

DC 37, L. 3621 & 2507, 11 OCB2d 10 (BCB 2018)

(Scope) (Docket No. BCB-4190-16)

Summary of Decision: The Union alleged that the FDNY refused to bargain over the alleged workload and safety impacts of a pilot program under which EMS Supervisors are assigned to perform paramedic duties in addition to their supervisory duties. The City argued that the Union has failed to establish that the pilot program had any practical impacts. After a hearing, the Board found that the Union established that the pilot program has a practical impact on workload because it regularly requires EMS Supervisors to work overtime to complete their job duties and ordered impact bargaining. The record did not establish a safety impact. Accordingly, the petition was granted in part and denied in part. (*Official decision follows*).

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

In the Matter of the Scope of Bargaining Proceeding

-between-

**DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and its affiliated
LOCALS 3621 and 2507,**

Petitioners,

-and-

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

Respondents.

DECISION AND ORDER

On November 10, 2016, District Council 37, AFSCME, AFL-CIO, and its affiliated Locals 3621 and 2507 (together, “Union”) filed a verified scope of bargaining petition alleging that a pilot program that began in June 2016 in the Bureau of Emergency Medical Service (“EMS”) of the Fire Department of the City of New York (“FDNY”) has workload and safety impacts on bargaining unit members that are within the scope of bargaining under § 12-307(b) of

the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). The pilot program involves the dispatching of Captains and Lieutenants (“EMS Supervisors”) who are also certified paramedics to respond to emergency calls in Paramedic Response Units (“PRUs”), also known as “Fly Cars,” to perform paramedic duties. The City of New York (“City”) argues that the Union has not demonstrated any practical impacts. The Board finds on the entire record that the Union established that the PRU pilot program has a practical impact on workload because it regularly requires EMS Supervisors to work overtime to complete their job duties and orders impact bargaining. The Board further finds that the Union did not establish a safety impact. Accordingly, the petition is granted in part and denied in part.

BACKGROUND

The Trial Examiner held a six-day hearing and found that the totality of the record, including the pleadings, exhibits, and briefs, established the relevant facts to be as follows:

The EMS Bureau is responsible for the operation and staffing of all ambulances deployed utilizing the City’s 911 system. In June 2016, the FDNY began the PRU pilot program in EMS Division 2, the Bronx, to more efficiently direct EMS resources regarding incidents that require Advanced Life Support (“ALS”) care, which only certified paramedics can legally provide.¹ Certified paramedics, however, are not always available to be dispatched. Under the PRU pilot program, an EMS Supervisor who is also a certified paramedic is teamed with another certified paramedic to provide ALS care in a Fly Car. As a result of the PRU pilot program, the number

¹ Incidents considered to require ALS care include cardiac arrest, difficulty breathing, anaphylactic shock, choking, drowning, trauma, mass casualties, and obstetrics.

of cases in Division 2 where certified paramedics were unavailable to respond to 911 calls that are believed to require ALS care has been reduced from 4.1% to 1.5%.²

EMS Personnel

EMS employs bargaining unit members in the titles of Supervising Emergency Medical Service Specialist Level I (“Lieutenant”) and Level II (“Captain”), Emergency Medical Specialist – EMT (“EMT”), and Emergency Medical Specialist – Paramedic (“Paramedic”).³ EMTs and Paramedics provide pre-hospital emergency medical care and operate ambulances commonly referred to as “Buses.” After providing patient care, EMTs and Paramedics must complete Patient Care Reports (“PCRs”) as these are required by New York State Department of Health (“NYSDOH”) regulations and necessary for the City to obtain insurance reimbursements. EMTs provide Basic Life Support (“BLS”) care, receive three months of full-time training, and are required to have and maintain a NYSDOH EMT-Basic certificate.⁴

Paramedics provide ALS care and are required to have and maintain a NYSDOH Advanced EMT - Paramedic certificate and a New York City Regional Emergency Medical Advisory Committee certificate. Paramedics receive BLS training plus an additional nine months of full-time ALS training before receiving their paramedic certification and then spend

² In the first year of the PRU pilot program (July 2016 to July 2017), Division 2 responded to over 45,000 911 calls that were believed to require ALS care. (*See* Union Ex. PP)

³ Where capitalized, Paramedic refers to FDNY employees in the civil service title; the term “certified paramedic” refers to any individual who holds and maintains the same certificates as required of Paramedics. Most EMS Supervisors are certified paramedics. EMS Supervisors are members of Local 3621; EMTs and Paramedics are members of Local 2507.

⁴ BLS care includes addressing any immediate life threats, such as uncontrolled bleeding, and minor illnesses and injuries. EMTs administer some drugs, such as albuterol and epinephrine. BLS equipment includes defibrillators, oxygen, bandages, tapes, tourniquets, and splints.

six months as an intern receiving field training.⁵ Paramedics are required to take continuing medical education courses every three years to maintain their certification. Each Paramedic carries a controlled substance pouch containing narcotics such as Valium, midazolam, and fentanyl. At the end of each shift, each Paramedic must account for all narcotics and either transfer their pouch to another Paramedic or secure it in a drug locker.⁶

Lieutenants are responsible for overseeing EMTs and Paramedics. The Lieutenant job specification states that they also perform the duties of an EMT, and since 2008, all new Lieutenants have been required to be certified paramedics and to maintain their certification.⁷ Lieutenants are designated either the Station Officer or the Conditions Officer. Station Officers are assigned to and remain at a Station for the entirety of their tour, performing duties such as monitoring the status of EMS units and securing and inventorying controlled substances. Station Officers control one of the keys to the drug locker but do not carry a controlled substance pouch.

Conditions Officers are assigned to perform field supervision of EMS units. Among their duties is responding to EMT and Paramedic requests for assistance, which may stem from on-the-job injuries, damage to a Bus, or concerns that the scene of an incident is, or is becoming, unsafe. Conditions Officers also go to hospitals to “clear” EMS units from emergency rooms, which means they deal with hospital staff to expedite the process of transferring the patient from

⁵ Paramedics receive training in the use of narcotics and techniques such as intubation and administering intravenous medication. ALS equipment includes many types of equipment found in emergency rooms, including two types of EKG (3 and 12 lead), an intubation kit, and IVs.

⁶ This duty normally cannot be completed prior to the scheduled end of the tour; accordingly, Paramedics assigned to ALS units are pre-authorized 15 minutes of overtime at the end of the shift to allow for the proper handling of the narcotics.

⁷ Lieutenants promoted before 2008 are not required to be certified paramedics.

EMS to the hospital and release EMS units to be available for another assignment. Conditions Officers direct and assist operations at major and multiple casualty incidents at which they may provide patient care. Conditions Officers operate Conditions Cars which, unlike Buses, do not have patient transport capabilities; they are SUVs or pickup trucks. A Conditions Car carries some BLS equipment but normally does not carry ALS equipment.⁸ Conditions Officers operate the Conditions Car alone, but may transport EMS personnel.

Captains are Commanding Officers of a Station and oversee the EMTs, Paramedics, and Lieutenants. The Captain job specification states that they also perform the duties of a Lieutenant. Captains are occasionally assigned as the Station or Conditions Officer, which is known as being “put in the mix.” (Tr. 196) Like Lieutenants, since 2008, all new Captains have been required to be certified paramedics and to maintain their certification.⁹

Patient Care Provided by EMS Supervisors Outside of the PRU Pilot Program

EMS Supervisors will provide direct medical care when they are the first to arrive at the scene of an incident until the EMTs and/or Paramedics arrive to take over. At the scene of an incident, EMS Supervisors monitor the patient care provided by the EMTs and/or Paramedics and will assist and provide direct care if needed. Also, if they believe patient care is being provided improperly, they will intervene and provide the patient care. The parties disagree as to the frequency with which EMS Supervisors not in the PRU pilot program provide patient care.

Union witnesses testified that there are virtually no circumstances under which a Station Officer would be assigned to perform patient care. They also testified that Conditions Officers

⁸ There are procedures allowing EMS Supervisors who are certified paramedics to sign out some ALS equipment that they may carry in a Conditions Car.

⁹ Captains promoted before 2008 are not required to be certified paramedics.

rarely provide BLS care and almost never provide ALS care because the Conditions Car does not carry ALS equipment and State law requires that two paramedics be present to provide ALS care.¹⁰ They testified that EMS Supervisors are instructed not to provide patient care when EMTs or Paramedics are on the scene. One witness testified that he used to perform ALS care frequently as a Conditions Officer until he was instructed by a Deputy Chief in 2011 “that patient care wasn’t the primary role for the [L]ieutenant” and that, since then, he has rarely performed BLS care and has not performed any ALS care. (Tr. 680) Lieutenant Variale, the Local 3621 President, testified that an EMS Supervisor was disciplined in 2011 for providing patient care when she had been dispatched as a Conditions Officer and other EMS personnel were on scene.

City witnesses testified that, while some EMS Supervisors rarely provide patient care, there are many opportunities for EMS Supervisors to provide patient care and that there are procedures that allow Conditions Officers to sign out ALS equipment so they can perform some ALS care. City witness Chief Alvin Suriel, Division 2 Commander, testified that there is no general prohibition preventing EMS Supervisors from providing patient care when other EMS personnel are on the scene and that he performed patient care regularly when he was an EMS Supervisor assigned to a Conditions Car. He also identified three EMS Supervisors not in the PRU pilot program who regularly performed ALS assessments and, when other certified paramedics were on-scene, performed ALS care.¹¹

¹⁰ For example, one Union witness characterized the frequency with which Conditions Officers provide BLS care as five percent of the time, another described it as once or twice a month.

¹¹ An ALS assessment is the determination made at the scene of an incident as to whether ALS care is actually needed.

ALS Dispatch Procedures for Divisions not in the PRU Pilot Program¹²

ALS units not in the PRU pilot program consist of two Paramedics assigned to an ambulance containing both BLS and ALS equipment known as an “ALS Bus.” An ALS unit, if available, will be dispatched to a 911 call deemed to require ALS care. For the most serious incidents, a Conditions Car, a BLS unit, and a Certified First Responder (“CFR”) unit will also be dispatched.¹³ ALS care is needed in only approximately 30% of ALS dispatches. When needed, it is provided by the ALS unit, which would also transport the patient to the hospital. When ALS care is not required and a BLS unit is also on scene, the EMTs provide the BLS care, and the ALS unit is released to be available to be dispatched. However, if there is no BLS unit on scene, the Paramedics provide the BLS care and, if necessary, transport the patient to the hospital. It is not uncommon for ALS units to be dispatched to an incident that cannot be completed prior to the scheduled end of their tour. These are known as “late calls.”

PRU Pilot Program

Under the PRU pilot program, Conditions Cars were replaced with Fly Cars.¹⁴ A Fly Car carries the same ALS equipment as an ALS Bus and is staffed by two certified paramedics, one

¹² The PRU pilot program does not impact dispatch procedures for 911 calls deemed to require BLS care. A BLS unit consisting of two EMTs operating an ambulance containing BLS equipment, known as a “BLS Bus,” would be dispatched to such a 911 call.

¹³ CFR units are part of an Engine Company, are not part of the EMS Bureau, and consist of approximately four to five Firefighters who have received first responder training.

¹⁴ Fly Cars are either SUVs or trucks. Some are new vehicles, others are Conditions Cars converted to Fly Cars by the addition of ALS equipment. Because Fly Cars carry ALS equipment, they are subject to NYSDOH regulations that specify the temperature at which medicines and equipment must be stored. Accordingly, almost all equipment in a Fly Car is secured under a cargo net on the backseat, as trunks and truck beds are not climate controlled. The exception is a tablet computer used by Paramedics to record the PCRs, which is carried in the front seat of the Fly Car. A similar tablet computer that is not configured to process PCRs is

of whom is an EMS Supervisor.¹⁵ Unlike an ALS Bus, a Fly Car cannot transport a patient. Normally, Lieutenants are assigned to Fly Cars, but if no Lieutenant who is a certified paramedic is available, a Captain who is a certified paramedic may be assigned.¹⁶ To free up Paramedics to staff the Fly Cars, the number of ALS Buses in Division 2 was reduced from ten to five. However, for each ALS Bus eliminated, one BLS Bus and two Fly Cars were added. Thus, the number of Buses in Division 2 remained the same while the number of EMS personnel assigned to provide ALS care increased.

EMS Supervisors and Paramedics assigned to Fly Cars carry a controlled substance pouch and must go through the same transfer or storage of narcotics procedures as Paramedics assigned to an ALS Bus. Approximately 80% to 85% of the time, this duty cannot be completed during their regular shift. Chiefs Suriel and Fitton both conceded that the task of transferring or securing a controlled substance pouch regularly required EMS Supervisors in the PRU pilot program to work overtime at the end of their shift.

ALS Dispatch of Fly Cars Under the PRU Pilot Program

Under the PRU pilot program, a Fly Car may be dispatched instead of an ALS Bus. Fly Cars are dispatched to incidents far more frequently than the busiest ALS Bus, responding to approximately 12 to 15 calls per tour, four to six of which will require ALS care.¹⁷ Fly Cars also

carried in the Conditions Cars. The parties disagree as to whether the tablet computer is considered secured. Chief Suriel testified that it locks in place and cannot come loose. Lieutenant Variale and Captain Saffon testified that they considered it to be unsecured.

¹⁵ When two certified paramedics are not available, the vehicle is operated as a Conditions Car.

¹⁶ Captain Saffon testified that he was assigned to a Fly Car as frequently as he was assigned to a Conditions Car, approximately three or four times a month.

¹⁷ A Station by Station comparison of Fly Cars to ALS Buses found that Fly Cars responded to

receive more late calls than Conditions Cars. An August 30, 2016 Memorandum from Chief of EMS James Booth to Chief of Department James Leonard summarizing the first month of the PRU pilot program (“August 2016 Memo”) noted concerns that had been expressed by EMS personnel, including that during the “busiest times ... 80-90% of the Fly Cars [were] off service awaiting the previous tour” and that “[d]uring tour changes, there are no officers available, mostly due to ALS related late jobs.” (Union Ex. ZZ)

A BLS Bus is supposed to be dispatched whenever a Fly Car is dispatched; an ALS Bus will be dispatched if no BLS Bus is available. In approximately 50% of Fly Car dispatches, only BLS care was required, which was provided by the BLS unit, freeing the Fly Car for another call. In approximately 30% of Fly Car dispatches, ALS care was required, which was provided by the EMS Supervisor and the Paramedic.¹⁸

Approximately 30% of the time, the Fly Car arrives before any other unit.¹⁹ Bargaining unit members have expressed concerns that this creates a safety risk if the response area is, or becomes, unsafe. The August 2016 Memo noted an officer’s concern that “patients, family, and/or bystanders become angry that the patient cannot be immediately removed to the hospital.” (Union Ex. ZZ) When responding in a Bus, the EMS personnel can retreat, with the patient, to the Bus if the scene becomes unsafe. EMS Personnel cannot retreat to Fly Cars with the patient

30% to 200% more calls than the busiest ALS Bus. Union witnesses testified that they believe that the dispatch system favors Fly Cars; City witnesses testified that they believe that Fly Cars are dispatched more frequently because they become available with greater frequency because they do not transport patients.

¹⁸ In the remaining 20% of ALS dispatches, no care was provided, either because it was not needed or was refused.

¹⁹ The average wait time for a Bus is 2 minutes 44 seconds, but Union witnesses testified that Fly Cars have been on-scene ten or more minutes before a Bus arrived.

because the backseat is filled with ALS equipment. Lieutenant Variale testified that once, when he was assigned to a Conditions Car and was dispatched to the scene of a shooting, he arrived before the Bus and started providing BLS care when “the crowd started getting a little hostile.”²⁰ (Tr. 138) He was able to retreat to the Conditions Car but believed that he would not have been able to retreat had he been assigned to a Fly Care because ALS care is more involved than BLS care and he would not have been able to disengage.

Chief Suriel testified that there are no safety issues due to a Fly Car arriving before a Bus because the first thing an EMS Supervisor is supposed to do upon arriving at a scene is to assess the scene to see if it is safe before proceeding. Captain Saffon also testified that EMS teaches its members that scene safety comes first and that their safety comes above whatever else they have to do on that scene. Chief Suriel further testified that EMS personnel are instructed that if the situation changes and becomes unsafe they are to retreat and ask for assistance.²¹

Supervisory Responsibilities of EMS Supervisors Under the PRU Pilot Program

It is undisputed that EMS Supervisors in the PRU pilot program are instructed to prioritize patient care and that they perform a significantly greater amount of patient care as part of their duties than other EMS Supervisors, spending an average of three hours of an eight-hour tour on patient care. It is also undisputed that EMS Supervisors in the PRU pilot program are still responsible for the full range of supervisory duties when not providing patient care.

²⁰ Lieutenant Variale testified that Conditions Cars infrequently arrive before a Bus.

²¹ Captain Saffon testified that when a scene becomes unsafe, the only option a Fly Car unit has is to retreat and abandon the patient. He also noted that EMS personnel are legally responsible for the patient until transported to a hospital, turned over to a higher medical authority, or the patient leaves on their own

The parties disagree as to the impact of the PRU pilot program on EMS Supervisors. Union witnesses testified that workload has increased to the point that EMS Supervisors cannot complete all of their supervisory duties.²² Lieutenant Variale testified that in two labor management meetings held prior to the start of the program, Chiefs Leonard and Booth and Assistant Chief of EMS Michael Fitton acknowledged that the PRU pilot program would result in an increase in the volume of work as well as the scope of duties.²³ Union witnesses' un rebutted testimony was that the PRU pilot program has required Captains to be put in the mix more frequently to cover for Lieutenants and that, in turn, has forced Captains to work overtime to complete their work.²⁴ In addition, Fly Car assignments have caused EMS Supervisors, primarily Lieutenants, to work overtime to complete late calls and the narcotics transfer or

²² Concerns documented in the August 2016 Memo indicate that the EMS Supervisors are working to capacity. Among the concerns expressed are that: “[t]he additional responsibilities do not allow [o]fficers to fulfill all of the items on their tasks and standards”; “[o]ur biggest issue is the lack of supervision in the Bronx”; “[t]he overall lack of available supervisors during peak call times can be frequently observed”; and “[t]he overall lack of supervision has been noted on numerous occasions.” (Union Ex. ZZ) The August 2016 Memo also noted that EMS Supervisor vacancies in Division 2 were becoming increasingly difficult to fill. Union witnesses testified that this was because EMS Supervisors do not want to participate in the pilot program due to the increased workload. Captain Saffon testified that the difficulties in filling vacancies is why he has been placed in the mix more often under the PRU pilot program.

²³ Chiefs Booth and Leonard did not testify; Assistant Chief Fitton testified but was not asked about the labor management meetings.

²⁴ Captain Saffon testified in depth as to two examples. The first was the May 2017 work schedule. Monthly schedules cannot be completed in the field because they must be completed on specific computers at the Station, must be prepared by the 20th, and cannot be started until the 15th because that is the deadline for EMS personnel to request time off. In April 2017, the only day between the 15th and 20th that Captain Saffon was scheduled to work was April 16; but on April 16 he was assigned to a Fly Car, so he had to work four hours of overtime to complete May's schedule. The second example was in September 2016 when Captain Saffon could not complete the required paperwork for a twelve-hour tour pilot program during his regular scheduled hours because he was put in the mix.

storage. Union witnesses also testified that the assignment of Lieutenants to the Fly Cars has left fewer Lieutenants available to respond to requests for assistance from EMTs and Paramedics. Bargaining unit members have expressed concerns that this creates a safety risk because there may not be a Lieutenant available if a scene becomes unsafe.²⁵

City witnesses acknowledged that the PRU pilot program impacted supervisory duties. Chief Booth noted in his August 2016 Memo that “EMS officer supervisor availability during the [F]ly [C]ar pilot may be compromised.” (Union Ex. ZZ) However, Chief Suriel testified that the workload of EMS Supervisors had not significantly increased because, when assigned to a Fly Car, they are only responsible for supervisory duties to the extent that they are compatible with their patient care duties. City witnesses testified that efforts to address workload concerns included assigning more Deputy Chiefs to Division 2 and, on an *ad hoc* basis, removing non-patient care duties from EMS Supervisors assigned to Fly Cars. Captain Saffon testified that he receives assistance with completing administrative tasks once or twice a week and that he has received extensions of time in order to complete tasks. In Division 2, the EMS Bureau has also assigned Deputy Chiefs and designated Hospital Liaison Officers to “clear” hospitals.

With respect to overtime assignments, the City provided overtime records for Lieutenants assigned to the PRU pilot program and Lieutenants assigned in all other boroughs for the 12 months prior to the start of the program and the 12 months after the program began. The data revealed that overtime worked by Lieutenants in the Bronx increased 7% over the 12 months following the start of the PRU pilot program, while overtime worked by Lieutenants in the rest

²⁵ A concern noted in the August 2016 Memo was that “[i]t is now very common to hear dispatchers advising members seeking/need[ing] an [o]fficer [saying] ‘sorry no Lieutenants available.’” (Union Ex. ZZ)

of the City decreased by 11%. This represents an overall difference of 18% more overtime worked by Lieutenants in the Bronx after the PRU pilot program began.²⁶

Discipline and Threats of Discipline to EMS Supervisors in the PRU Pilot Program

Union witnesses testified that EMS Supervisors in the PRU pilot program would be disciplined if they failed to perform their supervisory duties. There is, however, nothing in the record indicating that any EMS Supervisors in the PRU pilot program had been disciplined for the failure to timely complete their duties.

The FDNY has not promulgated any written procedures or orders addressing when or how EMS Supervisors are supposed to perform their supervisory functions when assigned to a Fly Car. Union witnesses testified that a lack of formal guidance has resulted in confusion, and provided examples of EMS Supervisors in the PRU pilot program who were disciplined for supervising when they should have been performing as Paramedics and visa-versa. In December 2016, a Lieutenant received a Command Discipline (“CD”) for failing to perform an ALS assessment when he was assigned to a Fly Car and responded to a request for assistance from a BLS unit. Union witnesses testified that had the Lieutenant been assigned as a Conditions Officer instead of to a Fly Car he would not have been required to perform an ALS assessment and therefore would not have been subject to discipline. Chief Suriel testified that request for assistance clearly called for the Lieutenant to do an ALS assessment and he did not properly discharge his duties.

²⁶ After the close of the record, the Impartial Members of the Board requested overtime information from the parties to help determine whether employees assigned to the PRU pilot program worked additional overtime or the assignment merely reallocated the pre-existing volume of overtime to new tasks. The parties were also given the opportunity to provide additional testimony or other evidence regarding the overtime data. Both parties declined, and instead made written submissions offering argument regarding the data.

Lieutenant Douglas Rondon testified that he was charged for failing to bring his ALS equipment to a cardiac arrest in November 2016. He was dispatched in a Fly Car, and an ALS Bus, a BLS Bus, and a CFR unit were also dispatched. Lieutenant Rondon and the Paramedic proceeded to the scene without taking any ALS equipment from the Fly Car. When they learned that the ALS unit was not on-scene, they left the scene to return to the Fly Car to get the ALS equipment. While doing so, they met the arriving ALS unit and returned with them to the scene, where the ALS unit provided ALS care. Lieutenant Rondon testified that since an ALS Bus was also dispatched, he presumed that his primary role would be supervisory. Union witnesses testified that it was a judgment call whether or not to take the ALS equipment.²⁷ Chief Suriel acknowledged that when EMS Supervisors assigned to a Fly Car have confirmed that an ALS unit is already on-scene, they would not be expected to bring the ALS equipment with them upon leaving the Fly Car. However, he testified that there is equipment in the Fly Car that tracks exactly which units are on-scene and that Lieutenant Rondon should have confirmed before he left the Fly Car whether Paramedics were on-scene. The Union introduced several other CDs issued to EMS Supervisors as support for its claim that the EMS Supervisor would not have been disciplined if not for the PRU pilot program. Chiefs Suriel and Fitton testified that all of these CDs concerned the failure to properly perform a clearly assigned duty.

The Union acknowledged that all employees may be disciplined for not performing their duties properly. However, its witnesses testified that EMS Supervisors are now threatened with discipline for failing to perform pre-existing supervisory duties and Fly Car duties. The Union

²⁷ Captain Saffon testified that subsequent to the November 2016 incident, EMS Supervisors assigned to Fly Cars are told that they are primarily ALS care providers, are aware of Lieutenant Rondon's situation, and now bring their ALS equipment on calls.

introduced four emails from Chief Suriel to all Captains in Division 2 that it considers to be threats of discipline. The first was from July 7, 2016, and stated in pertinent part:

Unless dispatched to an assignment or responding to an assignment of interest, I expect [o]fficers to remain available and assist the Division in clearing the Emergency Room[s], ensuring unit availability and **resuming normal Supervisory roles and responsibilities.** **Stopped at a location “awaiting a job” is not acceptable when your assistance is needed.**

(Union Ex. N) (emphases in original) Captain Saffon forwarded the quoted language to all Station 20 Lieutenants. Chief Suriel testified that he sent this email because he was aware that there were EMS Supervisors unhappy with the PRU pilot program and that this email was his way of providing some direction. Chief Suriel further testified that he has sent similar emails to EMS Supervisors not in the PRU pilot program.

The second email was from October 22, 2016, and stated that 27 Lieutenants would receive CDs based upon their failure to complete PCRs. Completing PCRs is a regular duty of EMS personnel assigned to Buses and Fly Cars, but it is not a normal duty of EMS Supervisors outside of the PRU pilot program. Chief Suriel testified that the Captains assured him that they were on top of the situation, so he decided not to issue the CDs.

The third email was from January 17, 2017. In it, Chief Suriel stated that hospital administrators had informed him that they noted a reduction in EMS Supervisors clearing units and that Chief Suriel had reviewed videos of units not going available for up to 40 minutes after they had transferred their patient. This email instructed the Captains to discuss the matter with their subordinates and concluded: “Fair warning ... Members ([o]fficers included) will be held accountable.” (Union Ex. CC) (ellipses in original) The fourth email was from April 29, 2017, and noted that clearing “times continue to increase” and that Chief Suriel had “a bigger concern on tour one where the times continue to rise and the officers are not as busy.” (Union Ex. LL)

The April email concluded: “As a reminder, you are still responsible to monitor the hospitals in your area and as requested by the [Resource Coordination Center].” (*Id.*)

POSITIONS OF THE PARTIES

Union’s Position

The Union argues that the PRU pilot program has resulted in workload and safety impacts on bargaining unit members that must be bargained under NYCCBL § 12-307(b).²⁸ The Union contends that it has shown that the PRU pilot program has a workload impact because it imposes an excessive and unduly burdensome workload on EMS Supervisors and extends the workday. According to the Union, EMS Supervisors assigned to a Fly Car spend on average over half their tour performing ALS care without any diminution in their supervisory responsibilities and without written orders, training, or any other assistance. The Union argues that, since EMS Supervisors not in the PRU pilot program are not assigned patient care responsibilities even though they occasionally perform them, it has shown both an increase in their normal workload and in the scope of the duties required to be performed.

The Union argues that the discipline and threats of discipline received by bargaining unit members, as well as required overtime to complete their work, are evidence of the excessive

²⁸ NYCCBL § 12-307(b) provides, in pertinent part, that.

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; 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

workload resulting from the PRU pilot program. The record contains ten CDs that the Union claims EMS Supervisors would not have received if they were not in the PRU pilot program. It cites as an example Lieutenant Rondon, who has received formal charges related to judgments he made as to the performance of his supervisory duties while assigned to a Fly Car. Further, according to the Union, the record contains several emails from Chief Suriel that threaten discipline, including the October 2017 email stating that 27 CDs would be issued for failing to properly complete PCRs, a duty only required of EMS Supervisors in the PRU pilot program.

The Union argues that when assigned to a Fly Car, EMS Supervisors spend so much time performing patient care that they must work overtime to complete their supervisory duties. The Union also argues that overtime data shows 18% more overtime worked by the Lieutenants in the PRU pilot program compared to Lieutenants not in the program, and demonstrates that the program resulted in an overall increase in overtime that warrants impact bargaining. The Union further argues that the PRU pilot program extends the workday of EMS Supervisors assigned to a Fly Car because they regularly cannot secure or transfer the controlled substance pouches prior to the scheduled end of their tour and because the PRU pilot program substantially increases the frequency of late calls to which those EMS Supervisors must respond.

The Union alleges that the PRU pilot program has a safety impact because every time a Fly Car arrives at a scene before a Bus, the EMS Supervisor and the Paramedic have no safe location to retreat to in the event of a hostile crowd, angry family, gun fire, or any other safety hazard that can arise at the scene of an emergency. The delay can be over ten minutes; the Union calculates that bargaining unit members were on-scene without the safety of a Bus for an aggregate of over 33,000 minutes in the first 13 months of the PRU pilot program. The Union

within the scope of collective bargaining.

also alleges that the PRU pilot program has a safety impact on EMTs and Paramedics because it has resulted in the unavailability of Lieutenants to respond to their requests for assistance. Finally, the Union argues that transporting ALS equipment on the backseat of the Fly Car and the unsecured tablet computer in the front pose safety risks.

The Union argues that the PRU pilot program has eliminated overtime opportunities for EMS Supervisors without paramedic training since they are ineligible to be assigned to a Fly Car. The Union acknowledges that, with the PRU pilot program currently limited to Division 2, there are still sufficient overtime assignments for EMS Supervisors who are not certified paramedics. However, the Union argues that, should the program go Citywide, the overtime opportunities for EMS Supervisors who are not certified paramedics will be limited.

City's Position

The City argues the petition must be denied because the PRU pilot program is a clear management right pursuant to NYCCBL § 12-307(b) that does not involve a mandatory subject of bargaining. The City further argues that the Union has failed to demonstrate that there has been a practical impact that would trigger the duty to bargain under NYCCBL § 12-307(b).

The City argues that, while it is true that EMS Supervisors in the PRU pilot program perform some duties with greater frequency, the duties performed by these officers are tasks that fall squarely within their job specifications. It further argues that the Union's claim that EMS Supervisors are assigned a greater workload than they can complete is entirely unsupported by the record. In this regard, the City argues that the record, including the overtime data, does not definitively link an increase in Bronx Lieutenant overtime to the pilot program, and thus does not support a finding of workload impact. In addition, according to the City, the EMS Bureau has taken considerable steps to relieve EMS Supervisors of supervisory tasks, such as assigning

Deputy Chiefs and Hospital Liaison Officers to clear hospitals. The City further notes that the FDNY's diminished expectations have been clearly communicated to EMS Supervisors, citing Chief Suriel's email instructing them that clearing hospitals is a duty only expected of them when they are not on a patient care assignment. The City further argues that the PRU pilot program does not expose EMS Supervisors to new disciplinary consequences. Although duties are apportioned differently under the PRU pilot program, the performance standards for EMS Supervisors have not changed, and every instance of discipline highlighted by the Union concerned the failure to follow a direct order or the failure to comply with a pre-existing FDNY policy or a State requirement.

The City argues that the PRU pilot program does not extend EMS Supervisors' workday, as the only issue is the narcotics exchange between shifts and overtime is not an absolute requirement for this task. The City argues that Board precedent holds that the City has the sole right to determine when overtime is necessary, and the possibility that a narcotics exchange may go past the end of a shift is just one example of a reason why an overtime opportunity may exist.

The City argues that the PRU pilot program poses no safety impact. The possibility that the EMS Supervisors would arrive before a Bus exists regardless of whether they are assigned to a Conditions Car or a Fly Car. According to the City, any claimed risk is speculative. The City argues that the claim that unsecured equipment makes the Fly Cars unsafe is also speculative.

The City argues that the Union's claim that the PRU pilot program limits overtime opportunities for EMS Supervisors who are not certified paramedics must be rejected because paramedic certification is a pre-existing qualification for performing ALS care and the Board has held that qualifications for initial employment or for promotion are not terms and conditions of employment and do not require bargaining. Fly Car overtime assignments are only available to

certified paramedics because paramedic certification is a qualification imposed by the State for any assignment providing ALS care. EMS Supervisors who are not certified paramedics have never been eligible for overtime assignments involving ALS care; for example, they have never been able to perform overtime on an ALS Bus. The City notes that no evidence was offered of any particular officer experiencing a loss in overtime earnings due to the PRU pilot program.

DISCUSSION

This Board finds that the Union has established a workload impact as the PRU pilot program regularly requires EMS Supervisors to work overtime to complete their job duties. Specifically, EMS Supervisors assigned to Fly Cars are required to secure or transfer controlled substances pouches, a job duty that regularly cannot be completed during the EMS Supervisors' scheduled tour; EMS Supervisors assigned to Fly Cars are dispatched to significantly more late calls than EMS Supervisors assigned to Conditions Cars; and Captains in the PRU pilot program are assigned to perform Lieutenant duties more frequently than Captains not in the program, resulting in overtime for the Captains to complete time-sensitive supervisory duties. Accordingly, we order impact bargaining to alleviate the above-described impact. The record does not establish any other bargainable practical impacts. Thus, the petition is granted in part and denied in part.

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." *UFA*, 7 OCB2d 4, at 18 (BCB 2014); *see also UFA*, 43 OCB 70, at 2 (BCB 1989), *affd*, *Uniformed Firefighters Assn. v. Off. of Collective Bargaining*, Index No. 1065/90 (Sup Ct New York Co Nov 26, 1990). An employer,

however, may be required to negotiate over the alleviation of a practical impact stemming from the exercise of a managerial right. *See* NYCCBL § 12-307(b). As we have held that “a public employer is not required to bargain over a question concerning a practical impact prior to this Board determining that a practical impact exists,” we review the record to determine if it supports finding a practical impact. *CEU, L. 237, IBT*, 2 OCB2d 37, at 17 (BCB 2009). “A petitioner urging the Board to find such an impact must present more than conclusory statements of a practical impact in order to require the employer to bargain.” *Id.* at 18; *see also CCA*, 51 OCB 28, at 8 (BCB 1993) (“practical impact is a factual question, and the existence of such impact cannot be determined when insufficient facts are provided by the union.”).

Practical Impact on Workload

For the Board to find a practical impact on workload, “a petitioner must allege sufficient facts to show that the managerial decision created an unreasonably excessive or unduly burdensome workload as a regular condition of employment.” *UFA*, 7 OCB2d 4, at 23 (citing *UFA*, 71 OCB 19, at 8 (BCB 2003)); *see also LBA*, 51 OCB 45, at 31 (BCB 1993), *affd, Toal v. MacDonald*, 216 AD2d 8 (1st Dept 1995); *Local 94, UFA*, 1 OCB 9, at 4 (BCB 1968). A petitioner “does not demonstrate a practical impact [on workload] merely by enumerating additional duties assigned to employees or by noting a new assignment of duties covered in the job specifications.” *Local 333, UMD*, 5 OCB2d 15, at 14-15 (BCB 2012) (citing *UFA*, 71 OCB 19, at 13; *SBA*, 41 OCB 56, at 17 (BCB 1988)). Thus, a “claim of increased workload during the workday does not amount to a workload impact absent a showing that employees were subject to working more time than scheduled or overtime to complete their work.” *Id.* at 15-16 (citing *UFA*, 77 OCB 39 at 15-17 (BCB 2006)); *see also UFA*, 73 OCB 2, at 7-8 (BCB 2004); *ADW/DWA*, 69 OCB 16, at 8 (BCB 2002); *PPOA, L. 599, SEIU*, 17 OCB 2 (BCB 1976).

It is undisputed that patient care responsibilities of EMS Supervisors in the PRU pilot program have increased significantly. It is also undisputed that EMS Supervisors in the PRU pilot program are still responsible for the full range of supervisory duties. The record demonstrates that EMS Supervisors in the PRU pilot program do not have the time during their scheduled workday to complete their supervisory tasks. Our caselaw, however, is clear that an increase in responsibilities alone does not “constitute[s] an unreasonably excessive or unduly burdensome workload as a regular condition of employment” even where it means employees are working to their full capacity. *ADW/DWA*, 69 OCB 16, at 7 (citing *PPOA, L. 599, SEIU*, 17 OCB 2, at 15).²⁹ We note that Division 2 has taken steps to alleviate the workload of EMS Supervisors assigned to the PRU pilot program. For example, EMS has assigned Deputy Chiefs and Hospital Liaison Officers to help clear hospitals. Further, Captain Saffon testified that EMS Supervisors have regularly received assistance in performing administrative duties. *See ADW/DWA*, 69 OCB 16, at 7 (“relaxation of other requirements” is a factor in determining workload impact) (quoting *PPOA, L. 599, SEIU*, 17 OCB 2, at 15). We also note that, while several EMS Supervisors in the PRU pilot program have faced disciplinary action since the start of the program, no EMS Supervisor has been disciplined for being unable to complete their required work in a timely manner. *See PPOA, L. 599, SEIU*, 17 OCB 2, at 15 (factor in

²⁹ In *PPOA, L. 599, SEIU*, 17 OCB 2, the Board found that the doubling of probation officers’ caseloads was not, in and of itself, sufficient to establish a workload impact, in part because “both before and after the layoffs, probation officers have been required to work to capacity during the seven hour workday.” *Id.* at 15. *See also NYSNA*, 71 OCB 23, at 13 (BCB 2003) (finding that a 50% increase in the number of employee interactions and increased training responsibility to be insufficient to establish workload impact). *Compare UPOA*, 35 OCB 23A (BCB 1985) (hearing ordered on practical impact where the union alleged, among other things, that the probation officers’ caseloads doubled, the attrition of experienced officers increased by 20% per year, there were further projected increases in caseloads, and officers’ overtime had increased in order to complete caseloads).

determining if there is a workload impact is whether employees are subject to discipline for failure to timely perform duties); *Local 333, UMD*, 5 OCB2d 15, at 15 (one instance of disciplining an employee for failing to adequately perform a duty and a single threat to discipline another employee for failing to complete his duties on schedule insufficient to establish workload impact). The disciplinary actions in the record all concern the failure to properly perform a job duty, albeit in several instances the duties at issue were Fly Car duties. “It would be impractical and contrary to the policy of the NYCCBL to consider every managerial decision made within the scope of its statutory prerogative as giving rise to practical impact, solely because an employee who does not conform to the decision could suffer the imposition of disciplinary action.” *Doctors Council*, 69 OCB 24, at 8 (BCB 2002) (quoting *DC 37*, 45 OCB 1, at 15 (BCB 1990) (discipline from the failure to follow a new policy not a workload impact).

However, we have also frequently noted that a factor to be considered when determining if there is a workload impact that requires bargaining is whether employees are “subject to working more time than scheduled or overtime to complete their work.” *Local 333, UMD*, 5 OCB2d 15, at 15-16 (citing *UFA*, 77 OCB 39 at 15-17); *see also UFA*, 73 OCB 2, at 7-8; *ADW/DWA*, 69 OCB 16, at 8; *PPOA, L. 599, SEIU*, 17 OCB 2. Here, we find a workload impact based on the credible testimony that the PRU pilot program required additional overtime and data that shows the total amount of overtime worked by the Bronx Lieutenants in the first 12 months of the PRU pilot program increased, while the total overtime assigned to Lieutenants in other boroughs decreased during that same time period. The record demonstrates three circumstances under which EMS Supervisors are required to work overtime due to the PRU pilot program. First, EMS Supervisors assigned to Fly Cars must secure or transfer controlled substance pouches. This new duty is not performed by EMS Supervisors outside of the PRU

pilot program. This duty must be completed at the end, or immediately after the scheduled end, of the tour, and the record establishes that this new duty cannot be performed prior to the scheduled end of 80% to 85% of Fly Car tours. Thus, the PRU pilot program regularly requires EMS Supervisors to work overtime to complete this duty. Second, the record establishes that EMS Supervisors assigned to Fly Cars are dispatched to more late calls than EMS Supervisors not in the PRU pilot program, resulting in overtime that is not required of EMS Supervisors outside the program. The record shows that, at times, 80-90% of Fly Cars at the start of a tour are unavailable because the Fly Cars from the outgoing tour have not returned due to a late call. Third, the record establishes that the PRU pilot program results in Captains being put in the mix, performing Lieutenants' duties, more frequently, which has resulted in additional overtime to complete time-sensitive supervisory duties.³⁰ In reaching this conclusion, we note that occasional overtime alone may be insufficient to establish a workload impact. However, the record here shows that duties assigned in the PRU program regularly require bargaining unit members to work overtime to complete their assignments and that during the PRU pilot program the overall amount of overtime worked increased.³¹ Accordingly, we find that the Union has established a workload impact.³² Therefore, while the City retains the right to mandate overtime

³⁰ Captain Saffon's testimony was corroborated by Lieutenant Variale's unrebutted testimony that he has been informed that "[m]any times" Captains have had to work overtime due to the PRU pilot program. (Tr. 128)

³¹ Although the City posits that there may be other factors which resulted the increase in overtime for Bronx Lieutenants in the 12 months following the start of the PRU pilot program, there is insufficient evidence in record to substantiate this assertion.

³² Because we have found a workload impact based upon required overtime to complete tasks, we need not address the Union's alternative argument that the transfer of controlled substance pouches and late calls extended the workday.

and determine the amount thereof, it is required to bargain concerning the alleviation of the impact of these assignments.

Practical Impact on Safety

In the instant case, we find that the evidence does not establish that the PRU pilot program had a practical impact on the safety of bargaining unit members. For the Board to find a safety impact, the Union “must demonstrate that the exercise of a management right has created a ‘clear and present or future threat to employee safety.’” *UFOA*, 3 OCB2d 50, at 18 (BCB 2010) (quoting *UPOA*, 39 OCB 37, at 5-6 (BCB 1987)). The Union must do more than “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 New York County Oct. 30, 1989), *affd*, 163 AD2d 251 (1st Dept 1990). While the Union “must substantiate, with more than conclusory statements, the existence of a threat to safety before we will require the employer to bargain,” 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 30-31 (BCB 2007); *see also SBA*, 23 OCB 6, at 25 (BCB 1979), *affd*, *Matter of Sergeants’ Benevolent Assn. v. Bd. of Collective Bargaining*, Index No. 11950/79 (Sup Ct New York County Aug. 7, 1979). Thus, the Union need not show any actual injury. However, the union must show “more than simply a change in the way things are done.” *UFA*, 43 OCB 70, at 4. Further, the Board considers 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. *See UFA*, 3 OCB2d 16, at 30 (BCB 2010); *EMS SOA*, 79 OCB 7, at 30-31.

Here, the Union has only provided testimony with conclusory allegations in support of its safety impact claims. *See EMS SOA*, 79 OCB 7, at 36 (witnesses' good faith belief that a change has increased safety risks is not sufficient to establish a safety impact).³³ The Union has not alleged specific, probative facts to support its contention that the PRU pilot program will subject bargaining unit members to an increased safety impact. *See Local 333, UMD*, 5 OCB2d 15, at 14. The Union alleges three safety impacts. The first is that a Fly Car does not have room for the EMS Supervisor, the Paramedic, and the patient to retreat to if they arrive before a Bus and the scene subsequently becomes unsafe.³⁴ However, Lieutenant Variale acknowledged that EMS Supervisors assigned to Conditions Cars face the same circumstances, albeit less frequently since Fly Cars respond to more calls than Conditions Cars. *See UFA, L. 94*, 5 OCB2d 2, at 24 (BCB 2012) (finding 50% increase in building inspections, with attendant risks increasing proportionally, in of itself insufficient to establish a safety impact as it was a "reallocation amongst pre-existing duties."). Further, EMS procedures, as testified to by both Chief Suriel and Captain Saffon, minimize any such risk. Specifically, that the EMS Supervisor's first duty upon arriving at a scene is to conduct a safety assessment and, if necessary, retreat to the Fly Car. *See UFA*, 3 OCB2d 16, at 30 (existing management procedures and guidelines may obviate safety concerns); *EMS SOA*, 79 OCB 7, at 36.

³³ *EMS SOA*, 79 OCB 7, concerned the FDNY's removal of aides from full-time assignment to Deputy Chiefs. Union witnesses testified that they "felt" that this impacted safety. The Board found such testimony was insufficient to establish a practical impact. *See id.* at 36.

³⁴ The Union does not allege that the Fly Cars are insufficient to provide a safe refuge for the EMS personnel assigned to the Fly Car.

Second, we do not find that the PRU pilot program creates a safety impact by reducing the availability of EMS Supervisors to respond to requests for assistance from EMTs and Paramedics. The record contains insufficient evidence of an increased safety risk to EMS personnel stemming from the unavailability of EMS Supervisors.³⁵

Finally, the record does not support finding that the equipment carried in a Fly Car poses a safety impact. The City has provided sufficient evidence to establish that the cargo netting ameliorates the safety risks identified by the Union as associated with unsecured equipment.³⁶ *See UFA*, 3 OCB2d 16, at 30 (BCB 2010); *EMS SOA*, 79 OCB 7, at 30-31.³⁷ Accordingly, we do not find that the Union has established a practical impact on safety.

Overtime Eligibility Claim

We do not find that the PRU pilot program had a practical impact that warrants bargaining because it allegedly restricts the overtime opportunities of EMS Supervisors who are not certified paramedics from overtime assignments to a Fly Car. The Union argues that *UFA*, 9

³⁵ We note the Union has not alleged that the PRU pilot program impacts EMS personnel's ability to call on the police for assistance in an unsafe situation.

³⁶ The record does not contain sufficient evidence to conclude that the tablet computers that are carried in the front seat of both Fly Cars and Conditions Cars constitute a practical impact on safety. *See EMS SOA*, 79 OCB 7, at 36.

³⁷ We reiterate that a union need not show an actual injury to establish a safety impact. However, we note that the PRU pilot program has been in effect for over a year. The Union estimates that EMS Supervisors assigned to Fly Cars have spent over 550 hours alone before the arrival of a Bus without a single unsafe situation being attributed to the Fly Car arriving first. In addition, Fly Cars have responded to tens of thousands of calls, and there is not a single instance in the record of any equipment in the Fly Car becoming unsecured or creating a safety impact.

OCB2d 19 (BCB 2016), controls because the City must bargain over procedures and methods for distributing overtime.³⁸

However, we find that the Union's claim does not pertain to the procedures or methods for the distribution of overtime. The requirement that only certified paramedics be assigned to Fly Cars relates to the qualifications required to provide ALS care, it is not a procedure by which overtime is distributed. The requirement that only certified paramedics provide ALS care is mandated by the NYSDOH and long preceded the PRU pilot program.³⁹ Thus, at issue in the instant case is a pre-existing qualification mandated by law to perform specific assignments, and EMS Supervisors who are not certified paramedics have never been allowed to work assignments that require the ability to provide ALS care. Accordingly, we do not find that restricting Fly Car assignments in the PRU pilot program to certified paramedics created a practical impact that requires bargaining.

We find that the Union has established a workload impact based upon the overtime EMS Supervisors require to complete their duties as a result of the PRU pilot program, and we order impact bargaining. We do not find any other practical impacts or that the City violated the NYCCBL by restricting overtime opportunities of EMS Supervisors who are not certified paramedics. Thus, we grant the petition in part and dismiss in part.

³⁸ *UFA*, 9 OCB2d 19, concerned the eligibility criteria for the equitable distribution of overtime. The criteria focused primarily on hours already worked by the employees and did not consider any required qualifications to perform certain overtime assignments. The Board found that “[i]t is well-established that when and how much overtime to authorize are not mandatory subjects of bargaining. ... However, this Board has held that the procedures or methods for the distribution of available overtime are mandatory subjects of bargaining under NYCCBL.” *Id.* at 9.

³⁹ The Union acknowledges that under the PRU pilot program there are sufficient overtime assignments for EMS Supervisors who are not certified paramedics. Therefore, its claim that there will not be sufficient overtime assignments if the program expands is speculative.

ORDER

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

DETERMINED, that the pilot program of the Fire Department of the City of New York instituted in June 2016 under which Emergency Medical Service Captains and Lieutenants who are also certified paramedics are dispatched to respond to emergency calls in Paramedic Response Units was a change requiring impact bargaining regarding workload, and that the above pilot program had no other bargainable impacts; and it is further

ORDERED, that the verified scope of bargaining petition filed by District Council 37, AFSCME, AFL-CIO, and its affiliated Locals 3621 and 2507, against the Fire Department of the City of New York and the City of New York, docketed as BCB-4190-16, be, and the same hereby is, granted to the extent that the Fire Department of the City of New York shall, upon demand, bargain over the alleviation of the above-stated impact; and it is further

ORDERED, that the verified scope of bargaining petition docketed as BCB-4190-16 be, and the same hereby is, denied in all other respects.

Dated: April 16, 2018
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER