Patrolmen's Benevolent Ass'n, 25 OCB 26 (BCB 1980) [Decision No. B-26-80 (IP)], aff'd, Patrolmen's Benevolent Ass'n v. McGuire, No. 16971/80 (Sup. Ct. N.Y. Co., July 14, 1981).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- X

In the Matter of

THE PATROLMEN'S BENEVOLENT ASSOCIATION,	DECISION N0. B-26-80
Petitioners,	DOCKET NOS. BCB- 375-79
	376-79
-against-	377-79
	378-79
ROBERT J. McGUIRE, as Police Commissioner	379-79
of the City of New York, and THE CITY	380-79
OF NEW YORK,	381-79
	382-79
Respondents.	405-80
- X	406-80
	408-80

DECISION AND ORDER

Procedural Background

The Patrolmen's Benevolent Association (hereinafter "PBA") filed improper practice petitions in cases BCB-375-79 through BCB-381-79 on December 19, 1979. The petition in BCB-382-79 was filed on December 21, 1979. All of these petitions alleged the replacement of police personnel[1] by civilians in various precincts and units of the Police Department. The Police Department's actions in implementing such replacements are alleged to constitute improper practices, in violation of section 1173-4.2(a), subdivisions(2),(3), and (4), of the New York City Collective Bargaining Law (hereinafter "NYCCBL").

[1] The PBA uses the term "police personnel" to refer to Patrolmen and Policewomen who are in the bargaining unit represented by the PBA. This is to be distinguished "civilians", who are also employees of the Police Department but who are not included in the PBA's bargaining unit.

With the PEA's consent, the City requested and was granted extensions of time to answer the above petitions, on the ground that the City was attempting to elicit from the PBA the specific nature of the acts complained of, in order to frame a responsive answer. These informal attempts apparently proved to be fruitless, and on January 29, 1980, the City submitted a letter in which it stated that it was unable to respond to the petitions because of their alleged lack of specificity. The City requested that this Board dismiss the PBA's petitions unless the union submitted a response to the City's demand for specificity.

Subsequently, a conference was held on February 28, 1980, at which time the attorneys for the parties appeared before representatives of the Office of Collective Bargaining to discuss these matters. As a result of these discussions, the PBA was directed to submit a statement of particulars, and a schedule was established for the filing of that statement and the City's answer to the petitions. Thereafter, the PBA requested and was granted additional time to file the statement.

The PBA's statement of particulars, filed on March 19, 1980, contained the names of the police officers alleged to have been replaced, the names of the civilians alleged to have replaced them, and the approximate dates of replacement.

New and substantially similar improper practice petitions were filed by the PBA on April 3, 1980, alleging additional instances of the replacement of police personnel by civilians. These cases were docketed as BCB-405-80 through BCB-408-80.

After additional extensions of time, with the consent of the union, the City filed an answer in response to all of the above-mentioned petitions on April 29, 1980. Finally, after a further extension of time, agreed to by the City, the PBA filed a reply on May 29, 1980.

By letter dated June 5, 1980, the parties were notified by the Trial Examiner that cases BCB-375-79 through BCB-382-79, BCB-40580, BCB-406-80 and BCB-408-80 would be consolidated for purposes of determination, since common questions of law were involved and since the factual allegations of the cases were essentially the same, differing only with respect to names and dates. [2] We ratify this consolidation, and consider these cases together for purposes of decision.

[2]The parties were also informed that BCB-407-80 would not be consolidated with the other matters because it differed sufficiently to require independent determina tion. Accordingly, BCB-407-80 is not within the scope of this decision and order.

On June 17, 1980, the City submitted a letter in response to what it alleged to be new legal arguments appearing in the PBA's reply. Although our Rules do not provide for submission of any pleadings subsequent to the filing of a reply, our review of the file in this matter indicates that the PBA's reply does raise legal arguments and citations of authority not mentioned in its improper practice petitions, and is not merely responsive to the City's answer. Accordingly, we do not believe that the City should be denied the opportunity to respond to these arguments, and, therefore, we have decided to accept the City's submission.

Nature of the Improper Practice Charges

The PBA alleges that twenty-nine police officers assigned to ten different Police Precincts and the Building Maintenance Section have been replaced by civilians in the performance of duties including clerical, record keeping, time keeping, roll call, payroll, communications, statistical, analytical, and mechanical repair functions.[3] The union does not allege that these replaced police officers have been

[3]These figures and duties are based upon the statement of particulars filed by the PBA on March 19, 1980, together with those improper practice petitions filed on April 3, 1980.

terminated from their positions; rather, with a few exceptions, they have been reassigned to perform other duties. [4] The PBA challenges the use of civilians in duties formerly performed by police officers, alleging:

> "Replacement of a union employee unit with non-police employees constitutes a deprivation and loss of an employee unit to the detriment of the union. The union is comprised of individual units which are represented in the union organizational structure and for which the union bargains during contract negotiations. A replacement of an employee's unit by another employee unit not affiliated with the recognized employee union (PBA), constitutes an improper practice pursuant to Section 117 3-4 . 2 (2) (3) (4) of the Rules of the Office of Collective Bargaining [sic]. Said policy of replacing a union unit with a non-union unit constitutes discrimination against the covered employee organization." [5]

The remedy requested by the PBA is an order of this Board directing the City:

[4]The City indicates that one of the officers enumerated by the PBA was replaced upon his death, two others were re placed upon their retiremeft, and one other was replaced upon his promotion to the rank of sergeant. The remaining twenty five were reassigned to other police duties.

[5]The quoted language appears in all of the improper practice petitions filed herein.

> "To halt and desist from replacing employees of the recognized bargaining organization with other employees."

Positions of the Parties

The PBA contends that the City's actions in replacing police officers with civilians is detrimental to the union, as stated in foregoing quotation. In its reply to the City's answer, the PBA further asserts that the City's civilianization program in the Police Department has substantially affected terms and conditions of employment of Police Officers. Specifically, the PBA alleges that civilianization has an impact on questions of workload and manning, and thus, is within the scope of collective bargaining.

The union analogizes the civilianization program to cases involving the contracting-out of bargaining unit work to non-bargaining-unit independent contractors. The PBA relies heavily upon private sector case law on the subject of subcontracting, decided under the National Labor Relations Act. It also cites several decisions by the New York State Public Employment Relations Board (hereinafter "PERB") and the Port Authority Employment Relations Panel concerning the reassignment of unit work to non-unit employees. The PBA concludes that these cases support its contention that the civilianization program is a mandatory subject of bargaining

and that the unilateral implementation of civilianization

constitutes an improper practice.

The City argues that several of the improper practice petitions herein were filed more than four months after the occurrence of the acts complained of. The City states that such petitions are untimely, pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "OCB Rules"), and therefore all allegations concerning acts occurring more than four months prior to the filing of the petitions should be stricken.

The City further argues that the petitions fail to allege any facts which, if true, would establish that the City has attempted to "dominate or destroy" a public employee organization within the meaning of NYCCBL section 1173-4.2(a). The City notes that the PBA has not alleged any improper motivation on the part of respondents.

The City also contends that through the ongoing civilianization program, the Police Department:

> "... is attempting to deploy its total work force in a fashion most conducive to effective, efficient and safe delivery of police functions. Specifically, 'civilianization' allows more Police Officers to be assigned to duties more directly related to law enforcement." [6]

[6]City Answer, paragraph 22.

In this regard, the City alleges that:

> "Coupled with the reassignment of Police Officers to operations within the ambit of traditional police duty, the Department has assigned non-uniformed civilian personnel represented by an organization other than Petitioner, to perform functions related to the operation of the Department as distinguished from delivery of police services."[7]

It is the City's position that the institution of its civilianization program is within its statutory right to:

> "... determine the methods, mean and personnel by which government operations are to be conducted ...." [8]

The City submits that the civilianization program is a valid exercise of a statutory management right and may not form the basis of an improper practice.

Further, the City cites a recent decision in a case alleged to be similar to the present matter, in which PERB held that civilianization in a police department in another city did not constitute an improper employer practice under [9] the Taylor Law.

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[7] Id.' paragraph 23.

[8] NYCCBL section 1173-4.3(b).

[9] City of Albany and Albany Police Officers Union, 13 PERB 1(3011 (1980).

Finally, the City asserts that what it characterizes as a "nascent claim of 'practical impact"' appearing in the PBA's reply, is unsupported by any factual allegations or other supportive material, and is thus entitled to no weight.

DISCUSSION

We address initially the City's argument that the claims contained in several of the improper practice petitions herein were not timely made, pursuant to section 7.4 of the OCB Rules. This section provides:

> "A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section1173-4.2 of the statute may be filed with the Board within four (4) months thereof ...."

We have recently held that the four month limitation contained in section 7.4 bars consideration of untimely filed petitions, even where the delay in filing has not prejudiced the party [10] charged.

In applying this rule to the present case, we find that some of the acts complained of by the PBA are alleged.

[10]Decision No. B-16-80.

to have occurred as long ago as May, 1973. Others, though occurring more recently, are clearly outside the period of the four month limitation. Significantly, despite the City's challenge to the timeliness of these claims, the PBA has offered no explanation or justification for the delay in filing improper practice petitions in these cases, nor has it alleged any facts in mitigation. Accordingly, we find that those claims enumerated below, which were not filed within four months of the date of the acts complained of, are untimely and will not be considered here. These claims, which we hereby dismiss, are:

Docket No. of Petition	Individual Claim (or entire case) Dismissed	Date of Act Complained of	Date Petition Was Filed
BCB-375-79	entire case	7/79	12/19/79
BCB-376-79	entire case	5/73 & 7/73	12/19/79
BCB-377-79	Reilly	4/79	12/19/79
BCB-378-79	entire case	6/79	12/19/79
BCB-379-80	La Bella & Ritter	4/79 & 6/79	12/19/79
BCB-381-79	Miline [11]	6/79	12/19/79
BCB-405-80	entire case	8/77, 2/79, 4/3/80 4/79 & 10/79	
BCB-408-80	entire case	11/79	4/3/80

[11]We also note that the claims in BCB-381-80 with respect to officers Vreeland and Wilson were filed prematurely, since the petition was filed on December 19, 1979, and the acts complained of (as stated in the PBA's March 19, 1980 statement of particulars) are alleged to have occurred in January, 1980. However, since these claims possessed an alleged factual basis as of January, 1980, the initial defect has been cured by the passage of time, and thus we will consider these claims.

The remaining claims [12] raise a challenge to the City's admitted policy of replacing police officers with civilians for purposes of performing certain duties, and the reassignment of the displaced police officers to other police duties, allegedly more directly related to law enforcement. We have recently considered another aspect of this. policy, concerning transfer of the duties of the police traffic enforcement squad to civilian employees of the Department of Transportation.[13] In the present case, the PBA relies upon additional authorities not presented in the earlier matter.

The PBA alleges that the City's actions constitute improper practices prohibited by NYCCBL section 1173-4.2(a), subdivisions (2), (3) and (4). These subdivision declare it to be an improper employee practice:

> "(2) to dominate or interfere with the formation or administration of any public employee organization; (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

[12]BCB-377-79 (Smith); BCB-379-79(Reilly & Farewell); BCB-380-79; BCB-381-79(Vreeland & Wilson); BCB-382-79; and BCB-408-80. We note that these remaining claims involve substantially the same issues as were raised in the cases we have dismissed for untimeliness.

[13]Decision No. B-8-80.

> (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."

With respect to subdivision (2), the union has failed to indicate how the transfer of duties from uniformed to civilian personnel, and the corresponding reassignment of police officers to other police duties, constitutes domination or interference with the formation or administration of the PBA. The union has not alleged any facts which would suggest that the PBA has been or will be prevented, hindered or in any way affected in representing present and future members of the bargaining unit.

The union's allegations of a:

> "... deprivation and loss of an employee unit to the detriment of the union...",

is incomprehensible to us. The bargaining unit for which the PBA has been certified as the collective bargaining representative, has not been changed or reduced in any manner. The PBA is certified to represent all employees in the titles of Patrolman and Policewoman, excluding those assigned as First, Second and Third Grade Detectives, [14] and that certification is not altered by the City's civilianization

[14]Decision No. 54-68.

program. Moreover, it is not alleged that any police officer has been laid off or otherwise terminated as a consequence of the transfer of some duties to civilians. Thus, we fail to see how the PBA has been deprived of any part of its bargaining unit. Accordingly, we will dismiss that part of the PBA's complaint alleging illegal interference with or ..domination of the union by the City.

With respect to subdivision (3), the PBA alleges that the claimed:

> ". . policy of replacing a union unit with a non-union unit constitutes discrimination against the covered employee organization." [15]

However, the PBA has not alleged any facts which would tend to show that the City discriminated against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, either the PBA or the union which represents the civilian employees. In this re gard, it is significant that the PBA has not alleged nor submitted evidence to prove that the City is motivated by anti-union animus in implementing the civilianization program.

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[15]We note that despite the quoted allegation, the PBA has not disputed the City's contention that the police offi cers affected have been replaced by employees represented by another union. Thus, these officers have been replaced by non-PBA personnel, rather than non-union personnel.

Nor has the union attempted to refute the City's statement of the rationale underlying this program.[16] Therefore, in the absence of factual allegations to support its assertion of discrimination, we will dismiss that part of the PBA's complaint alleging a violation of §1173-4.2(a), subdivision (3) .

The PBA's claim under subdivision (4) is based upon the City's statutory duty to bargain in good faith on matters within the scope of collective bargaining. The PBA contends that the City's implementation of the civilianization program constitutes a mandatory subject of bargaining, and that the City's failure to bargain constitutes an improper practice.

The City denies that the civilianization program is a mandatory subject of bargaining, and asserts that the decisions to reassign police officers to assignments within the ambit of "traditional police duty" and to replace them with civilians in assignments relating to the "operation" of the Department, are within the City's statutory right to:

> "... determine the methods, means and personnel by which government operations are to be conducted ...." [17]

[16]City answer, paragraph 22._

[17]NYCCBL section 1173-4.3(b).

The City points out that, pursuant to the statute,

> "Decisions of the City or other public employer on those matters are not within the scope of collective bargaining ...." [18]

In addressing the issue of whether the civilianization program, as presented in the instant matters, is or is not "within the scope of collective bargaining, we are guided by our findings in two recent cases involving the same parties herein, in which we were presented with similar issues. In Docket No. BCB-367-79, it was alleged that the Police Department had assigned unpaid auxiliary.police to duties previously performed exclusively by police officers. In finding the City's actions to be within its statutory management prerogative, and thus not within the scope of collective,bargaining, we stated:

> "Any claim of right more directly to limit management's exercise of its statutory rights must be based upon clear and explicit management waiver whether in the form of contractual, provisions, statutory limitations, or a showing that the work belongs exclusively to the bargaining unit." [19]

[18] Id.

[19] Decision No. B-5-80.

Similarly, in Docket No. BCB-369-79, where it was alleged that the City intended to transfer the functions of the Parking Enforcement Squad ("PES") from the Police Department to civilian personnel of the Department of Transportation, we held that,

> "... the decision on the 'methods, means and personnel by which the [PES functions] are to be conducted' is within the City's management prerogative. The *Union offers* no persuasive evidence or argument which demonstrates that limits exist on the City's freedom to act unilaterally in this area." [20]

In the present case, we find that the City's decision to have certain clerical, record keeping, time keeping, roll call, payroll, communications, statistical, analytical, and mechanical repair functions performed by civilian employees of the Police Department, and to reassign those police officers previously performing such functions to duties "within the ambit of traditional policy duty" and "more directly related to law enforcement", is within the City's right, under NYCCBL section 1173-4.3(b), to determine the "methods, means and personnel by which governmental operations are to be conducted." We also are persuaded by the City's allegation that through the civilianization program, the City is,

[20]Decision No. B-8-80.

> "... attempting to deploy its total work force in a fashion most conducive to effective, efficient and safe delivery of police functions."

This rationale offered by the City falls within the City's further statutory right to:

> "... maintain the efficiency of governmental operations..."

Therefore, we hold that the implementation of the civilianization program is a management prerogative, and we are compelled to find that it is not within the scope of collective bargaining unless we further find that the PBA has established that other limits exist upon the City's [21] freedom to act unilaterally in this area.

The PBA contends that such other limits do exist, which require that the City bargain before implementing the civilianization program. The union relies principally upon the case of Fibreboard Paper Products Corporation v. National Labor Relations Board, [22] which involved a union's challenge to an employer's decision to subcontract work previously

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[21]We note the NYCCBL places certain limits on the City's exercise of its management prerogative. Thus, notwithstanding the existence of a management prerogative, the employer will be required to bargain over the practical impact which management decisions have on employees. The applicability of practical impact bargaining to the present case will be discussed infra

[22]379 U.S. 203, 57 LRRM 2609(1964).

performed by members of the union's bargaining unit. The PBA asserts that the ruling of the Supreme Court in Fibreboard supports the proposition that the reassignment of bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining.

We disagree with the PBA's interpretation of Fibreboard; we believe that the court's holding is limited to factual situations similar to that presented in the Fibreboard case. The opinion of the court is summarized in the following passage from the decision:

> "We are thus not expanding the scope of mandatory bargaining to hold, as we do now, that the type of 'contracting out' involved in this case -the replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment -- is a statutory subject of collective bargaining under §8(d). Our decision need not and does not encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex economy." [Footnote omitted] [23]

Mr. Justice Stewart, in a concurring opinion joined in by Justices Douglas and Harlan, pointed out that not every decision of management is subject to a duty to bargain under the National Labor Relations Act ("NLRA"), and defined

[23] 57 LRRM at 2613-14.

excluded subjects as those "... decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security ...."[24] Justice Stewart explained that the Fibreboard decision, involving the bargainability of a decision to subcontract mainten4pce work, is limited to situations where employees in an existing bargaining unit were replaced, and their employment terminated as a result, by an independent contractor doing the same work under similar conditions of employment. Even though there was no management rights clause -- statutory or contractual -- at issue before the Court, Justice Stewart emphasized that an employer must be free to act unilaterally in certain areas and that "management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security" should be excluded from the scope of collective bargaining.[25]

The PBA's reliance on Fibreboard is clearly misplaced. There was no management rights clause at issue in Fibreboard such as exists in the instant. matter. There has been no showing that the employment of bargaining unit members will be terminated as a consequence of the decision to transfer the work in question herein, as was the case in Fibreboard.

[24] 57 LRRM at 2617.

[25] Id.

And, the instant case does not involve subcontracting to strangers as Fibreboard did, but rather a transfer of work from one group of Police Department employees to another group of Police Department employees.

Of greatest significance, however, is the statutory mandate set forth in NYCCBL section 1173-4.3(b) that the City be free to decide unilaterally and without prior negotiation, "the methods, means and personnel by which government operations are to be conducted ...." Whatever relevance the private sector rule enunicated in Fibreboard might otherwise have, section 1173-4. 3b clearly renders it inapplicable to the City's determination that the duties at issue herein can most efficiently be performed by civilians, thus freeing police officers for reassignment to law enforcement duties.

The PBA also relies on several decisions by PERB which, it alleges, hold that the reassignment of bargaining unit work is a mandatory subject of bargaining. We find that the cited cases are distinguishable on the ground that they all involved a reassignment of work which resulted in a loss of jobs within the bargaining unit. In East Ramapo Central School District, [26] Library Media Specialists were to be terminated and their positions eliminated. In Saugerties Central School District, [27] guidance counsellors

[26] 10 PERB 113064 (1977) .

[27] 10 PERB 145 29 (Hearing Officer decision) (1977) .

were deprived of summer employment which they had previously obtained. And, in North Shore Central School District, [28] the position of a Nurse-Teacher who retired was to be abolished. Furthermore, contrary to the PBA's assertion, none of the above cases purports to apply the standards used by the courts in Fibreboard; in fact, these cases do not even mention Fibre board.

The present case differs from the above matters, inasmuch as it does not involve a showing or even an allegation of a loss of jobs within the bargaining unit. It is not claimed that any police officers are to be laid off or otherwise terminated. The City has expressed its intent, not to reduce the numbers of police officers, but to increase the number of police officers available for law enforcement duties. A further management limitation relied upon by the PBA is the express limitation contained in NYCCBL section 1173-4.3(b), which follows the statutory enumeration of management rights and provides:

> "...,but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters [of managerial prerogative] have on employees, such as questions of workload or manning, are within the scope of collective bargaining."

[28] 10 PERB If 4530(Hearing Officer decision) (1977), remanded for further hearings, 10 PERB J[3082.

In accordance with the statute, if the existence of a practical impact upon the police officers affected were established, we would require the City to bargain such impact of its decision to replace police officers with civilians herein, notwithstanding the fact that that decision was within its management prerogative. However, we find that the PBA has failed to demonstrate even minimal impact resulting from the City's actions.

The PBA's allegation of practical impact does not appear in any of the union's pleadings until the Reply to the City's answer. The allegation is as follows:

> "Petitioners assert that the Department, by implementing the civilianization program has substantially affected the terms and conditions of employment for Police Officers. The Civilianization program as implemented does impact on questions of workload and manning, and consequently, are within the scope of collective bargaining."

Yet, the PBA does not allege any facts or present any argument concerning the nature of the purported impact. The union does not explain how questions of workload or manning are impacted by the City's actions. Neither does it specify any other term or condition of employment *which has* been affected. The PBA's allegations of impact are merely conclusory; no actual or even hypothetical impact has been demonstrated. Therefore, we agree with the City's argument that:

> "In the light of the complete absence of any supportive material bolstering its claim of 'impact' ... this argument is entitled to no weight."

Moreover, we observe that the City's actions in relieving police officers of certain duties, thereby making available a larger number of police officers to perform a narrow6t range of duties, would appear to have (from an employee's perspective) a favorable impact on workload and manning. We recognize that this is not necessarily true, since there may be factors involved of which we are not aware. But, to the extent that the PBA suggests that the City's actions have an adverse impact on workload and manning, it is incumbent upon the PBA to allege and demonstrate what that impact is. This the union has failed to do.

Aside from the union's lack of specificity concerning the alleged impact, our review of the record reveals no evidence of any practical impact. As stated above, no police officers are to be laid off or terminated as a result of the City's actions. There is no allegation that fringe benefits or other terms and conditions of employment will be reduced or changed. Absent evidence of a practical impact, we have no basis to find that this matter is within the scope of collective bargaining.

We note that in the private sector, where there is no statutory management rights provision, the federal courts and

the NLRB have held that there must be a showing of a substantial adverse impact on employees in a unit before the employer will be required to bargain on the exercise of a management prerogative.[29] Thus, even in the private sector, there is no duty to bargain concerning a management prerogative in the absence of a showing of impact.

Our conclusion that the actions of the City challenged herein are not within the scope of collective bargaining, is consistent with two recent decisions by PERB in cases very similar to the instant one. Since the provisions and procedures of the NYCCBL are required to be substantially equivalent to those of the Taylor Law,[30] these decisions by PERB are of particular significance.

In Matter of County of Suffolk, 12 PERB 1[3123 (1979) , PERB held that the transfer of police officers from the Teletype section, the Firearms section and the Central Records section of the Department's Headquarters Division to other

[29]See NLRB v. King Radio Corp., 416 F.2d 569, 72 LRRM 2245(loth Cir. 1969 , cert. denied, 397 U.S. 1007, 73 LRRM 2849(1970); Puerto Rico Telephone Co. v. NLRB, 359 F.2d 983, 62 LRRM 2069 1st Cir. 1966); District 50, United Mine Workers of America, Local 13942 v. NLRB, 358 F.2d 23 , 61 LRRM 2632 (4th Cir. 1966); Westinghouse Electrical Corp., 150 NLRB No.136, 58 LRRM 1257(1965).

[30]Civil Service Law, section 212.2.

units within the County Police Department and the replacement of the police officers in those sections with civilian employees to perform the officers' previous duties was within the County's management right to determine qualifications for a position and assignment of employees. PERB affirmed the degision of a Hearing Officer [31] who found that:

> "Regarding the impact of the decision to civilianize, the police officers in Teletype, Firearms and Central Records were neither terminated nor laid off, and suffered neither a reduction in salary nor benefits -they were simply transferred to identically remunerated duties in other Sections of the Department. The total number of employees within PBA's negotiating unit was unchanged as a result of the County's action. Thus, the County's action appears to have had no immediate tangible effect upon the police officers' terms and conditions of employment. It being axiomatic that a mandatory subject of negotiations impacts upon employees' terms and *conditions of* employment, it would appear that the *instant decision* to civilianize does not fall into said category even if the decision is devoid of policy or 'mission' implications." [32] [Footnote omitted]

The Hearing Officer further noted that the positions in question were clerical or instructive, rather than "law enforcement", in nature. The Police Department had determined that satisfaction of the rigid qualifications for employment

[31] 12 PERB 114561(1979).

[32] 12 PERB 114561(1979).

as a police officer was not necessary for filling these positions. The Hearing Officer stated that this determination [33] "... involved an intrinsic management concern."

PERB affirmed the Hearing Officer's ruling and dismissed the improper practice charge, which alleged a refusal to bargain, on the basis that the County's action was a matter of management right. This decision is significant inasmuch as the Taylor Law does not contain a management rights provision and the decision did not mention the existence of any contractual management rights clause. In contrast, in the present case, the NYCCBL contains a statutory management rights provision which expressly states that the City is free to determine unilaterally and without bargaining,

> " .. the methods, means and personnel by which government operations are to be conducted ...." [34]

The management rights clause of the NYCCBL deals statutorily, as PERB, in County of Suffolk, did decisionally, with the fundamental principal that government must be free to act unilaterally in certain areas without being required to negotiate its decisions so that the government may provide essential services to the public in the most efficient manner possible.

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[33] 12 PERB at p.4626

[34] NYCCBL section 1173-4.3(b).

In a more recent case, Matter of City of Albany, 13 PERB 113011(1980), PERB found that the City of Albany's unilateral decision to transfer police officers "from work involving communications, towing and the issuance of parking tickets to other assignments" and the hiring of civilians to perform the work previously assigned to the police officers was not violative of the public employer's statutory duty to negotiate in good faith because the actions did not involve a mandatory subject of negotiations. PERB affirmed the Hearing Officer's decision,[35]/ dismissing the improper practice charge, on the basis of a finding that*no police officers were laid off as a result of the decision, that "the reassignments were motivated only by a desire to utilize police officers more efficiently" and that the City was exercising a "well-established management right" to determine qualifications for the jobs involved.

Thus, we believe that our finding that the City's decision to civilianize these positions involving the performance of clerical, record keeping, time keeping, rollcall, payroll, communications, statistical, analytical, and mechanical repair duties is not within the scope of collective bargaining, is entirely consistent with the holdings of PERB on this issue. We reiterate that where, as in the instant case,

[35]12 PERB 114563(1979).

an action taken is a management prerogative and the union has failed to demonstrate any practical impact upon the employees affected, there is no requirement that the parties bargain over the City's actions, and a failure to so bargain does not constitute an improper practice. Accordingly, we will dismiss the PBA's petitions herein.

O R D E R

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

ORDERED, that the improper practice petitions filed herein by the Patrolmen's Benevolent Association of the City of New York, Inc., in the cases docketed as BCB-375-79 through BCB-382-79, BCB-405-80, BCB-406-80, and BCB-408-80, be, and the same hereby are, dismissed.

DATED: New York, N.Y.
July 23, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER