

UFOA, 8 OCB2d 13 (BCB 2015)

(Scope) (Docket No. BCB-2840-10)

Summary of Decision: The Unions claimed that the FDNY unilaterally implemented a new procedure omitting certain FDNY employees from the processing of 911 emergency calls without first bargaining, and the new procedure has a practical impact on the safety of their employees. The Unions claimed that the City's failure to bargain over the alleviation of the impact violates the NYCCBL. The City contended that the methods and technology by which it provides its 911 response is within its prerogative and that there is no evidence of a safety impact on the Unions' members. The Board found that the record did not establish that changes to the call-taking system resulted in a safety impact and dismissed the petition. (*Official decision follows.*)

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

In the Matter of the Scope Proceeding

-between-

**UNIFORMED FIRE OFFICERS ASSOCIATION,
LOCAL 854, IAFF, AFL-CIO, and UNIFORMED FIREFIGHTERS
ASSOCIATION, LOCAL 94, IAFF, AFL-CIO,**

Petitioners,

-and-

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

Respondents.

DECISION AND ORDER

On March 8, 2010, the Uniformed Fire Officers Association, Local 854, IAFF, AFL-CIO ("UFOA") and the Uniformed Firefighters Association, Local 94, IAFF, AFL-CIO ("UFA") (collectively "Unions") filed a verified improper practice/scope of bargaining petition as well as a petition for injunctive relief on behalf of their members against the City of New York ("City") and

the New York City Fire Department (“Department” or “FDNY”).¹ The Unions claim that the FDNY unilaterally implemented a new procedure omitting FDNY Alarm Receipt Dispatchers (“ARDs”) from the processing of 911 fire emergency calls without first bargaining and that the new system has a practical impact on the safety of the Unions’ members. The Unions claim that the failure to bargain over the alleviation of the safety impact violates the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). The City contends that the methods and technology by which it provides its 911 response is within its prerogative and not a mandatory subject of bargaining. Further, the City argues that there is no evidence of a safety impact on the Unions’ members. On April 6, 2010, the Board denied the Unions’ petition for injunctive relief. After considering the entirety of the record in this matter, which included multiple days of hearing and thousands of pages of evidence, the Board finds that the record does not establish a finding of a practical safety impact and dismisses the petition.

BACKGROUND

The issues before the Board in this matter concern whether ARDs have been prevented from eliciting information or inquiring into necessary details of fire emergency calls and/or are frequently omitted from the calls, and whether this new procedure has resulted in a safety impact to the Unions’ members, *i.e.*, firefighters and fire officers. Before summarizing the facts presented on these issues, we review the procedural history of this case.

¹ The UFA represents those in the title of Firefighters, among others, and the UFOA represent those in the titles of Lieutenants, Captains, Battalion Chiefs, and Deputy Chiefs, among others.

Procedural History

In March 2010, the Unions filed an injunctive relief petition and an improper practice/scope of bargaining petition, docketed as BCB-2840-10 (INJ) and BCB-2840-10 respectively, alleging that the FDNY unilaterally implemented the Unified Call-Taker (“UCT”) System without first bargaining and that the new UCT System had a practical impact on the safety of firefighters. In these petitions, the Unions claimed that, despite a written FDNY memorandum mandating that ARDs be conferenced-in to the emergency fire calls, ARDs were prevented from eliciting information or were omitted from the calls. The Unions asserted that delays resulting from poor information elicited by Police Communication Technicians (“PCTs”) without the assistance of ARDs (including, but not limited to wrong addresses and incorrect coding of incidents) delayed the FDNY’s response, allowed fires to grow larger, and placed UFA/UFOA members in danger. As a remedy in BCB-2840-10, the Unions requested that the Board direct the City and the FDNY to “cease and desist from further use of the UCT System, and to immediately reinstate the emergency call taking system in place prior to April 2009.” (BCB-2840-10 Pet. p. 10) Further, the Unions asked that the Board order the City to bargain with the Unions over the implementation of the UCT System and/or the means to alleviate the adverse impact that the UCT System has on the health and safety of their members. (*Id.*)

On April 6, 2010, the Board denied the Unions’ injunctive relief petition. On October 26, 2010, the Board issued an Interim Decision in the improper practice case finding the claim regarding implementation of the UCT System to be untimely, but ordering that a hearing be conducted on the safety impact claim in the scope of bargaining portion of the petition. *See UFOA*, 3 OCB2d 50 at 17 (BCB 2010) (“Interim Decision”). In its Interim Decision, the Board

stated that the sole purpose of the hearing was to determine whether ARDs are being excluded from UCT phone calls and, if they are, if such exclusion results in a practical safety impact on the Unions' membership. *Id.* at 17. An OCB Trial Examiner held 11 days of evidentiary hearings in accordance with that decision between June 21, 2011 and March 5, 2012.

During the course of those proceedings, the Unions learned that the Office of the Mayor commissioned a report, then in the draft stages, on the 911 system as a whole ("911 Report" or "Report") from Winbourne Consulting, LLC, a consulting firm.² The Unions subpoenaed the Report, and when the City did not comply with the subpoena, the Unions filed legal action to compel the City to produce the Report. Since the Unions deemed the 911 Report to be crucial to their case before the Board, in March 2012, the Unions asked that the OCB not proceed with the remaining hearing dates while litigation over the report was ongoing. The OCB granted that request. On May 2, 2012, the City provided the Unions with a final version of the 911 Report. (Joint Ex. 10) The Unions claimed that the final version was highly edited and thereafter continued their litigation in order to obtain draft copies of the Report.³ By June 14, 2013, the City provided the Unions with approximately 13,000 pages of documents, comprising of multiple draft versions of the final 911 Report.

In August 2013, the Unions filed an injunctive relief petition in a related matter,

² The report was initially commissioned to investigate a discrete event involving emergency response during a snowstorm, but over time the scope grew exponentially to include the entirety of the 911 system.

³ On November 20, 2012, the Appellate Division, First Department affirmed an April 10, 2012 decision of the Supreme Court which denied the City's motion to quash the Unions' subpoena. *See Matter of Uniformed Fire Officers Assn., Local 854 v. City of New York*, 100 A.D.3d 546 (1st Dept. 2012). On April 30, 2013, the Court of Appeals denied the City's application for leave to appeal. *See Matter of Uniformed Fire Officers Assn., Local 854 v. City of New York*, 21 N.Y.3d 910 (2013).

BCB-3096-13. In that petition, the Unions sought to enjoin the City's implementation and utilization of the Intergraph Computer Aided Dispatch ("ICAD") System in conjunction with the UCT System for handling 911 calls. As a remedy in BCB-3096-13, the Unions requested that the Board 1) find that the City violated NYCCBL § 12-306(a)(1) and (4) by instituting and implementing the ICAD System in conjunction with the UCT System; 2) direct the City and/or NYPD and FDNY to cease and desist from the utilization of the ICAD System in conjunction with the UCT System when dispatching fire companies to fire-related emergencies, and immediately reinstating the emergency call-taking system that existed prior to May, 2009; 3) direct the City and/or FDNY to cease and desist the utilization of the UCT System when dispatching fire companies to fire-related emergencies, and immediately reinstate the emergency call-taking system that existed prior to May, 2009; 4) direct the City and/or FDNY to collectively bargain to fruition or impasse concerning the utilization of the ICAD System in conjunction with the UCT System when dispatching fire companies to fire-related emergencies; 5) direct the posting of conspicuous notices to be placed throughout the FDNY; or, in the alternative, 6) order a fact-finding hearing to determine the existence of a practical impact on safety in connection with the utilization of the ICAD System in conjunction with the UCT System. On September 10, 2013, the Board denied the injunctive relief petition.

On September 13, 2013, the OCB consolidated the underlying improper practice claims in BCB-3096-13 and the remaining claims in BCB-2840-10 and the parties were directed to resume the hearing and complete the record in both matters. Additional hearing dates were set by the parties, and then adjourned at the Unions' request while the Unions considered whether additional witnesses were necessary. The hearing before the Trial Examiner resumed in January 2014 and

drafts and the final version of the 911 Report and other exhibits were received in evidence without additional testimony or witnesses. The Trial Examiner delayed the closing of the record at the request of the Union to allow for the submission of additional documentary evidence. On February 5, 2014, the Unions withdrew BCB-3096-13. The record in BCB-2840-10 was closed upon submission of the parties' briefs on April 14, 2014.

During the 11 days of formal hearings, testimony was taken from many witnesses including current and retired Fire Alarm Dispatchers ("FAD's"),⁴ FDNY Captains, Lieutenants, Battalion Chiefs, Union officers, an FDNY Associate Commissioner, Chief of the Department, Directors of Dispatch and Communications, a Supervising PCT, and a NYPD Deputy Inspector.

Role of ARDs in Call-Taking Prior to May 2009

Prior to May 2009, receipt of a 911 call regarding an emergency originated with a PCT. The PCT asked the caller a series of questions to gather basic information, beginning with the location of the emergency. Once a PCT determined that an FDNY response was necessary, the PCT would attempt to reach an ARD by manually placing a call and waiting for an ARD to pick up the line. Once the PCT reached an ARD, the ARD was conferenced into the call. The ARD would then ask the caller a series of questions, including the address and nature of the emergency, and enter the information into FDNY's own computer-aided dispatching system, "Starfire." The ARD would then send this incident information to the appropriate borough's FDNY Decision Dispatcher ("DD"), who would use the information to dispatch the appropriate fire apparatus to the emergency. The ARD would remain on the line with the 911 caller after the information was sent

⁴ FADs are represented by the Uniformed Fire Alarm Dispatchers Benevolent Association ("UFADBA"). FADs are assigned to several different dispatch positions including: ARD, decision dispatch, radio-in dispatch, radio-out dispatch.

to the DD to ask some additional questions, such as the cross streets of the emergency location and the caller's phone number, and fire units en-route to the emergency would be updated with the additional information.

Generally, the parties do not dispute the importance of obtaining and relaying accurate information in the call-taking process. Battalion Chief Sullivan, a 37-year veteran of the FDNY, explained that obtaining precise address information is critical in the dispatch process because the companies need to know exactly where to go, the location on the block of the building, and the best route to take to get there. Battalion Chief Sullivan further explained that the specific address is also essential in triggering accurate information from the Critical Information Dispatch System ("CIDS"), a "tremendously valuable tool to protecting the safety of the members."⁵ (Tr. 391). Similarly, Captain Miller, a 14-year FDNY veteran, testified that correct incident description information is crucial, and Lt. Dereskewicz, a 13-year FDNY veteran, testified that incorrect and or inaccurate information leads to confusion, which causes delays, and exposes the members to risk.

Battalion Chief Sullivan testified that prior to May 2009, the ARDs provided additional valuable incident description information which was displayed on the dispatch tickets, such as the type of occupancy and the type of emergency. He testified that without that information, responding companies are "flying blind" because the companies "employ different tactics depending on what the emergency is." (Tr. 391) Generally, all the Unions' witnesses testified that having as much accurate information as possible as soon as the dispatch ticket arrived – and

⁵ CIDS is an FDNY database containing information on city buildings, including the type and occupancy of a structure that is critical to a safe and efficient response and fire control. In addition, CIDS can include notes on whether hazardous materials are stored on site, or if there are dogs on the premises.

not later when *en route* or at the scene of an emergency—was crucial. The Unions’ witnesses testified that the determination of how they planned to approach a given emergency (the “size-up”) began upon receipt of the ticket and before responding, and that it was problematic for them to receive information *en route* to an emergency or on the scene because of the chaos that often surrounds the scene.

FDNY Chief of Department Kilduff oversees five bureaus within the FDNY, including the Bureau of Communications and the Bureau of Operations. Chief Kilduff testified that generally, responding to a scene with limited information and then reacting or responding to unknown or changing circumstances is a common occurrence for fire units. Chief Kilduff testified that in his experience, there certainly were situations prior to May 2009 where units were sent to one location when the emergency was at another location. Chief Kilduff estimated that during his time in the field prior to May 2009, he was satisfied with the accuracy of the information dispatched to his units around 95 percent of the time.

All of the Unions’ witnesses also testified that pre-UCT, the information they received from the ARD-led interrogation of callers was extremely reliable and helpful. Battalion Chief Sullivan testified that, pre-UCT, he would “stake [his] life on the information that was given by the dispatchers” and that the ARDs “virtually never” issued dispatch tickets with inaccurate or incomplete information. (Tr. 392) The Unions’ witnesses also testified to the extensive training that ARDs received, and the reasons why they thought it was important that ARDs exclusively handled fire-related calls.⁶

⁶ ARDs receive four weeks of training at just the ARD position, and afterward function in the position for three months, during which time they receive daily and monthly supervision and performance reviews. ARDs also receive training in all of the other FDNY dispatcher positions

First Iteration of UCT is Implemented

In May 2009, the initial iteration of the UCT System was implemented for fire-related calls. In the UCT System, like the old 911 system, the PCT was the first person to speak to a caller. The PCT elicited necessary information from the caller and entered the initial information into the NYPD's "Sprint" computer-aided dispatch system. Once the PCT established the call as a fire emergency, the information would be immediately released directly into FDNY's Starfire system, accompanied with any relevant CIDS information, for use by the DD to dispatch the appropriate apparatus and responding units. It is undisputed that during this initial iteration of the UCT system, ARDs were no longer involved in calls.

Second Iteration of UCT is Implemented

In November 2009, FDNY again modified the call-taking procedures. As with the first iteration of UCT, a PCT begins each 911 call by asking the caller the location of the emergency and then asking for other essential information, including the nature of the emergency. If it is a fire emergency, the PCT enters the answers to the initial questions into Sprint and that information is automatically forwarded to the DD to dispatch FDNY units along with any relevant CIDS information. Once PCTs release this information to a DD, PCTs are instructed to conference ARDs into the 911 call. The ARD is instructed to refine and/or correct the information already sent to the field by the DD, if any further pertinent information or corrections are obtained from the caller.

FDNY Deputy Director of Dispatch Dingman, who oversees the FDNY Dispatch force, testified that under this UCT System, when it is time for the PCT to conference-in the ARD, the

during the first nine months of employment.

computer now automatically finds an available ARD, whereas under the old system, the PCT would have to hunt for an available ARD manually, which could take up to six rings. Therefore, Dingman stated that the new system allows for the transfer of calls to the FDNY ARD faster than before. Further, the NYPD and FDNY systems are now linked so that any information ascertained by the PCT on a fire call is automatically converted to the proper FDNY code and routed faster to FDNY. Dingman testified that once the pre-released information is routed to the DD at FDNY, it is the DD's responsibility to review the information provided by the PCT and adjust it as necessary before dispatch. Dingman also testified that after the ARD is conferenced-in, the computer system will indicate if the ARD enters information different from what the PCT entered by producing a certain command.

This new procedure was memorialized in a memorandum to Dispatch Personnel on January 25, 2010, which stated in pertinent part:

The following procedures shall be followed when receiving UCT conference calls:

ARD

When receiving a call from UCT with the caller on the line, let them handle the call. Let 911 do the questioning. **Only** when they don't question the caller, do you handle the call.

-Exchange dispatcher numbers

-Ask for the Boro

-Ask if the call was pre released

(Now listen as they question the caller.)

If the UCT gives you the address:

-Ask them to have the caller repeat the address and cross streets.

-Ask any additional information you need.

-Let them end their call.

-After the caller is gone, verify the address entered by the 911 call-taker

* * *

Bring up the history to check and see that all important

information is in the history. If not, notify the ARD supervisor who shall ensure that the DD & Radio Out Dispatcher are notified of the additional info.

UCT Correction Log Sheet

If the call was pre released by the UCT with a wrong address, a sheet must be filled out and noted that the error was discovered while you were on the line.

(Joint Ex. 7A)

Dingman testified that one of the purposes of the UCT System is to eliminate the redundancy of a caller providing the same information to both the PCT and the ARD before units were dispatched. He testified that under the old system, callers would become frustrated at having to provide the same information to both the PCT and the ARD. Chief Boyce, FDNY Chief of Communications, testified that the longer the caller is on the line, the more complete and comprehensive the information will be, but the goal is to get the most accurate information possible and get units on the road as quickly as possible. Similarly, Chief Kilduff testified that FDNY's goal is to both get units on the road as quickly as possible and also get the most accurate information to the field. Chief Kilduff testified that he has worked for FDNY for 34 years, and that he has held various assignments from Firefighter up to Assistant Chief. However, he stated that the preference is to get units out quickly. Therefore in some cases, complete accuracy is sacrificed for speed, even if there may need to be additional or changed information provided to fire units *en route*.

Other City witnesses also testified that, post-UCT, ARDs are not limited in any way from participating in the emergency call once they are conferenced-in. Chief Kilduff testified that under the current UCT System, the ARD is still an important part of the call-taking process because he or she is able to ask pointed questions and can update and verify information that is

being sent to responding units. City witnesses testified that under current practice, ARDs continue to be conferenced-in on fire calls, except where there is a language barrier, where it is technologically impossible to conference-in an ARD (such as a call from a Transit intercom system), and where conferencing-in is unnecessary based upon the limited information the caller has, or the caller hung up. Importantly, ARDs were similarly not conferenced-in to 911 calls in these instances prior to the implementation of the UCT System. Chief Boyce estimated the percentage of calls where the ARD is not conferenced in as one or two percent of the “1200 or so” fire calls received daily. (Tr. 1108)

The Unions’ witnesses conceded that often, 911-callers just drop out before the ARD is conferenced-in for various reasons including caller frustration or the belief that they are done giving information. However, Supervising Fire Alarm Dispatcher (“SFAD”) Connell, who has been an SFAD for eight years, testified that post-UCT “at least a dozen times a tour” ARDs were not conferenced-in to calls. (Tr. 479-80) Similarly, SFAD Smyth testified that ARDs were not being conferenced in to calls “five, ten times a shift and FAD Veneziano, who has held that position for five years, testified that this occurs at least several times each tour.” (Tr. 715)⁷

Impact of the UCT System

The Unions’ witnesses all consistently testified that the UCT System implemented in May 2009 is unacceptably dangerous, and that it is dangerous largely as a result of address errors by PCTs, which delay getting fire personnel to the scene of an incident. The Unions’ witnesses testified that when units are delayed in responding to a call, the fire grows exponentially larger and more dangerous to fight. Generally, the Unions’ witnesses testified that the prior system utilized

⁷ SFAD Smyth, currently a SFAD and UFADBA President, has been in a FAD title with FDNY for approximately 14 years.

by the City to handle and dispatch 911 calls was safer than the UCT System.

Further, the Unions' witnesses testified that PCTs are pre-releasing unnecessary information and omitting pertinent information, which causes delays in dispatching. The witnesses testified that PCTs pre-release the wrong addresses approximately six or seven times a tour and the wrong incident code or no code at all about 25 to 30 times per tour, which causes delays. The Unions' witnesses testified that correcting the erroneous information relayed by the PCT is a difficult and time-consuming process that could take between one and four minutes, and further delays getting correct information to responders. The Unions' witnesses testified that the PCTs' provision of irrelevant and inaccurate information overloads the DDs' queues, and also delays dispatch. The Unions' witnesses testified that since implementation of the UCT they regularly see various inaccuracies such as wrong addresses, wrong cross streets, and wrong incident descriptions "several times per week" (Tr. 395) or that "it can happen daily." (Tr. 579) Battalion Chief Campbell, a 26-year FDNY veteran, testified that the "lack of information" problems occur on "most of our runs" and that they receive wrong addresses "a couple of times a week." (Tr. 865) Battalion Chief Sullivan testified that the information he receives is "abysmal, unreliable, inaccurate." (Tr. 394)

To the contrary, the City's witnesses did not concede that dispatch errors increased post-UCT or that errors that occurred caused a delay in response time. Generally, the City's witnesses testified that PCTs were trained to retrieve and relay accurate information from callers. Supervising PCT Nater, who works for the NYPD Communications Training Unit, testified that the two biggest challenges PCTs have with eliciting information from a 911 caller is that the caller could be "frantic, screaming. There could be a language barrier." (Tr. 1550-1551) She

testified that during their 40-day training, PCTs are taught how to obtain accurate information. Further, early in the UCT System implementation, PCTs received training focused on learning the FDNY codes and later received in-service refresher training. Nater testified that, based on her supervision and monitoring of PCTs, they are just as likely to transmit accurate information as FADs.⁸

NYPD Deputy Inspector Guerriera testified that he has “high confidence” in PCTs ability to elicit correct information and he has listened to some calls where he had no idea what the person was saying on the other end, but the PCT somehow elicited the information from the caller.⁹ (Tr. 1481-1484) He testified that “the phone rings 30,000 times a day” for 911, and that the caller may not know where they are, or where they are calling from. (Tr. 1480-1482) He testified that in those situations, a caller’s lack of information could delay response. He testified that the vast majority of the time, all of the information transmitted by PCTs on fire calls is accurate, even if they are providing too much information. He agreed with the statement that, on occasion the caller gives the wrong address, and the location information that the PCT transmits has to come from the caller or the phone number/automatic location identifier.

The Unions’ witnesses also testified that address problems are causing responding units to go to the wrong location, and any delay in arrival to the scene allows the fire to grow and heightens

⁸ Deputy Director Dingman testified on cross-examination that an ARD is the employee “best suited to process a fire-related call.” (Tr. 1237) However, Dingman also clarified that although he was not made aware of every error a PCT made, he was made aware of serious errors, and he described the frequency of those errors as “very, very rare.” (Tr. 1238)

⁹ Guerriera was the commanding officer of the NYPD’s Communications Section between 2006 and 2012; as such he was in charge of the unit responsible for all 911 calls and police dispatch. Guerriera’s duties included listening to many of the 911 calls forwarded to NYPD by FDNY in order to determine if the PCT had made an error in processing a call.

the risk to the Firefighters. Two Union witnesses described incidents where each believed that an incorrect address led directly to Firefighter injury. Battalion Chief Sullivan, a long-term FDNY veteran who has been Battalion Chief for 6-1/2 years, testified that on April 26, 2010, the companies under his command were provided with an incorrect address, which led to a delay of more than a minute, and that he was one “hundred percent certain that the delay in our response allowed this fire to grow and expand.” (Tr. 412) During this fire, three FDNY members suffered burn injuries, which Battalion Chief Sullivan believes “were directly attributable to the delay.” (Tr. 413) Captain Alexander, a 26-year veteran of FDNY, testified that, on March 5, 2010, his company was provided the wrong address, the response was delayed by three to four minutes, and once at the correct location, three FDNY members were injured with second degree burns, and Captain Alexander fell through the floor of the attic. Captain Alexander testified that he “[a]bsolutely” felt that the delay was a factor in his falling through the floor because the fire was able to progress in the extra time it took them to get there. (Tr. 595-596) He testified that “[i]f we get there sooner . . . [t]here’s a good chance that there’s not fire, heavy fire volume in the attic which is where two guys in the company got burned.” (Tr. 594-595)

The Unions’ witnesses gave other examples of instances between November 2009 and the hearing where they believe that incorrect and inaccurate information led to heightened risk to them as responders, primarily wrong addresses, misclassifications, and incomplete information, that they believe created delay and risk. Some of these examples include:

-A January 2010 incident in which a caller reported fire coming from a neighbor’s building and responding units were initially sent to the wrong address (89-36 Whitney vs. 87-36 Whitney), causing a ten minute delay in response. The Union’s witness believed that the PCT had incorrectly coded the incident as nonstructural, although the CIDS information showed correctly that the address involved was a structure.

-In July 2010, a PCT sent the dispatch ticket for a nonstructural response, but the accompanying CIDS information showed that it was instead a response to a large structure. An apartment number was not included, and Unions' witness asserted that the description of the incident as "three kids/smoke" was too vague. (Tr. 276-278)

-In August 2010, units were initially sent to the wrong address for a report of a pan burning on a stove and response was delayed at least eight minutes.

-In January 2011, four units and a fire chief responded to reports of a structural fire on the highway on an icy and snowy evening, only to find a mattress lying on the highway.¹⁰

Other Evidence of Alleged Call-Taking Errors

As part of the implementation of the UCT System, in July 2009, the Bureau of Communications created a UCT Correction Log Sheet so that Firefighters and employees involved with Fire Dispatch could submit reports of PCT dispatching errors under the new system. The forms instructed personnel to return the completed form to the FDNY Chief of Communications. Prior to the creation of this log, FDNY did not have a system by which employees tracked dispatch errors. FDNY's Bureau of Communications "BOC" was assigned responsibility for collecting and investigating the UCT Correction Log Sheets and preparing reports summarizing the alleged errors on a monthly basis (the "Complaint Review" process). BOC screened the UCT Correction Log Sheets and then forwarded those deemed to be serious to NYPD supervisors for them to investigate. The investigation could include supervisors listening to the tapes of the 911 call in question, in an attempt to determine the source of the error.

Beginning in February 2010, the monthly reports became more comprehensive, with analyses including 1) the total number of complaints by source (dispatch or field personnel

¹⁰ The witness testified that the "road conditions that night were extremely slippery and placed firefighters and pedestrians at risk of a potential accident." (Tr. 281)

complaint), 2) the number of complaints sent to NYPD for investigation, 3) the type of complaint (whether it was an alleged address error, routing error, an error in the incident description, or the non-conference of an ARD), and 4) the NYPD findings, including to whom or what an error could be attributed (caller hang up, PCT error, language barrier, *etc.*). If they found that a PCT had made an error, the Complaint Review summary noted if the error was corrected during the call with the PCT, or whether it was corrected after an ARD was conferenced-in, and whether the error was corrected pre- or post-dispatch.

The Unions submitted hundreds of UCT Correction Log Sheets, which they claim show the number of errors made by PCTs, and the delayed response as a result. Battalion Chief Sullivan testified that he does not report every problem on a UCT Correction Log Sheet anymore because “it’s almost like you become numb to it because the inaccuracy of the information is so consistent that many times guys don’t even bother putting in the reports anymore.” (Tr. 395)

The City’s witnesses consistently testified that the UCT Correction Log sheets do not show a substantive increase in call-taking errors and that there has been no such increase in errors. Dingman testified that because FDNY did not track dispatch mistakes prior to the implementation of UCT, he could not conclude that the prior system was error-free. Therefore, the creation of the UCT Correction Log sheet simply made him more aware of mistakes. Further, Chief Kilduff testified that he is confident that the level of accuracy of information being provided to fire units since the UCT System was implemented has not diminished.

FDNY Director of Communications Neville testified that he is responsible for reviewing potential dispatching errors, including the UCT Correction Log Sheets, and working with the NYPD to resolve any UCT System issues. Neville testified that in his estimation, the UCT

Correction Log Sheets are primarily filed by FADs, with about twelve percent filed by fire personnel in the field. Neville conceded that address accuracy is a priority in call-taking. He testified that he forwards “any bad address” reports to NYPD for a review of the 911 call audio. (Tr. 1302-1303, 1307) However, Neville stated that a large percentage of the UCT Correction Log Sheets involve complaints that the PCT did not remove the 911 caller’s phone number from the description line on the dispatch ticket.¹¹ Neville testified that he considers this complaint to be less important and therefore he does not forward log sheets containing these complaints to the NYPD.

In addition, Neville testified that after reviewing the incident history and the UCT Correction Log Sheets, he formed the opinion that many of the other reported errors are not attributable to PCT error. Instead, he testified that the records show that FADs, which include ARDs, are also responsible for certain dispatching errors and some of the UCT Correction Log Sheets involve EMS calls, which have not changed under UCT. In addition, Neville stated that duplicate UCT Correction Log Sheets are often created for a single incident; if four units are sent to an incorrect address, he may receive up to five forms: one from each unit, and one from a DD. Neville testified that UCT Correction Log Sheet submissions spiked in May, June, and July of 2011, immediately after UFADBA sent out a directive encouraging its members to submit as many forms as possible for purposes of this case.¹² He also testified that he never saw “phone number

¹¹ He testified that in one month, 98 percent of the UCT Correction Log Sheets submitted were for phone numbers on the description line.

¹² At some point after the creation of the UCT Correction Log Sheet and the filing of the petition, UFADBA sent a memorandum entitled “UCT Forms” to all its members, and listed ten different dispatching errors for which UCT Correction Log Sheets “must be” completed. (City Ex. 1) The memo concluded, “The UFOA has hired a lawyer and has a lawsuit against the City regarding

on a description line” mentioned on a UCT Correction Log Sheet prior to the start of the instant proceedings. (Tr. 1304-1305)

Guerriera testified that initially he reviewed all of the UCT complaints that Neville sent to NYPD as part of the Complaint Review process. Guerriera estimated that the number of calls where the ARD is not conferenced-in is a fraction of total number of fire calls, around .0004 to .0006 percent.¹³ Guerriera testified that historically, the first question the PCT asks the caller is always, “Where is the emergency,” so that even if a caller drops off, resources can be deployed to that location. (Tr. 1430-1431) He also testified that the protocol for PCTs interrogating callers remains the same regardless of the type of emergency: fire emergency, police emergency, or EMS emergency. Further, Guerriera testified that between 2006 and 2012, the extended time period before, during, and after the fire call-taking procedures were changed, he did not see any corresponding increase in complaints coming from the NYPD regarding the information provided by PCTs.

The final 911 Report and the multiple draft Reports provide a comprehensive analysis of the implementation in 2004 of the Emergency Communications Transformation Program (“ECTP”), the stated purpose of which was to consolidate all emergency communications services from NYPD, FDNY, and EMS. The 911 Report analyzed collaboration between police, fire, and EMS during this implementation and after; all 911 call-taking procedures; 911 standards and performance metrics; overall technology systems; geofile synchronization and geographic information system strategic plans; and training and quality assurance. The full text of the

UCT. The forms need to be filled out for all of the above. The forms need to be faxed to the UFOA, [U]FADBA, and FDNY Headquarters. These forms will be used by the UFOA in the lawsuit to prove the UCT System does not work.” (*Id.*)

¹³ Fire calls are only approximately two percent of the total number of 911 calls received.

findings from the section of the final 911 Report that pertained to the UCT System, dated May 1, 2012, are as follows:

It is a finding of this analysis that the UCT process, as currently configured and operated has resulted in documented issues for FDNY Fire Dispatch and field operations. Below is a list of issues that were identified with the current Fire UCT process:

- A combined NYPD and FDNY governance structure was not established to ensure UCT meets NYPD and FDNY objectives, provides overall Quality Assurance of UCT operations, day-to-day management and conflict resolution
- Formal baseline measurements, performance standards, and operational metrics, were not developed prior to the initiation of UCT and post-UCT cutover
- Expert consultant recommendations regarding UCT planning, development and implementation were submitted but for the most part not implemented
- The project was managed as an Information Technology (IT) project and not an operations project
- NYPD and FDNY CAD Systems are supported by three separate geofile systems that contain numerous mismatches of street address information
- The UCT process added a significant increase to the workload of the Fire Decision Dispatcher
- NYPD call takers did not receive adequate training for UCT responsibilities and are not proficient at handling FDNY related activity
- FDNY Fire Dispatch personnel did not receive adequate training and have made only nominal adjustments to their pre-UCT business processes
- A review of FDNY UCT complaint forms, interviews with NYPD and FDNY personnel, and direct observation identified problems in the following areas:
 - *Wrong address
 - *Unclear information provided to FDNY responding units
 - *Miscoding of incidents
 - *Misrouting of incidents
- Statistical information provided to City Hall management to demonstrate the success of the UCT project contained errors and does not provide a clear picture of the effectiveness of UCT related business processes

(Joint Ex. 10, p. 80-81)

POSITIONS OF THE PARTIES

Unions' Position

The Unions argue that they have met their burden of demonstrating the actual and potentially harmful impact that the exclusion of the ARD from the initial interrogation of 911 callers has already had, and continues to have, on the health and safety of the Petitioners' members. Specifically, Petitioners claim that they have demonstrated by unrefuted evidence that, in regard to fire-related 911 calls to the UCT System, the work of the ARD is performed by the PCT. The Unions point to the testimony of FDNY Associate Commissioner of Management Initiatives when he testified that “. . . that's what UCT is.” (Tr. 980-981) Petitioners argue that they have demonstrated further that in replacing the ARD with a PCT for purposes of the initial interrogation, the City has replaced call-takers who are considerably more experienced and expert in taking Fire Department-related calls with call takers who are less-experienced, less-trained, and considerably less expert. The Petitioners argue that they have established that the exclusion of the ARD from the initial interrogation, coupled with the fact that in all cases of structural fires, FDNY DDs are required to immediately release the information being provided by the PCTs, has caused significant, serious, and numerous incidents of inaccurate and/or incomplete information to be transmitted into the field.

The Petitioners contend that they have demonstrated that the incomplete and inaccurate information being transmitted by the PCTs, the result of the ARD being excluded from the initial interrogation, is leading to delays for the ARDs who try to locate and correct the inaccurate

information. The Unions argue that DDs are also being inundated with the inaccurate information, which also slows them down.

The Petitioners argue that, significantly, they have demonstrated, and the City witnesses have acknowledged, that the inaccurate information being released into the field is a) a new problem that did not exist pre-UCT, and b) is creating numerous unsafe situations for Petitioners' members. The Petitioners contend that they have submitted undisputed evidence of fires in which Fire Officers and/or Firefighters have been injured due to fire scenes which grew far more serious and dangerous due to the delays caused by inaccurate information.

The Petitioners argue that the exclusion of the ARD from the initial interrogation of a 911 call-taker is clearly creating both a present and future threat to the health and safety of the FDNY Fire Officers and Firefighters. The Petitioners assert that the thousands of UCT Correction Log sheets submitted unequivocally show that many of these errors were indeed caused by PCT errors. They concede that although not each and every one of these reports is an example of a member being exposed to risk by virtue of the exclusion of the ARD from the initial interrogation, the reported errors were engendered by the PCT's initial interrogation with a 911 caller and pre-release of that information while the ARD was excluded.

Further, the Unions argue that the 911 Reports concluded that there was a "severe lack of collaboration, cooperation and communication between the NYPD and FDNY" in implementing the system. (Joint Ex. 9, at NYC00041, NYC00042) The Unions cite to one of the draft 911 Reports for the "recommendation that the UCT initiative be discontinued as soon as possible." (*Id.*, at NYC 00100) They also cite to a finding that 50 percent of the calls where an ARD was not

conferenced-in were attributable to PCT error. (*Id.*, at NYC01048)¹⁴ The Unions point to the language in one of the draft Reports, which was not included in the final 911 Report, which concludes that “the 9-1-1 system and operations are dangerous to both citizens and public safety personnel.” (*Id.*, at NYC00098)¹⁵

City’s Position

The City urges that the Board was clear when it set the parameters of the hearing in its Interim Decision: if ARDs are not being excluded from 911 calls, then the Scope Petition must be dismissed, and all of the evidence points to the inevitable conclusion that, since November 2009, ARDs have been participants in 911 calls related to fire emergencies. The City points to the evidence, that in the first half of 2011, the documented instances where the PCT should have, but failed to, conference the ARD into a fire-related call was 10 out of 124,000 total calls routed from NYPD to FDNY, a failure rate of .008 percent. The City argues that the Unions’ alternate argument, that although ARDs are not being excluded, they are somehow limited or restricted from interrogating callers, is equally unsupported by the Unions’ witnesses own testimony and the documentary evidence that shows ARDs are correcting dispatches after being conferenced-in.

The City further contends that, even assuming that the Unions had evidence to demonstrate that PCTs frequently fail to conference in ARDs so as to demonstrate a custom or practice, the practical impact claim is still deficient. The City stands behind the current system as the safest

¹⁴ Of the 57 UCT Correction Log Sheets submitted to the Complaint Review Process between February 2010 and March 2011 for failure to conference-in an ARD, 28 of the non-conferences were found to be attributable to PCT error, resulting in the 50% statistic cited by the consultants. (Jt. Ex. 9, at NYC01048)

¹⁵ The same section of the final 911 Report states that the UCT System “has resulted in documented issues for FDNY Fire Dispatch and field operations.” (Joint Ex. 10, p. 80)

and most reliable 911 emergency response system the City has ever had. First, the City argues, PCTs are no less capable than FADs to question a caller, elicit the location of an emergency, and/or transmit that location information to a DD to be dispatched. The City argues that PCTs successfully and accurately elicit the location and description of the emergency at least 99 percent of the time, and the only variable that creates any question about the PCTs' performance is the Union-generated complaints from UFADBA, UFA, and the UFOA requested for the purposes of this case.

Further, the City contends that there is no evidence to suggest that incorrect address information is dispatched to first responders more frequently under the UCT System than under the previous protocol. The City points to the testimony of Deputy Inspector Guerriera, who used to be in charge of the unit responsible for all 911 calls and police dispatch at the NYPD, where UCT was also implemented. He testified that there has been no increase in the frequency of complaints from Police Officers in the field regarding the information that PCTs provide. Further, the City argues that prior to the inception of UCT, there was no complaint form and several witnesses testified that most errors committed by FADs would not even come to the attention of the FDNY Communications Division or create any subsequent intervention. As a result, the record contains only anecdotal evidence comparing the frequency of errors pre-and post-UCT. Further, the City stresses that just about every UCT Correction Log Sheet submitted relates to a phone number in the description. Therefore, the City contends that there is no dependable evidence to suggest that the error rate is higher under the UCT System.

The City argues that the Unions have not proven that the UCT System creates delays in responding to fires on an overall basis. Under the old system, units would not be dispatched until

late in the call-taking process, whereas under UCT, dispatch occurs much earlier, and a redundant line of questioning from the ARD regarding location has been eliminated from delaying the deployment of units. On an overall basis, the City contends that it is better off with the current arrangement because the elimination of a series of questions saves time during which, under the Unions' theory of the case, a fire may be expanding exponentially.

In this matter, the City argues that the Unions' contentions largely rest on the theory that address errors create delays that allow a structural fire to grow larger and more dangerous for their members to fight. The City contends that only five percent of FDNY responses in 2011 were for structural fires. For structural fires, an incorrect address will only create a delay in response in very limited circumstances. (City Ex. 3) The incorrect address would have to be significantly far away from the incident in order to cause a delay. For example, there would have to be no effective correction *en route*, and there would have to be only one 911 caller reporting the incident, which is rare.

In order for the Board to accept the Union's allegations of a practical impact, the City argues that the Board would have to rely entirely on the Petitioners' conjecture as opposed to the facts in evidence. The City contends that there is no substantive evidence in the record to indicate any actual health and safety risk for fire personnel. Therefore, the City asks that the Unions' claims be dismissed in their entirety.

DISCUSSION

In the petition, the Unions alleged that ARDs are being completely excluded from fire-related 911 calls and that this exclusion creates a practical impact on safety for their members.

After careful consideration of the evidence adduced at the hearings, as well as the pleadings, exhibits and post-hearing briefs, the Board finds that while the UCT System has changed the methods and procedures for relaying information on fire calls to fire dispatch personnel, ARDs are not routinely or regularly excluded from being conferenced-in to these calls. Additionally, the record also does not support the existence of a practical impact on safety due to these changes. Accordingly, we deny the petition.

NYCCBL § 12-307(b) provides public employers the discretion to act unilaterally in certain enumerated areas outside of the scope of bargaining, including assigning and directing employees and determining their duties during working hours.¹⁶ See *EMS SOA*, 79 OCB 7, at 29 (BCB 2007); *UFA*, 43 OCB 70, at 2 (BCB 1989), *affd.*, *Matter of Uniformed Firefighters Assn. v. Off. of Collective Bargaining*, Index No. 1065/90 (Sup. Ct. N.Y. Co. Nov. 26, 1990), *affd.*, 173 A.D.2d 206 (1st Dept. 1991), *affd.*, 79 N.Y.2d 236 (1992). An employer is required to negotiate over the alleviation of a practical impact on employee safety stemming from managerial action in a non-mandatory subject. See NYCCBL § 12-307 (b); *UFA*, 5 OCB2d 3, at 13 (BCB 2012); *EMS SOA*, 79 OCB 7, at 30; *UFA*, 43 OCB 70, at 3 (BCB 1989); see also *Matter of Uniformed*

¹⁶ NYCCBL § 12-307 (b) provides, in relevant part:

It is the right of the city . . . to determine the standards of services to be offered by its agencies; . . . direct its employees; . . . 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 . . . on those matters are not within the scope of collective bargaining, but . . . questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

Firefighters Assn. of Greater N.Y. v. City of New York, 114 A.D.3d 510 (1st Dept. 2014). However, “it is not enough to allege a threat to employee safety . . . it is incumbent upon the Union to demonstrate that the alleged safety impact results from a management decision or action, or inaction in the face of changed circumstances.” *UFA*, 37 OCB 43, at 17-18 (BCB 1986); *see also UFA*, 43 OCB 4, at 48 (BCB 1989), *affd.*, *Matter of Uniformed Firefighters Assn. v. Off. of Collective Bargaining*, Index No. 12338/89 (Sup. Ct. N.Y. Co. Oct. 30, 1989), *affd.*, 163 A.D.2d 251 (1st Dept. 1990). Factors considered in determining whether a practical impact on safety exists include whether the employer has adopted measures that offset any potential threat to safety and whether the employees’ adherence to management procedures and guidelines would obviate any safety concerns. *UFA*, 5 OCB2d 2, at 22 (BCB 2012); *see also UFA*, 3 OCB2d 16, at 30 (BCB 2010); *EMS SOA*, 79 OCB 7, at 30-31.

The Unions have the burden to demonstrate that a practical impact on safety exists and “must substantiate, with more than conclusory statements, the existence of a threat to safety before we will require the employer to bargain.” *EMS SOA*, 79 OCB 7, at 30; *LEEBA*, 3 OCB2d 29, at 44 (BCB 2010); *SEIU, L. 621*, 51 OCB 34, at 9 (BCB 1993). This Board has never “require[d] a union to show that injuries have actually resulted from management’s action in order to demonstrate a practical impact on safety.” *EMS SOA*, 79 OCB 7, at 31; *see also UFA*, 3 OCB2d 16, at 30-31 (BCB 2010) (citing *SBA*, 23 OCB 6, at 25 (BCB 1979), *affd.*, *Matter of Sergeants’ Benevolent Assn. v. Board of Collective Bargaining*, Index No. 11950/79 (Sup. Ct. N.Y. Co. Aug. 7, 1979); *UFA*, 79 OCB 7, 31 (BCB 2007)). Thus, the Unions need not show any actual injury. However, to establish a practical impact on safety, the Unions must show “more than simply a change in the way things are done.” *UFA*, 5 OCB2d 2, at 24; *UFA*, 43 OCB 70, at 4.

Here, the testimony and the documentary evidence do not support the conclusion that ARDs are excluded from fire-related 911 calls on a routine or regular basis, nor are they restricted in questioning the caller once they are conferenced-in to the call. It is undisputed that for a short time when the UCT System was initially implemented, from May 2009 to November 2009, ARDs were excluded from 911 fire emergency calls. Nevertheless, after November 2009, PCTs were instructed to conference-in ARDs to every fire emergency call and the record supports the conclusion that PCTs conference in an ARD, as directed by procedure. While the record establishes that post-UCT implementation, there were some instances when ARDs were not included on fire calls, this testimony does not establish that the required procedure was not being consistently followed by PCTs after November 2009. Further, there is insufficient evidence to conclude that under the current UCT System, the number of instances when proper procedure is not followed and ARDs are not conferenced in on fire calls has changed, much less increased, from the call-taking process pre-UCT.

Similarly, we cannot conclude that procedures introduced with the UCT System prevent ARDs from eliciting information or inquiring into necessary details of fire emergency calls. As we noted in the Interim Decision, ARDs were instructed in the January 25, 2010 memorandum to allow the PCTs to handle the call. However, that same memorandum expressly instructs the ARDs to “question the caller,” when the PCT fails to do so and to verify or add relevant information as needed. (Joint Ex. 7A) The evidence adduced at the hearing shows that ARDs are regularly conferenced in to fire emergency calls and that they can and do question callers.

Nevertheless, the record does establish that after the implementation of the UCT System, the ARD’s role in the 911 call changed and the manner in which information is released to fire

dispatch changed. It is clear that the initial information on a fire emergency obtained by the PCT is now released by the PCT to the DD. Prior to the UCT System, the ARD was conferenced in to the call before releasing the information to the DD, and was the first person to release information to the DD. Further, as noted earlier, the PCT has assumed the primary role in gathering information from the caller, whereas prior to the UCT System, the ARD was primarily responsible for gathering the fire emergency information. Moving to the current system, the release of basic information by the PCT to the DD, followed by the PCT conferencing-in the ARD, appears to speed the process in the vast majority of cases, while still involving the ARD. Therefore, the Board finds that the ARDs are not prevented from eliciting fire information from 911 callers, and that their role is now to clarify and refine information that has already been forwarded to the DD.¹⁷

Accordingly, we now evaluate whether this change to the call-taking procedures resulted in a safety impact. In this regard, the Unions' assert that the new procedures have resulted in an increase in the release of inaccurate information to fire personnel and that this information, or lack thereof, has resulted in delays in fire response and increased safety risks to the fire responders. Specifically, the Unions' assert that the change in call-taking procedures has led to an increase in dispatch errors, which leads to delays in response, and an unacceptable level of threat to Firefighter safety. They allege that the dispatch errors are directly attributable to the new procedures and that PCTs generally lack competence to handle fire-related calls. These assertions are not borne out by the record.

¹⁷ We do not reach the issue of whether removal of the ARDs entirely from the call-taking process resulted in a safety impact since that procedure was implemented for only six months. There is no evidence that the FDNY intends to re-introduce this procedure and we deem the claim for that time period as moot. Consistently for the six years since November 2009, the procedure is for the PCT to conference in the ARD to fire emergency calls, therefore the remainder of this decision addresses only that issue. *See PBA*, 2 OCB2d 36 (BCB 2009).

First, we find that the Unions have not established that PCTs are unable to adequately handle fire calls. Although the 911 Report and a City witness suggest that ARDs may be the best City employees suited for handling fire-related emergency calls, we cannot conclude that PCTs are generally incapable of safely handling fire-related emergency calls. PCTs have a long history of working with the 911 system and have had a significant role in the 911 emergency call-taking process, in which obtaining accurate information is crucial. They receive and process over 10 million calls per year. In addition to their standard training upon hire, they were given further training in fire calls when UCT was implemented, and refresher training thereafter. In addition, the basic functions performed by PCTs during the course of a 911 call are fully within the title's job specification.

Second, we find that the Unions have not shown that the number of call-taking errors have increased under the current UCT System. Although the Unions' witnesses testified to an increase in errors that they perceive, the evidence is not conclusive and the perception is ultimately not supported by the evidence in the record.¹⁸ Errors were not tracked by the FDNY prior to the implementation of the UCT, making a pure statistical comparison impossible. However, after analyzing the totality of the evidence, including the UCT Correction Log Sheets and the findings of the Complaint Review reports, the number of PCT dispatch errors appears to be insignificant when compared with overall fire call volume.¹⁹ Further, we note that a proclaimed lack of errors under the old system is not satisfactory proof of an increase in the current system's error rate.

¹⁸ The Unions' anecdotal claims are not completely without support. The testimony and the 911 Report point to errors in the 911 system and suggested that PCTs were not yet proficient in handling 911 calls for fire-related emergencies. However, this evidence is not dispositive and we find that the evidentiary record as a whole supports the Board's conclusions.

¹⁹ Taking 2011 as an example, between January and December 2011, approximately 256,249 911

Additionally, the Unions have not shown that these post-UCT errors are directly attributable to PCT errors, as opposed to other failures in the 911 system. The primary concern articulated by the Unions' witnesses was the alleged inaccurate transcribing of address information. While the Unions presume that many of the reported errors in the location or address of an incident are attributable to a PCT's error in data collection, there are multiple reasons for such errors. It is undisputed that 911 callers, often in a state of excitement and panic, make errors in reporting addresses or are unable to give a precise location. In addition, as noted in the 911 Report, the UCT System itself had issues in mismatches of street address information due to the use of multiple CAD systems. Moreover, the 911 Report also concluded that both NYPD call takers and FDNY dispatchers needed additional training.

In reviewing the record as a whole, the motivation behind the 911 procedural changes appears well-intentioned and meant to both improve the speed and the accuracy of the dispatch process, thereby getting units to fires faster. Nevertheless, the system has not been error proof. Numerous witnesses for the Unions, especially those directly involved with fire response, testified to such errors. Similarly, the 911 Report noted such errors and recommended that both FDNY and NYPD call-takers receive more training. However, while this information is indicative of

calls were routed to FDNY Starfire. During that same time period, FDNY personnel submitted 3,641 total UCT Correction Log Sheets. Using the raw number of UCT Correction Log Sheets submitted, which includes duplicates and non-critical errors such as phone numbers on the ticket, we arrive at an error rate of 1.42 percent for all fire calls in 2011. For the same period, NYPD supervisory personnel found a PCT post-dispatch error rate of between .0002 and .0010 percent after their Complaint Review process. The Unions characterize the Complaint Review report statistics as self-serving, since NYPD supervisors are reviewing the work of NYPD employees, and FDNY was responsible for selecting the complaints to forward. However, the Complaint Review process involved a tremendous level of detail and there is nothing in the record to dispute its validity. Therefore, we find this evidence to be reliable.

problems in the implementation of new procedures, for the reasons above, it is insufficient to show that those problems have created the claimed safety impact.

As we saw in *UFA*, 7 OCB2d 4 (BCB 2014), it is not sufficient to allege that there has been a change, in the absence of a showing that the change impacts the safety of a Unions' membership. In that matter, we found that there was a change, in that FDNY implemented a nighttime building inspection program, but the Union was unable to show that the change resulted in a safety impact. *Id.*, at 20-21. Here, there has also been a change, in that the ARD is not the first person to receive and dispatch fire information, but the evidence before us is insufficient to conclude that the procedural changes to dispatch create a practical impact on safety.

Finally, a considerable portion of the testimony reflects opinions shaped by the witness' direct experience. Drawing on that experience, witnesses summoned by the UFA tellingly recounted past firefighting episodes whose outcomes were dramatically affected by the accuracy of the information provided to them at dispatch. We are cognizant of the witness' and all fire personnel's considerable dedication to public service. It is undeniably true that firefighting is an inherently dangerous job, and that, in the future, as has been true in the past, firefighters' work will expose them to stressful and dangerous situations. Yet, here, we are not convinced that the probative evidence establishes that the procedural changes to the 911 fire call-taking process at issue in this matter resulted in the alleged safety impact.

Consequently, on the record before us, we conclude that the evidence does not demonstrate the claimed practical safety impact within the meaning of the statute, and we dismiss the Unions' petition.

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 scope petition filed by the Uniformed Fire Officers Association, Local 854, IAFF, AFL-CIO, and Uniformed Firefighters Association, Local 94, IAFF, AFL-CIO, docketed as BCB-2840-10, is hereby dismissed.

Dated: June 8, 2016
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

I concur in the dissent of Member Pepper.

CHARLES G. MOERDLER
MEMBER

I dissent in a separate opinion attached hereto.

PETER PEPPER
MEMBER

UNIFORMED FIRE OFFICERS ASSOCIATION, LOCAL 854, IAFF, AFL-CIO, and UNIFORMED
FIREFIGHTERS ASSOCIATION, LOCAL 94, IAFF, AFL-CIO,

Petitioners,

-and-

THE CITY OF NEW YORK and THE NEW YORK CITY FIRE DEPARTMENT

Respondents.

(Docket No. BCB-2840-10)

I dissent. The Unions claimed that the FDNY unilaterally implemented a new procedure omitting certain FDNY employees from the processing of 911 emergency calls without first bargaining, and the new procedure has had a practical impact on the safety of their employees. I must agree with the Union's claim that the City's failure to bargain over the alleviation of the impact violates the NYCCBL. I also must disagree with the City's contention that the methods and technology by which it provides its 911 response is within its prerogative and that there is no evidence of a safety impact on the Unions' members.

The Unions have alleged that Alarm Receipt Dispatchers ("ARDs") are being completely excluded from fire-related 911 calls and that this exclusion creates a practical impact on safety for their members. Although it has been maintained that NYCCBL § 12-307(b) provides public employers the discretion to act unilaterally in certain enumerated areas outside of the scope of bargaining, including assigning and directing employees and determining their duties during working hours. Factors considered in determining whether a practical impact on safety exists include whether the employer has adopted measures that offset any potential threat to safety and whether the employees' adherence to management procedures and guidelines would obviate any safety concerns.

It is clear that the record establishes that after the implementation of the Unified Call-Taker ("UCT") System, the ARD's role in the 911 call clearly changed and the manner in which information is released to fire dispatch changed. The initial information on a fire emergency obtained by the Police Communication Technician ("PCT") was now released by the PCT to the FDNY Decision Dispatcher ("DD"). Prior to the UCT System, the ARD was conferenced in to the call before releasing the information to the DD, and was the first person to release information to the DD. Further, as noted earlier, the PCT has assumed the primary role in gathering information from the caller, whereas prior to the UCT System, the ARD was primarily responsible for gathering the fire emergency information.

The Unions' assert that the new procedures have resulted in an increase in the release of inaccurate information to fire personnel and that this information, or lack thereof, has resulted in delays in fire response and increased safety risks to the fire responders. Specifically, the Unions assert that the change in call-taking procedures has led to an increase in the release of inaccurate information and

dispatch errors, which leads to delays in response, and an unacceptable level of threat to Firefighter safety. They allege that the dispatch errors are directly attributable to the new procedures and that PCTs generally lack competence to handle fire-related calls.

The 911 Report and a City witness testimony suggest that ARDs may be the best City employees suited for handling fire-related emergency calls. In addition, it was suggested that the Unions' witnesses testified to an increase in errors that they perceived, it was stated that this evidence was not conclusive and the perception was ultimately not supported by the evidence in the record. However, it was then noted in a footnote, that the "Unions' anecdotal claims are not completely without support. The testimony and the 911 Report point to errors in the 911 system and suggested that PCTs were not yet proficient in handling 911 calls for fire-related emergencies." I find it difficult to understand how this was not sufficient reason to grant the petition.

It was noted that "the motivation behind the 911 procedural changes appears well-intentioned and meant to both improve the speed and the accuracy of the dispatch process, thereby getting units to fires faster." This motivation aside, it was then stated that "numerous" witnesses for the Unions especially those directly involved with fire response, testified to errors. In addition, the 911 Report noted such errors and recommended that both FDNY and NYPD call-takers receive more training.

Although it is certainly understood, that if a change occurred, this may not itself establish evidence of a safety impact on the Unions' members, but it is also clear that there be no requirement that a union show that injuries have actually resulted from management's action in order to demonstrate a practical impact on safety. What is clear is this practice has now been changed. It is because of this I dissent and would grant the petition.

New York, New York
June 8, 2016

Peter Pepper

Alternate Labor Member

Charles G. Moerdler

Labor Member

I concur in the dissent.