L.375, Civil Service Tech. Guild v. City, et. al, 25 OCB 41 (BCB 1980) [Decision No. B-41-80 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, AFSCME, AFL-CIO,

Petitioner, DECISION NO. B-41-80

-and- DOCKET NO. BCB-430-80

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, JOSEPH HOFFMAN,
LOUIS TERRERI, AND ROBERT PICK,

Respondents..

DECISION AND ORDER

On June 3, 1980, Civil Service Technical Guild, Local 375, AFSCME, AFL-CIO (hereinafter Local 375) filed a verified improper practice petition claiming that the New York City Health and Hospitals Corporation (hereinafter HHC) had violated its duty to bargain in good faith by refusing to provide information requested by the Union relating to HHC's plans for decentralization of the Capital Design Unit located at 66 Leonard Street in Manhattan. HHC, appearing by the City's Office of Municipal Labor Relations (hereinafter OMLR), filed a verified answer to the improper practice petition denying that it has violated its duty to bargain under the New York City Collective Bargaining Law (NYCCBL).

BACKGROUND

Local 375 claims that the president of the Union was first notified of HHC's plan to decentralize the design unit on May 2, 1980. The Union contends that a meeting was held

between Union officials and officials of HHC, on May 6, 1980, to discuss the plan and that, later in the same day, the affected members of the Union were informed of the plan. Local 375 states that approximately 100 employees in design, architectural, engineering and technical titles, represented by the Union, will be affected by the decentralization plan.

According to Local 375, another meeting was held, on May 12th, at which the HHC representatives acknowledged that the plan was experimental and that there was uncertainty as to the costs. The Union requested information concerning cost factors and other aspects of the decentralization plan, including:

> [D]ata pertaining to changes in organizational structure, including impact on promotional opportunities for affected personnel; whether budgetary provisions have been made by the individual hospitals to continue staffing at current levels, and whether decentralization will jeopardize jobs; whether the nature and number of work assignments will be affected, and if so, how and to what degree; whether the cost of the vastly increased number of projects which are farmed-out will be substantially more expensive than the performance of work in-house; and whether the proposed decentralization is purported to save taxpayers' money through increased productivity, and if so, how.

Local 375 asserts that HHC has refused to provide any of the information and has, thereby, precluded informed discussion on issues concerning the decentralization.

OMLR claims that on or about May 12, 1980 HHC announced implementation of the decentralization plan to employees. OMLR maintains that, on May 12th, the Union was informed "of the number and nature of new assignments" and that "the decentralization plan would not jeopardize the positions-held by [the Union's] members, or their promotional opportunities." OMLR alleges that there is no plan to decentralize the entire design unit and that only a portion of the employees represented by the Union will be reassigned to locations other than 66 Leonard Street.

OMLR further asserts that the Union was told on May 12th that new assignments would be posted and employees would be given the opportunity to bid for them. OMLR contends, "The assignments were posted but [the Union's] members failed to respond to the posting." OMLR also states that HHC refused to discuss the costs of the productivity aspects of the decentralization plan because the issue comes within the managerial prerogatives provided in NYCCBL section 1173-4.3b.

POSITIONS OF THE PARTIES

The Union argues that the plan to decentralize the Capital Design Unit will have a practical impact on employees and therefore is a matter within the scope of collective bargaining pursuant to NYCCBL section 1173-4.3b. Local 375

claims that the information it has requested is necessary for effective and meaningful discussions between the parties as to the practical impact on employees caused by HHC's exercise of its managerial prerogative.

Local 375 maintains that HHC has a duty to provide the requested information pursuant to NYCCBL section 11734.2 c (4), which, according to the Union, requires that "as to matters within the scope of collective bargaining, each party furnish to the other, upon request, information which is reasonably available and necessary for full and proper discussion, understanding and negotiation....'" Local 375 alleges that since the practical impact of decentralization is within the scope of collective bargaining, HHC has a duty to provide information regarding decentralization to the Union. HHC's failure to furnish the requested information, concludes the Union, is a breach of the employer's duty to bargain in good faith as to the practical impact on employees of the decentralization plan.

Local 375 asks that the Board find that HHC has committed an improper practice and order HHC to provide the Union with the requested information and to meet with the Union to discuss the decentralization plan.

OMLR maintains that there is no dispute that HHC's decision to decentralize the Capital Design Unit is within

its management rights defined in NYCCBL section 1173-4.3b. OMLR contends that HHC is required only to bargain on the practical impact of the decision. OMLR argues that the Board has interpreted practical impact to be "unreasonably excessive or unduly burdensome workload as a regular condition of employment."[1] OMLR alleges that there is no practical impact on employees resulting from decentralization of the Capital Design Unit. According to OMLR, decentralization will not lead to an increased or more onerous workload and will not result in job loss, loss of promotional opportunity or change in the Civil Service status of employees. In addition, OMLR continues, employees were given an opportunity to bid for preferred work locations.

OMLR concludes that since there is no practical impact, there is no duty on HHC to bargain on any of the issues concerning decentralization of the Capital Design Unit and therefore there is no obligation to supply information under NYCCBL section 1173-4.2c(4), which requires only that information be furnished in connection with "negotiation of subjects within the scope of collective bargaining." OMLR asks that Local 375's petition be dismissed.

[1] OMLR cites Board Decisions Nos. B-9-68; B-18-75; B-23-75; B-2-76.

DISCUSSION

NYCCBL, section 1173-4.2c, in pertinent part, provides:

> C. Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
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> * * *
>
> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
>
> * * *

At issue in this matter is whether HHC has a duty under this statutory provision to furnish the information requested by Local 375, which is detailed on page 2, supra.

The NYCCBL requires the employer to furnish certain information necessary for discussion, understanding and negotiation "of subjects within the scope of collective bargaining." There is no dispute between the parties that HHC's decision to decentralize the Capital Design Unit and to place its functions at different locations is a matter of management prerogative and not mandatorily bargainable pursuant to the provisions of NYCCBL section 1173-4.3b. The Union's claim that HHC has violated its duty to provide

information under NYCCBL section 1173-4.2c is based on the assertion that the employer's action has resulted in a bargainable practical impact as provided in NYCCBL section 1173-4.3b.

The Board has held that the practical impact of a managerial decision refers to unreasonably excessive or unduly burdensome workload as a regular condition of employment as a result of the decision.[2] A duty to bargain on an alleged practical impact does not arise until the question of whether the practical impact exists has been determined.[3] The Board has stated that "the determination of the existence of practical impact is a condition precedent to determining whether there are any bargainable issues arising from the practical impact."[4] After the Board finds that there is a practical impact, the employer may act unilaterally to relieve the impact through the exercise of its reserved management rights or it may seek to relieve the impact by negotiating changes in wages, hours and working conditions. Only after the Board finds that the employer has not expeditiously relieved the impact is there a duty on the employer

[2] Board Decision Nos. B-9-68, B-18-75, B-21-75, B-23-75, B-2-76.

[3] Matter of Uniformed Firefighters Association and the City of New York, Decision No. B-9-68.

[4] Id.

to bargain over the means to be used and the steps to be taken to relieve the impact.[5]

The Board has recognized exceptional circumstances resulting from an exercise of management prerogative and has acted to respond to the exigencies of particular cases. The Board has held that certain actions of the employer result in a per se practical impact, such as the impact on those laid off, or scheduled to be laid off, when the employer decides to lay off employees.[6] The practical impact resulting from a management decision to lay off is immediately bargainable; a union need not wait until employees are, in fact, laid off before it exercises its right to negotiate the impact of management's decision.[7] Included in the scope of matters subject to bargaining as a result of a decision to lay off
employees is a demand for information and notification prior to the implementation of the lay off.[8]

The Board has also held that a question of threats to employee safety resulting from a particular exercise of management prerogative constitutes sufficient basis for a finding that a practical impact may attach to the exercise

[5] Board Decision Nos. B-9-68, B-1-74, B-7-74, B-13-74, B-16-74, B-3-75, B-18-75, B-21-75

[6] Board Decision Nos. B-3-75, B-18-75, B-21-75.

[7] Id.

[8] Matter of City of New York and MEBA, District No. 1, Pacific Coast District, Decision No. B-3-75.

of the management prerogative. The Board has required bargaining on the safety impact at the managerial decision is proposed.[9]

The only indication of a practical impact resulting from an exercise of a management prerogative in the present case is the Union's conclusory statement that a practical Impact has occurred as a result of the decision to decentralize the Capital Design Unit. The Union does not allege nor does it offer any evidence indicating that an "unreasonably excessive or unduly burdensome workload" has resulted from HHC's decision. The Union makes no allegation nor offers any proof that employees are or will be laid off or that there are threats to employee safety as a result of the decision. OMLR has both challenged the Union's statement of practical impact and affirmatively stated that HHC took steps to alleviate effects of the decision on employees, such as providing an opportunity to bid for preferred work locations. OMLR maintains that HHC announced the decentralization plan to employees in advance of its implementation and that Local 375 was informed, in advanced, of the number and nature of new assignments, that the plan would not jeopardize positions held by employees hand that there would be no effect on promotional opportunities. Moreover, OMLR contends that there is no plan to decentralize

[9] Board Decision Nos. B-5-75 and B-6-79.

and relocate the entire unit, but that only a portion of the unit and its employees will be decentralized and relocated. Local 375 has not controverted any of OMLR's contentions. It must be concluded that, under the facts of this case as presented -to-the Board, there is at this time no current or foreseeable bargainable practical impact on employees resulting from HHC's decision to decentralize the Capital Design Unit.

In light of the absence of dispute on the right of HHC to decide unilaterally to decentralize the unit and the nonexistence of a bargainable practical impact, there is, under the circumstances of this case, no duty on the part of HHC to bargain on any aspect of the decentralization of the Design Unit. There is, therefore, no subject or subjects present in the instant matter which are within the scope of collective bargaining. According to the terms of NYCCBL section 1173-4.2c, the employer has a duty to furnish certain information relating to "subjects within the scope of collective bargaining." Since there are no subjects on which HHC is required to bargain at this point, there is, in our opinion, no statutory duty on the part of HHC to furnish the information requested by Local 375.

Therefore, for the reasons stated above, we dismiss the improper practice charge filed by Local 375 in this proceeding.

0 R D E R

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

ORDERED, that the improper practice petition filed by the Civil Service Technical Guild, Local 375, AFSCME, AFL-CIO be, and the same hereby is, dismissed.

DATED: New York, New York
December 2, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD CLEARY
MEMBER

EDWARD F. GRAY
MEMBER