this filing date, the Union's claim must have arisen on or after August 19, 2024, in order to be timely. We find the City's timeliness defenses to be unpersuasive. The fact that the on-call program has existed in some form for many years prior to January 2025 does not mean that the Union's claim is untimely. The disputed changes to the on-call program were announced on November 13, 2024, and implemented on January 10, 2025. That action clearly falls within four months of the filing of the petition. The City's claim that the policy implemented in July 2023 was temporary relies on the title of the email in which the policy was announced: "Changes to Primary on Call duties

and schedule for remainder 2023.” (Ans. Ex. 3) The City argues that the use of the phrase “remainder 2023” implies that the policy was only meant to continue through the end of 2023. We do not find this argument persuasive, especially given that aspects of the policy announced in the July 2023 email, such as the use of CURE Staffing Inc. to cover weekend and overnight calls and the option for physicians to perform their on-call duties from the office and be paid at their usual rate for those hours, continued well beyond the end of 2023. Therefore, we do not find sufficient evidence to conclude that the Union and physicians were on notice that the 2023 policy was temporary. Accordingly, we proceed to consider the merits of the Union’s allegations against DOHMH and the City.

NYCCBL § 12-306(a)(4) provides that it is an improper practice for a public employer or its agents “to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.” Under NYCCBL § 12-307(a), mandatory subjects of bargaining generally include wages, hours, working conditions, and any subject with a significant or material relationship to a condition of employment. The Board has long held that “[a]s a unilateral change in a term and condition of employment accomplishes the same result as a refusal to bargain in good faith, it is likewise an improper practice.” *DC 37, L. 420*, 5 OCB2d 19, at 9 (BCB 2012). “In order to establish that a unilateral change constitutes an improper practice, the petitioner must demonstrate the existence of such a change from the existing policy or practice and establish that the change as to which it seeks to negotiate is or relates to a mandatory subject of bargaining.” *DC, L. 10MD, SEIU*, 9 OCB2d 2, at 10 (BCB 2016) (quoting *Local 1182, CWA*, 7 OCB2d 5, at 11 (BCB 2014)) (quotation and internal editing marks omitted).

However, not every decision by a public employer that affects a term and condition of employment is a mandatory subject of bargaining. See *Local 1182, CWA*, 61 OCB 4, at 6 (BCB

1998). Rather, NYCCBL § 12-307(b) provides that:

It is the right of the city. . . 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; . . . take all necessary actions to carry out its mission in emergencies; 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.

Thus, NYCCBL § 12-307(b) “reserves to the City exclusive control and sole discretion to act unilaterally in certain enumerated areas that are outside the scope of collective bargaining, such as assigning and directing its employees, determining their duties during working hours, and allocating duties among its employees, unless the parties themselves limit that right in bargaining.” *DSA*, 14 OCB2d 9 at 8 (BCB 2021) (citing *COBA*, 63 OCB 26, at 9-10 (BCB 1999)); *Local 621, SEIU*, 51 OCB 34, at 8 (BCB 1993).

Further, a public employer is prohibited from making unilateral changes to wages, hours, and working conditions during a “period of negotiations,” which commences on the date that a bargaining notice is filed. *See* NYCCBL § 12-311(d); *DC 37, L. 2021*, 51 OCB 36, at 15 (BCB 1993). Once a bargaining notice is filed, NYCCBL § 12-311(d) requires the public employer to preserve the *status quo* with respect to mandatory subjects of bargaining. A public employer that breaches its obligation to maintain the *status quo* under NYCCBL § 12-311(d) engages in an improper practice pursuant to NYCCBL § 12-306(a)(5).

The Union argues that DOHMH’s modifications to the on-call program altered the number

of hours physicians are required to be on call and thus the number of hours worked and number of appearances per week. This Board has consistently held that the number of hours in a workday or week are a mandatory subject of bargaining. *See UFT*, 3 OCB2d 44, at 5 (BCB 2010) (“Hours are a mandatory subject of bargaining.”); *NYSNA*, 51 OCB 37, at 7-8 (BCB 1993) (holding that the number of hours worked per day and the length of the work week or number of appearances required per week are mandatory subjects of bargaining). However, these cases discuss regularly assigned work hours, not on-call assignments. This Board has not previously determined that on-call assignments are *per se* hours or numbers of appearances for the purposes of bargaining.

This Board has specifically addressed on-call type programs in only two prior instances. In one instance, we acknowledged that such a program was intended to ensure coverage outside of regular work or business hours and that, therefore, it was akin to management’s decision on whether to assign overtime.⁹ *See Local 621, SEIU*, 5 OCB2d 38, at 10 (BCB 2012). In *Local 621, SEIU*, the Board considered whether the elimination of an on-call program for supervisors of mechanics violated the duty to bargain. In that case, the supervisors were assigned to respond to road calls one week out of every seven. The on-call, or “duty rotation” program as it was called, required the supervisor to be available to receive calls from an emergency communications hub during their non-work hours and contact the appropriate mechanic to report to the scene of the incident. Sometimes the supervisors also assisted the mechanic on the scene over the phone; rarely were they required to report to the scene of the incident.¹⁰ The union argued that the agency’s

⁹ The Board has consistently held that “when and how much overtime to authorize are not mandatory subjects of bargaining” because such decisions are essential to how government operations are conducted. *See, e.g., UFA*, 9 OCB2d 19, at 9 (BCB 2016); *Local 924, DC 37*, 1 OCB2d 3, at 9-10 (BCB 2008).

¹⁰ Each time a supervisor received a call they were compensated with a minimum of four hours of overtime pay.

elimination of the on-call program altered the hours worked and wages of supervisors. The Board found that the on-call program fell within the employer's statutory right to determine how its operations are to be conducted. *See id.* Therefore, the Board held that the elimination of the program was not a mandatory subject of bargaining and that there was no violation of the NYCCBL.¹¹

Years earlier, the Board also addressed on-call assignments. In *CIR*, 27 OCB 10 (BCB 1981), the Board found that aspects of a demand concerning on-call assignments for doctors were a mandatory subject of bargaining. In that case, the bargaining demand sought to limit the frequency of on-call assignments, limit the duration of each assignment, and permit the doctors to leave the hospital while on call, as long as they remain within a certain distance. In view of the facts regarding those on-call assignments, the Board reasoned that the aspect of the bargaining demand that sought to limit the duration of an on-call assignment was akin to a demand regarding the length of the workday and was a mandatory subject of bargaining. *See id.* at 20. However, it held that the portion of the demand that sought to limit the frequency of on-call assignments contained both aspects that were mandatory subjects, i.e., number of appearances, as well as non-mandatory subjects, i.e., level of required staffing. The Board further noted that management had the right to schedule on-call assignments and that a demand that limits that right is not a mandatory subject of bargaining.¹² *See id.* at 22.

The *Local 621*, *SEIU* and *CIR* cases do not suggest that the Board has considered all on-call assignments to be simply hours or appearances. In *CIR*, the details of the on-call program

¹¹ Similarly, the Board did not find that the elimination of the four hours guaranteed overtime pay was a mandatory subject of bargaining.

¹² The Board did not expressly address the portion of the bargaining demand that sought to allow physicians to leave the hospital but remain nearby.

appeared to require doctors to work in the hospital, and the Board found the demand to limit the number of on-call hours related to the length of the employees' workday. However, for the employees subject to the duty rotation assignment in *Local 621, SEIU*, there was only the possibility of being asked to work while on call, i.e., there was no set or definitive extension of the employee's workday or week. Accordingly, the on-call assignment was much less restrictive of employees' non-work time. Therefore, the Board rejected the Union's assertion that there had been a change in hours and instead viewed the duty rotation assignment as similar to the scheduling of overtime and within management's right to staff when operationally needed.

In this case, there was no evidence presented that the frequency of each physician's on-call assignments increased after the January 2025 changes. Instead, DOHMH estimated only minor increases in the number of times per year that an individual would be assigned to be on call. As a result, we cannot conclude that there was any substantive change in the frequency of on-call assignments. Similar to the duty rotation program that was eliminated in *Local 621, SEIU*, DOHMH employees are now on call for seven continuous days, including one weekend. Like in *Local 621, SEIU*, when employees receive calls outside their regular work hours, they respond by phone and on their work computers and receive overtime compensation for the work performed. Accordingly, we do not find that the extension of the duration of the on-call program altered or extended the employees' workday or workweek. Based on these facts, we find that the decision to implement the on-call program falls within management's right to determine how to conduct its operations and is not a mandatory subject of bargaining. As such, there was no unilateral change to a mandatory subject of bargaining, and thus no violation of NYCCBL § 12-306(a)(4) or (5) stemming from the extension of the on-call program to overnights and a weekend.¹³

¹³ In reaching this conclusion, we do not determine whether there could be issues relating to

In addition, there has been no change in how physicians are expected to perform the on-call work. Both before and after January 2025, they are required to respond to the phone calls within 15 minutes and follow protocols that involve the use of a DOHMH laptop computer. The only change to “hours” effectuated by the January 10, 2025 memo was to the duration or length of the on-call assignment. There is no dispute that DOHMH extended the duration of on-call assignments, from 5:00 p.m. to 10:00 p.m. Monday to Friday, to the full week from Friday at 5:00 p.m. to 9:00 a.m. the following Friday.¹⁴

The Union also alleged that DOHMH made a unilateral change to a mandatory subject of bargaining when it stopped allowing physicians to complete their on-call assignments from their offices and eliminated their ability to be paid at their regular rate for on-call hours when they remained there. There is no dispute that, prior to January 10, 2025, physicians assigned to be on call from 5:00 p.m. to 10:00 p.m. Monday through Friday had the option to remain at the office for as many as five hours and were paid their regular rate for those hours. After the January 10, 2025 change, physicians no longer have the option to work any on-call hours from the office.

The Board has specifically held that the “decision to have [employees] work remotely was and continues to be a managerial prerogative” so long as there is no “express limitation on [the] location” where the work can be conducted. *UFT*, 16 OCB2d 14, at 34 (BCB 2023); *DC 37*, 6 OCB2d 14, at 21 (BCB 2013), *affd.*, *Matter of City of New York v. New York City Bd. of Collective*

implementation of this on-call program, such as how assignments are made, that may require procedural or impact bargaining. We address only the narrow issue presented by the Union concerning the alleged increase in the employees’ hours and appearances. Moreover, our conclusion should not be construed to mean that any extension of the duration of an on-call assignment is not a mandatory subject of bargaining.

¹⁴ In essence, the Union claims that the extension of the duration of the on-call assignment increased the number of appearances required by each employee.

Bargaining, Index No. 451081/13 (Sup. Ct. N.Y. Co. Oct. 28, 2014) (Madden, J.) (noting that “[t]he Board has long found assignments to work locations to be managerial prerogatives”); *UFA*, 3 OCB2d 16, at 26 (BCB 2010) (finding assignment of Firefighters to a steam pipe explosion at a location containing asbestos was a managerial prerogative). Accordingly, we do not find that the elimination of the option to remain in the office to perform up to five hours of on-call work violated DOHMH’s duty to bargain in good faith.¹⁵ See *Local 621, SEIU*, 5 OCB2d 38, at 10 (elimination of on-call assignment providing for four hours guaranteed overtime pay when on-call work was performed was not a mandatory subject of bargaining).

Moreover, we also note that DOHMH may have changed the amount of pay that physicians receive for on-call work performed while not in the office. Beginning in August 2022, physicians were paid at an overtime rate only for the time spent on calls, not for research and consultation, and only for calls lasting at least 15 minutes and totaling at least one hour per week. The record does not make clear that these pay practices continued until January 2025. However, physicians are now compensated at their overtime rate for all time spent on calls and other supporting work. The Union did not object to this apparent increase in compensation or allege it as a unilateral change and seek to bargain over it. However, inasmuch as pay is a mandatory subject of bargaining, the Union is within its rights to demand bargaining over the rate of pay for its bargaining unit members performing on-call work. See *DC, L. 10MD, SEIU*, 9 OCB2d 2, at 11 (finding that compensation is a mandatory subject of bargaining).

For the reasons stated above, the Union’s improper practice petition is denied.

¹⁵ On this record, we cannot conclude that the removal of the option to remain in the office after the regular shift resulted in a reduction of the employee’s regular workday. The facts show only that employees were assigned to be on call between one and four times per year and that some employees on some days may have elected to remain in the office.

ORDER

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

ORDERED, that the improper practice petition filed by Doctors Council, Local 10MD, SEIU, docketed as BCB-4590-24, be, and the same hereby is, denied.

Dated: August 14, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

JEFFREY L. KREISBERG
MEMBER

I dissent.

ALAN M. KLINGER
MEMBER