

DEA, 12 OCB2d 7 (BCB 2019)

(IP) (Docket No. BCB-4259-17)

Summary of Decision: The Union alleged that the City and the NYPD violated NYCCBL § 12-306(a)(1), (4), and (5) by unilaterally installing and refusing to bargain over cameras in the work area of its Crime Scene Unit. It argued that the unilateral act of videotaping its members in the workplace bears a direct and significant relationship to their working conditions. The City argued that the installation of cameras is not a mandatory subject of bargaining because it is essential to the NYPD's core mission, that there is a past practice of having cameras in work areas, and that any change in that practice was *de minimis*. The Board found that the cameras at issue are integral to the NYPD's core mission of securing evidence and, therefore, are not a subject of mandatory bargaining. Accordingly, the petition was denied. (*Official decision follows*).

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

In the Matter of the Improper Practice Proceeding

-between-

DETECTIVES' ENDOWMENT ASSOCIATION, INC.,

Petitioner,

-and-

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

Respondents.

DECISION AND ORDER

On December 8, 2017, the Detectives' Endowment Association, Inc. ("Union"), filed a verified improper practice petition against the City of New York ("City") and the New York City Police Department ("NYPD") alleging that the City and the NYPD violated § 12-306(a)(1), (4),

and (5) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by unilaterally installing and refusing to bargain over cameras in the work area of its Crime Scene Unit (“CSU”). The Union argues that videotaping its members in the workplace bears a direct and significant relationship to working conditions because it infringes on their job security, privacy, personal reputation, and the right to self-organize. The City argues that the installation of cameras is not a mandatory subject of bargaining because it is essential to the NYPD’s core mission, that there was a past practice of having cameras in work areas, and that any change in that practice was *de minimis*. The Board finds that the cameras at issue are integral to the NYPD’s core mission of securing evidence and, therefore, are not a subject of mandatory bargaining. Accordingly, the petition is denied.

BACKGROUND

The Trial Examiner held three days of hearing and found that the totality of the record, including the pleadings, exhibits, and briefs, established the relevant facts set forth below.

The Union represents all NYPD employees in the Detective title, including the approximately 50 Detectives assigned to CSU, which is part of the Forensic Investigations Division (“FID”). CSU Detectives document and collect evidence at crime scenes, package and seal evidence to secure the chain of custody, and testify in court regarding these duties.¹

¹ Chain of custody is the record of the maintenance of evidence from its collection at a crime scene through production in court. CSU Detectives spend approximately half of their time in the field responding to crime scenes such as suspicious deaths, situations where explosive devices are found, and situations where a Police Officer is seriously injured and likely to die.

CSU is located in the FID Building, which has long had an extensive camera surveillance system covering most of the inside and the outside perimeter.² However, until September 2017, there were no cameras in the CSU. In September 2017, as part of a general technology upgrade of the FID Building, four cameras were installed in the work area of the CSU. The four new surveillance cameras do not record audio, and their recordings are time-stamped.

There are two entrances to the CSU: one is locked and requires a CSU pass card to enter, and other is not locked.³ Both CSU entrances are captured by a camera in the second floor hallway outside of the CSU; that camera is not at issue in this matter. The non-locked CSU entrance opens onto a small hallway, on the left of which, surrounded by a half wall, is CSU's dispatch area. The dispatch area is manned 24/7 and to enter the remainder of CSU from the unlocked entrance, an officer in the dispatch area has to buzz individuals through a locked half-door at the end of the hallway. One of the four cameras at issue (a non-rotating camera) is focused on the non-locked entrance but also has within its field of view part of the dispatch area.

The CSU work area is located immediately past the half-door. It is a square open space containing approximately 50 Detectives' workstations on three parallel aisles. On the back side of the work area, farthest from the entrance hallway, are offices for supervisory and administrative personnel. One of the three remaining new cameras in the CSU work area is located at the front of aisle one, the other two cameras are located at the ends of aisles two and three. These three

² Currently, the FID Building has over 200 cameras. The majority of the FID Building consists of Police Labs, and almost all of the Police Lab work stations have been under camera surveillance for years.

³ All entrances to the FID Building are either manned or require a pass card to enter.

cameras can rotate 360 degrees but are kept in a fixed position known as their “resting position” in the normal course of business. (Tr. 234) In the resting position, these cameras look down the aisles and capture most, but not all, of the CSU workstations.

In addition to workstations, the camera in aisle one in its resting position captures anyone entering or exiting a supply closet located midway down aisle one. In its resting position the camera in aisle three captures the secured entrance to CSU as well as anyone entering or exiting a hallway located midway down aisle three that leads to one of the women’s locker rooms. In its resting position, this camera does not capture the hallway at the end of aisle three, which leads to a supervisory/administrative office, male and female locker rooms, and an equipment closet where 3D Leica Mapping/Scanners, worth \$250,000 each, are stored. However, it can be rotated so that, if the hallway door is open, it captures the door to the equipment closet.

The inside of the CSU breakroom and locker rooms are not visible on any camera. The feed from the four new CSU cameras, like all cameras covering the FID Building, can be accessed at the FID Building front desk and the security office on the fifth floor. However, the officers manning these posts only look at the CSU camera feeds if directed to do so. The camera feeds are also accessible through the NYPD “domain awareness system.” (Tr. 338; 381)

Almost all evidence handled by CSU Detectives is packaged at the crime scene, in portable workstations in CSU vans, or at the precinct handling the case.⁴ The packaged evidence is often

⁴ It is rare for CSU Detectives to handle unpackaged evidence other than fingerprints outside of the crime scene. Generally, this would only occur when the evidence is discovered after the crime scene had been processed by CSU and then is delivered to CSU.

brought to the CSU work area before it is transferred to the Detectives assigned to the case or the unit that will analyze the evidence. The amount of packaged evidence in CSU at any one time can be substantial, and packaged evidence may stay in the CSU work area overnight.

It is also common for CSU Detectives to complete fingerprint cards, which include pertinent information such as exactly where the fingerprints were collected, in the CSU work area. Once the fingerprint cards are completed, CSU Detectives package them in sealed envelopes which are put in CSU's fingerprint lockbox located in the dispatch area.⁵ The fingerprint lockbox is not visible on any of the cameras. CSU Detectives also create case files containing all the case-pertinent information in the CSU work area.

The Union produced two witnesses who testified as to the concerns of CSU members regarding the four new cameras: CSU Det. Chris Florio, who has been with CSU for over 17 years and is also the CSU Union delegate, and Union Trustee Det. Patrick Donohue, who was the CSU trustee in 2015-2016. Det. Florio testified that the CSU work area must be a "safe, comfortable environment" because working in CSU is extremely stressful due to the nature of the crime scenes its Detectives investigate, which includes "the most heinous things in the City." (Tr. 202) He testified that at least two Detectives had been removed from CSU due to emotional breakdowns. Det. Florio described instances when CSU members returned from horrific crime scenes and needed a "good cry to get it out [of their] system." (Tr. 201) Since the cameras were installed,

⁵ CSU Detectives do not have a key to the fingerprint lockbox; it has a slot like a mailbox to deposit the envelopes. Once a day, the sealed envelopes containing the fingerprint cards will be transferred to the Latent Print Section.

however, the CSU Detectives are no longer comfortable in the work area because they now feel like they are “under a microscope all the time” and lack privacy. (Tr. 202-03)

The CSU operates 24/7, and it is not uncommon for CSU Detectives to work over 20 consecutive hours. The CSU has beds in its locker rooms.⁶ Det. Donohue testified that before the cameras were installed, CSU Detectives “had the ability to move around freely in the office when they were staying overnight” but, since the cameras were installed, they were no longer comfortable working in CSU because “they felt that they were being watched and monitored.” (Tr. 58) The Union witnesses testified about normal day-to-day activities that CSU members are comfortable performing around co-workers that they are uncomfortable performing under camera surveillance.⁷ Also, prior to the installation of the cameras in CSU, Detectives going to and from the showers, which are located by the elevators across the hall from CSU, were only briefly and partially captured on camera when they crossed the outside hallway.⁸ Now, the Detectives are visible on a newly installed camera the entire way as they traverse the CSU work area to get to the showers or bathrooms.

⁶ CSU’s sleeping facilities are often used when the time between a Detective’s shifts is too short to make going home practical.

⁷ Examples provided included CSU Detectives keeping personal medical and hygiene items at their desks which now may be visible on camera.

⁸ Det. Florio noted that Detectives go to the shower in a robe and flip-flops and sleep in comfortable clothes, including pajamas. The distance from CSU’s locked entrance to the shower across the hall is approximately six feet.

Union witnesses also testified that, even though the cameras do not have audio recording capabilities, members are no longer comfortable discussing matters with them in the CSU work area. Det. Donohue testified that when he visited the CSU to discuss this improper practice petition, the Detectives wanted to meet with him in the breakroom where they would not be on camera. Det. Florio testified that he no longer makes calls regarding Union business from the CSU work area because he knows that the cameras' zoom lenses are powerful enough to read the number he dials off his phone. For the same reason, he avoids sending or answering Union-related emails or texts where there is camera coverage.

The City produced Lt. Mathew Strong, the FID Integrity Control Officer ("ICO"), to explain why the NYPD installed the cameras in the CSU work area.⁹ As ICO, Lt. Strong has access to the camera feeds.¹⁰ He testified that the cameras increased the overall security in CSU by supplementing the pre-existing security. Although the CSU locked door requires card access, only the card used is recorded, not who enters through the door. Lt. Strong noted that there were times when the door would not shut properly and that there were often non-NYPD personnel in

⁹ Lt. Strong was the only City witness. He was transferred to FID in November 2017 after the cameras were installed. Lt. Leggett, who was the lieutenant in charge when the decision to install the cameras was made, is now retired. To help the City answer this petition, Lt. Strong familiarized himself with the reasons for the cameras installation through discussions with FID Commander Chief Emanuel Katranakis and Lt. Leggett.

¹⁰ As part of his ICO duties, Lt. Strong regularly inspects the entire FID Building and, accordingly, visits the CSU several times a day. Lt. Strong testified that he does not use the camera feeds to initiate discipline but would treat anything he notices on a camera feed in the same manner as if he noticed it on a walkthrough of CSU.

the FID Building, such as contractors. Therefore, the cameras provide more “robust coverage” as anyone entering either door to CSU is now captured on one of the cameras. (Tr. 358)

Lt. Strong described the new cameras as having “overwatch” of the CSU work area in that the new cameras can monitor evidence that may be stored overnight, a capability the NYPD lacked before the cameras were installed. (Tr. 351-2) He acknowledged that the cameras in the CSU work area do not cover the entire work area and that someone, intentionally or not, could take the evidence out of the cameras’ view. Lt. Strong testified that the CSU cameras nevertheless “add value to the overall security of the room.” (Tr. 438) He noted that if evidence is removed from the camera’s view, the recording would show who moved it out of camera range and thereby provide the NYPD with a starting point for tracking down any lost evidence. Similarly, he testified that cameras helped secure equipment that is often left unattended. Lt. Strong described the security that the new cameras provide as not perfect but “better than what we had before.” (Tr. 439) Union witnesses noted that there is no history of theft at CSU and that the cameras were not placed in a way to protect CSU’s most expensive equipment.

Lt. Strong testified that the cameras also aid in maintaining the chain of custody of the evidence. He gave two examples in which cameras in the Police Lab preserved the chain of custody despite mistakes made in the handling of the evidence. The first example was an instance in which evidence was not repackaged after being examined. However, since that evidence was always under a camera’s view, the chain of custody was maintained until the mistake was discovered and corrected. The second example was an instance when evidence was accidentally thrown away. After it was discovered that evidence was missing, a review of the video recordings

allowed the NYPD to track the missing evidence and recover it from the garbage. Union witnesses testified that, except for fingerprints, it is extremely rare for a CSU Detective to handle unpackaged evidence in the CSU work area. As to fingerprints, the Union witnesses noted that the new cameras do not capture the fingerprint lockbox and that cameras were not installed in the other places where CSU Detectives process fingerprints, such as the CSU vans, or the Latent Print Section.

Lt. Strong testified that another reason that the NYPD installed the cameras is to aid CSU in securing ANAB accreditation. ANAB is an independent body that provides accreditation for laboratories, manufacturing facilities, and more recently forensic bodies such as CSU. The Police Lab has been accredited by ANAB for years, and the Latent Print Section is also seeking ANAB accreditation. However, Lt. Strong acknowledged that the ANAB accreditation guidelines do not require that the CSU work area be under camera surveillance and that the NYPD was not informed that accreditation would be denied if it did not install cameras in the CSU work area. In the process of preparing for ANAB accreditation, the NYPD sent employees to visit the Philadelphia Police Department's CSU, which has been accredited by ANAB. The Commanding Officer of the Philadelphia Police Department's CSU sent the Union a letter stating that "[t]here are no cameras over [CSU] examiners workstations." (Union Ex. I)

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the unilateral installation of cameras violated NYCCBL § 12-306(a)(1) and that the refusal to bargain over their installation violated NYCCBL § 12-306(a)(4)

and (5).¹¹ According to the Union, surveillance of public employees in the workplace is a mandatory subject of bargaining as it bears a direct and significant relationship to employees' working conditions by infringing on their job security, privacy, personal reputation, and the right to self-organize.

The Union argues that this issue is a question of first impression for the Board and that the Board should follow *Nanuet Union Free School District*, 45 PERB ¶ 3007 (2012) ("*Nanuet*"). According to the Union, in *Nanuet*, PERB applied a fact-specific balancing test to determine whether a unilateral decision to install cameras in an employee work area is a subject of mandatory bargaining. The Union asserts that, in the instant matter, the record reveals that the employees' protected interests hold significant weight and that the City has failed to establish a counterbalance on the employer interests' side of the scale.

¹¹ NYCCBL § 12-306(a) provides, in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

* * *

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees; . . .

(5) to unilaterally make any change to any mandatory subject of collective bargaining . . . during the period of negotiations. . . .

NYCCBL § 12-305 provides, in pertinent part: "Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities."

The Union asserts that the “unique demands” of CSU Detectives’ work make the 24/7 surveillance cameras “especially intrusive.” (Union Br. at 19) CSU Detectives’ work is emotionally stressful and, according to the Union, their work space needs to be a “sanctuary” to recover and not a place where they are “under a microscope.” (*Id.*) CSU Detectives are often required to stay overnight at CSU and, since the cameras’ installation, must walk a significant distance under surveillance from the locker rooms to the shower or bathroom.

The Union argues that the Board should reject the reasons proffered by the City for the camera installation. Regarding the chain of custody rationale, the Union notes that the only evidence handled regularly in the CSU work area are fingerprints, yet no camera is positioned to view the fingerprint lockbox. It also notes that the Latent Print Section, which examines the fingerprints, is not under camera surveillance. Similarly, the Union argues the City’s proffered rationale of safeguarding valuable equipment is unsupported as no camera is positioned to monitor the most expensive equipment in the CSU, the \$250,000 3D Leica Mapping/Scanners. Cameras are also not necessary to obtain ANAB certification, as demonstrated by the fact that the Philadelphia Police Department CSU received accreditation without installing cameras.

The Union also asserts that the cameras have a chilling effect on union activity, noting that two Union officials testified that the cameras altered the way in which Union business is conducted. Further, the Union argues that the cameras can be used to initiate discipline.

Since, the Union argues, the new cameras in CSU work area add little in light of the “vast security measures” already in place, the balancing test must be resolved in favor of the CSU Detectives. (Union Br. at 16)

City's Position

The City also describes the issue of cameras in the workplace as one of first impression and similarly urges that the Board follow *Nanuet*, which it argues provides that the use of cameras is not a mandatory subject of bargaining when they are “integral to the employer’s core mission.” (City Br. at 13) Further, the City argues the NYPD’s decision to install cameras is a proper exercise of management’s discretion to “determine the methods, means . . . by which government operations are to be conducted . . . and exercise complete control and discretion over . . . the technology of performing its work” under NYCCBL § 12-307(b).¹²

The City argues that the four CSU cameras are intended for the security, preservation, and protection of the integrity of evidence, equipment, and facilities. According to the City, these cameras enhance chain of custody. It also asserts that the existence of the cameras furthers the NYPD’s attempts to gain ANAB accreditation. The City states that the cameras are not used to evaluate employee work performance, initiate discipline, or pry into employees’ personal lives.

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

It is the right of the city . . . [to] direct its employees; . . . determine the methods, means and personnel by which government operations are to be conducted; . . . and exercise complete control and discretion over . . . 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.

Thus, the City argues, the important employer interests outweigh any potential employee interests that may exist.

The City further argues that there is an “unequivocal” well-known past practice of extensive camera usage in the FID Building that has stood uninterrupted for approximately twenty years. (City Br. at 1) Prior to the installation of the four cameras at issue, CSU Detectives were already viewable on over 200 cameras throughout the FID Building during the course of their work day, including the second floor hallway. The City argues that the Union’s attempts to differentiate these four new cameras from the other 200 cameras fails because there are cameras in essentially every other workstation in every other unit of the FID Building. Thus, the City argues, the parties have “tacitly agreed” to the presence of cameras, and the Board must not disturb that longstanding arrangement. (*Id.* at 2) Any departure from past practice is, according to the City, *de minimis* and does not trigger a duty to bargain.

DISCUSSION

The Union argues that the City and the NYPD violated NYCCBL § 12-306(a)(1) by unilaterally installing cameras in the CSU work area and violated NYCCBL § 12-306(a)(4) and (5) by refusing to bargain over their installation. After a hearing, the Board finds that, because the cameras at issue are integral to the NYPD’s core mission of securing evidence, their installation is not a mandatory subject of bargaining.

NYCCBL § 12-306(a)(4) makes it an improper practice to fail to bargain in good faith on wages, hours, and working conditions, as well as “any subject with a significant or material

relationship to a condition of employment.” *UFA*, 10 OCB2d 5, at 12 (BCB 2017), *affd. Matter of City of New York v. Uniformed Firefighters Assn., Local 94, IAFF, AFL-CIO*, Index No. 450703/2017 (Sup. Ct. N.Y. Co. Mar. 14, 2017) (Bluth, J.) (quoting *UFT, L. 2*, 4 OCB2d 54, at 10 (BCB 2011)); *see also NYSNA*, 51 OCB 37, at 8 (BCB 1993). We have long held that a unilateral change to a mandatory subject of bargaining is an improper practice because “it constitutes a refusal to bargain in good faith.” *Id.* (citing *ADW/DWA*, 7 OCB2d 26, at 18 (BCB 2014); *DC 37*, 79 OCB 20, at 9 (BCB 2007)). The party asserting a unilateral change to a mandatory subject of bargaining carries the burden of demonstrating “that (i) the matter sought to be negotiated is . . . a mandatory subject and (ii) the existence of such a change from existing policy.” *ADW/DWA*, 7 OCB2d 26, at 18 (quoting *DC 37, L. 436*, 4 OCB2d 31, at 13 (BCB 2011)) (internal quotation marks omitted).

This Board has not previously addressed a question concerning whether the placement of video cameras in employee work areas is a mandatory subject of bargaining. However, it has found that matters that go to an employer’s core mission are not mandatory subjects of bargaining. *See DC 37*, 1 OCB2d 32, at 33 (BCB 2008); *DC 37*, 75 OCB 13, at 10 (BCB 2005). *See also Matter of Roberts v. New York City Off. of Collective Bargaining*, 976 N.Y.S.2d 450, 455 (2013) (holding that the interest of the New York City Fire Department (“FDNY”) in ensuring that its employees who operate FDNY vehicles are drug-free when doing so goes to the “FDNY’s core mission” such that drug testing of those employees is not negotiable). In *DC 37*, 1 OCB2d 32, the Board found that the decision of the City’s Department of Juvenile Justice (“DJJ”) to use canines to search its employees for narcotics was not a mandatory subject of bargaining because providing

a safe environment for juveniles in its care was intrinsic to the DJJ's core mission. In *DC 37*, 75 OCB 13, the Board similarly found that the decision of the City's Department of Transportation ("DOT") to search its storage facilities, including lockers used by employees to keep personal belongings, was not a mandatory subject of bargaining because it is intrinsic to the DOT's core mission of providing safe transportation.

In addition, this Board "has repeatedly held that 'decisions regarding the selection or use of equipment involve the City's discretion over the methods, means and technology of performing its work.'" *UFA, L. 94*, 5 OCB2d 3, at 11 (BCB 2012) (quoting *LEEBA*, 3 OCB2d 29, at 48 (BCB 2010)). In *UFA, L. 94*, the Board found that the FDNY's decision to implement a policy governing the use of lights and sirens on its vehicles was not a subject of mandatory bargaining. The Board favorably cited *County of Nassau*, 41 PERB ¶ 4552 (ALJ 2008), in which a New York State Public Employment Relations Board ("PERB") administrative law judge ("ALJ") concluded that the utilization of Global Positioning System ("GPS") technology in county vehicles was a management prerogative such "that it was unnecessary to balance the union's asserted privacy interest." *UFA, L. 94*, 5 OCB2d 3, at 11. In *County of Nassau*, the ALJ noted that since the GPS only tracks employees during their work hours, the employees' "privacy rights are no more compromised in this matter than if an employer assigned a supervisor to accompany an employee on a specific job assignment, a prerogative which an employer possesses." 41 PERB ¶ 4552, at 4639.

The CSU is responsible for the collection, packaging, and securing of evidence that is clearly intrinsic to the core law enforcement mission of the NYPD. It is undisputed that evidence

is regularly present in the CSU work area and may be kept there for several hours. While the Union disputes the extra value added by the cameras in CSU, the record reflects that the cameras make CSU's security more robust. Should evidence be misplaced or go missing, the new cameras can be used to narrow the time frame and identify possible witnesses. The Union's witnesses credibly described concerns regarding its members' privacy and comfort caused by the cameras; however, the cameras cover only the CSU work area. The breakroom, the locker rooms, and the sleeping areas are camera-free. Therefore, Detectives continue to have access to areas within CSU where they can maintain a higher level of privacy. Positioning the cameras such that they only record activity in the CSU work area is suitably proportional for meeting the NYPD's core mission of securing evidence.¹³ Accordingly, we find that the NYPD's placement of video cameras in the CSU work area is not a mandatory subject of bargaining.

Our holding is consistent with *Nanuet*, 45 PERB ¶ 3007, which both parties urge the Board to follow. In *Nanuet*, PERB dismissed as untimely a petition challenging the installation of a hidden camera used to monitor the work performance of a Head Custodian.¹⁴ In *dicta*, PERB

¹³ We do not find that installation of cameras in the CSU was necessary to obtain ANAB accreditation. The Philadelphia Police Department's CSU was accredited by ANAB without having cameras over its CSU Detectives work stations and the NYPD has not placed cameras in the Latent Print Section, which is also seeking ANAB accreditation. Nevertheless, maintaining the security of evidence remains intrinsic to the NYPD's mission.

¹⁴ The PERB ALJ had dismissed the petition on the merits. He held that the installation and use of the hidden surveillance camera in a public space for the investigatory purpose of observing employee conduct and work performance was a managerial prerogative and, thus, a non-mandatory subject of negotiations. See *Nanuet Union Free School District*, 43 PERB ¶ 4591 (ALJ 2010). Other PERB ALJs have reached similar conclusions. See *Elmont Union Free School District*, 28 PERB ¶ 4693 (ALJ 1995) (holding that a school district did not violate the Taylor Law

discussed whether video surveillance was a mandatory subject of bargaining. It stated that, while “in general” workplace videotape surveillance is a mandatory subject of bargaining because it “intrudes upon employee interests, including job security, privacy and personal reputation,” video surveillance would not be a mandatory subject of bargaining where “integral to the employer’s core mission” and “necessary and proportional for meeting that mission.” *Nanuet*, 45 PERB ¶ 3007, at 3013. PERB reasoned that “whether a particular decision to utilize videotape surveillance in the workplace is mandatorily negotiable . . . requires a fact-specific examination of employer and employee interests” and that “among the factors that must be considered are the nature of the workplace, and the employer’s core mission.” *Id.* PERB described a correctional facility as an example of a workplace where videotaping would not be a mandatory subject of bargaining as it would be integral to the employer’s core mission. In contrast, PERB stated that in a civilian workplace, videotape surveillance may not be integral to the employer’s core mission and thus might be a subject of mandatory bargaining.¹⁵

CSU is not a civilian workplace; it is a law enforcement operation. It is located in an NYPD building with over 200 cameras covering all public areas as well as the exterior of the building.

when it secretly videotaped a bus driver during her route for the limited purpose of confirming complaints of unsafe driving); *City of Syracuse*, 14 PERB ¶ 4645 (ALJ 1981) (finding that the installation of a video surveillance system in a police garage was not a subject of mandatory bargaining because securing property is a managerial prerogative).

¹⁵ PERB stated that where videotape surveillance is not integral to the employer’s core mission, it would apply a balancing test of the respective interests of the employer and the employee, noting that the video captured “can form the basis for counseling, discipline or demotion,” could “reveal protected concerted activities,” and “aspects of an employee’s personal life.” *Nanuet*, 45 PERB ¶ 3007, at 3013.

As discussed above, the video cameras address the NYPD's core law enforcement mission and its need to secure evidence. Thus, *Nanuet* supports finding that the installation of cameras monitoring the CSU work area is not a subject of mandatory bargaining.

Accordingly, the petition is denied.¹⁶

¹⁶ We do not find that *Colgate-Palmolive Co.*, 323 NLRB 515 (1997), or *Anheuser-Busch, Inc.*, 342 NLRB 560 (2004), *enfd sub nom. Brewers and Maltsters, Local Union No. 6 v. Natl. Labor Relations Bd.*, 414 F.3d 36 (DC Cir. 2005), relied upon by the Union, command a different result. In those cases, the NLRB found the employer violated the NLRA by installing a video surveillance system. Both cases involved hidden cameras that were installed without notice to the employees or their unions and were installed not only in work areas but also in break areas and restrooms. The NLRB's holdings in those cases relied on its conclusion that the installation of the video surveillance system did not "lie at the core of [the employer's] entrepreneurial control." *Colgate-Palmolive Co.*, 323 NLRB 515, *2; *Anheuser-Busch, Inc.*, 342 NLRB 560, *9. Since the security of evidence is integral to the core mission of law enforcement, these NLRB cases are distinguishable from the instant matter.

ORDER

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

ORDERED, that the verified improper practice petition, docketed as BCB-4259-17, filed by the Detectives' Endowment Association, Inc., against the New York City Police Department and the City of New York, be, and the same hereby is, denied.

Dated: April 8, 2019
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