PBA v. McGuire(Comm. of NYPD), Ciy, 25 OCB 27 (BCB 1980)
[Decision No. B-27-80 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE PATROLMEN's BENEVOLENT ASSOCIATION,

DECISION NO B-27-80

Petitioner,

DOCKET NOS. BCB-423-80 and BCB-425-80

-and

ROBERT J. McGUIRE, as Police Commissioner of the City of New York and THE CITY OF NEW YORK

Respondents.

DECISION AND ORDER

The Patrolmen's Benevolent Association of the City of New York, Inc. (hereinafter "PBA") filed an improper practice petition, docketed as BCB-423-80, on May 12, 1980, in which it alleged that the Police Department had committed an improper practice by replacing a Sargent Dunleavy with a civilian Police Administrative Aide as supervisor in the Manhattan Property Clerk's office. The PBA filed a nearly identical improper practice petition that same day, docketed as BCB-425-80, in which it similarly complained of the Police Department's alleged replacement of a Sergeant Tarrantino by a civilian Police Administrative Aide as supervisor in the Queens Property Clerk's office.

After an extension of time consented to by the PBA, the City filed a single answer in response to both improper practice petitions on May 30, 1980. The union filed a single reply with respect to both cases on June 5, 1980. The City submitted an additional

letter in response on June 17, 1980.[1]

POSITIONS OF THE PARTIES

The PBA contends that the actions of the City constitute improper practices in violation of section 1173-4.2a. (2),(3), and (4) of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). The allegations of the petitions appear to be limited to challenging the replacement of the two Sergeants by civilians. However, in its reply, the union states that the petitions were filed to protest not the fact that the Sergeants were transferred and replaced, but the fact that the Sergeants' civilian replacements exercise supervision over police officers who heretofore were supervised only by other members of the uniformed force. Thus, it is the supervision by civilians, rather than the replacement of the Sergeants, to which the PBA objects.

Despite its disclaimer of challenging the replacement of the Sergeants, most of the PBA's argument is directed toward the placement aspect of the City's admitted civilianization program. The union alleges that the City's actions in these matters involves:

> "Replacement of a union employee unit with non-police employees...."

which the PBA asserts constitutes,

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

[1] The OCB Rules do not provide for submission of further pleadings subsequent to the filing of a reply. However, the City's letter of June 17 is alleged to be in response to legal arguments and authorities raised for the first time in the PBA's reply. We believe that the City is entitled to an opportunity to respond to such new matter, and we have decided to accept the City's submission.

The PBA further contends that such replacement,

> "...constitutes discrimination against the covered employee organization."

The union "relies heavily" upon private sector case law involving the subcontracting of bargaining unit work. It also cites a number of decisions by PERB involving the reassignment of unit work to non-unit employees. The PBA argues that these cases support its position that the implementation of a civilianization program is a mandatory subject of bargaining and that the unilateral implementation of such program constitutes an improper practice.

Additionally, the PBA asserts that the City is required to bargain concerning the supervision of police officers by civilians (who replaced the Sergeants herein) because,

> "Having these members of the service supervised by a civilian is clearly a situation that impacts upon the terms and conditions of employment of those Police Officers being so supervised."

Based upon this alleged impact, the PBA concludes that the City's failure to bargain concerning such supervision by civilians constitutes an improper practice.

The City submits that Sergeants herein who were reassigned and replaced by civilians, are not represented by the PBA and are not in positions within the PBA's bargaining unit. Rather, the Sergeants are in a bargaining unit represented by another union, the Sergeants Benevolent Association. Thus, the City argues, the PBA has no

legitimate interest in the reassignment of the Sergeants, and lacks standing to challenge such reassignment and replacement. on this basis, the City asks that the improper practice petitions be dismissed.

The City further asserts that the PBA has failed to allege any facts which would establish that the City has attempted to dominate or destroy the PBA. The City also argues that the union has failed to allege any improper motivation on the part of the City.

The City contends that the replacement of the Sergeants herein is one aspect of:

> "... the Police Department's ongoing 'Civilianization' program under which the 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."

The City alleges that its decision to "civilianize" certain functions is within its statutory management right, under NYCCBL section 1173-4. 3(b), to:

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

Therefore, the City asserts, its actions may not form the basis of an improper practice.

Finally, the City argues that the petitions herein,

> "... assert the same allegations extending even to the same phraseology and typographical errors),..."

as other petitions previously decided by this Board. Accordingly, the City contends that the continued litigation of the instant matters is barred by the doctrine of collateral estoppel. The City points to our Decision No. B-14-80 as a determination alleged to be dispositive of these matters.

DISCUSSION

There appear to be two different aspects to the PBA's challenge to the City's actions at issue herein. Firstly, the PBA contests the fact that two Sergeants were transferred and replaced by civilians. This is claimed to constitute a "deprivation and loss" of part of the bargaining unit, to the detriment of the union. This is also asserted to constitute discrimination against the PBA.

Secondly, the union protests the fact that police officers heretofore supervised by the transferred Sergeants ere now being supervised by civilians. This change in supervision is alleged to impact upon the terms and conditions of employment of the affected police officers.

With respect to the first aspect of the union's challenge, we agree with the City that the PBA lacks standing to raise the issue of the transfer and replacement of the Sergeants. The PBA is certified as the exclusive collective bargaining representative for:

> "... all employees employed by the City of New York in the titles of Patrolman and Policewoman, excluding those assigned as First, Second and Third Grade Detectives."[2]

[2] Decision No. 54-68.

The PBA's bargaining unit does not include Sergeants, who are certified to be represented by another union, the Sergeants Benevolent Association.[3] Therefore, the PBA's bargaining unit cannot have been subject to a "deprivation and loss" on account of the replacement of an employee belonging to another bargaining unit. Moreover, we fail to see how transfer and replacement of an employee belonging to another bargaining unit can constitute discrimination against the PBA.

Thus, we conclude that the PBA does not possess legal standing to challenge the transfer and replacement of the two Sergeants in question. We will dismiss this aspect of the PBA's petition without consideration of its argument on the merits of the issue of the replacement of Sergeants by civilians.

In response to the second part of the PBA's argument, challenging the supervision of police officers by civilians, the City contends that implementation of this and other aspects of the City's admitted "civilianization" program is a valid exercise of a management right, pursuant to section 1173-4.3(b) of the NYCCBL, which provides that it is the City's right to:

> "... determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its; ; employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which govern-

[3] 5 NYCDL No. 85.

> ment operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control discretion over its organization and the technology of performing its work....”

The City argues that the exercise of such a management right is not within the scope of collective bargaining and may not constitute an improper practice.

We find that the determination of which personnel should perform supervisory duties, and what the qualifications for such supervisory positions should be, is clearly a management right. The authority to make this determination is encompassed in the City’s statutory right to “direct its employees” and to “determine the methods, means and personnel by which government operations are to be conducted”.

However, the PBA correctly points out that pursuant to NYCCBL section 1173-4.3(b),

> “... questions concerning the practical impact that decisions on those matters (of management prerogative] have on employees, such as questions of workload and manning, are within the scope of collective bargaining.”

The PBA asserts that the City’s actions in assigning civilians to supervise police officers in the Property clerks, offices,

> “... impacts upon the terms and conditions of employment of those Police Officers being so supervised.”

While the union has based its assertion of impact on the fact of civilian supervision, it has not otherwise stated what the impact is, or how it affects the employees involved. No specific actual or even hypothetical impact has been demonstrated. We have long held that practical impact is a factual question, and that the existence of such impact cannot be determined when insufficient facts are provided by the union. The PBA has not met its burden of showing such impact, and thus its claim cannot be sustained.

0 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 Patrolmen's Benevolent Association's improper practice petitions in the cases docketed as BCB-423-90 and BCB-425-80 be, and the same hereby are, dismissed.

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

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