OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. B-11-81

Petitioner,

DOCKET NO. BCB-474-81

-and- (A-1115-80)

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1180, AFL-CIO,

Respondent.

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DECISION AND ORDER

On January 9, 1981, the City of New York, appearing by its Office of Municipal Labor Relations (OMLR), filed a petition challenging the arbitrability of a grievance that is the subject of a request for arbitration filed by the Communication workers of America (CWA) on December 22, 1980. CWA filed on January 30, 1981 an "Answering Affirmative" to the petition and OMLR filed on February 2, 1981 a reply to the answer,

REQUEST FOR ARBITRATION

The request for arbitration states the grievance as follows: "Protest of Assignment of Six Income Maintenance Specialists to Grievant's Group. Agency Policy states that the span of supervisory control is 5 to 1." From papers attached to the request for arbitration, it appears that grievant is a Principal Administrative Associate (Level 1)

employed by the Human Resources Administration (HRA) at an income maintenance center in Staten Island. The grievant, who appears to hold the office title Group Supervisor I.M., protests an increase in the number of Income Specialists, to six employees from five, that the is required to supervise. The grievant claims, "Since the workload is consistently heavy it is impossible to properly supervise more than five I.M. Specialists which has been the policy of the Department in the past." The grievant contends that there is an agreement that a supervisor's span of control would be five specialists.

In the Step II determination of the grievance, HRA's Office of Labor Relations stated that "the addition of a 6th worker to grievant's unit was due to implementation of the Ft. Greene Application Project. There are 11 IMS assigned to two application groups at Richmond IMC and this of necessity mandates that one group will have 6 workers." The grievance was denied by the employer at Steps II and III on the grounds that staffing and manning are management prerogatives and that there is no regulation or contractual provision limiting the span of control or ratio between supervisors and subordinates.

The Union claims violation of Article V, section la of the 1978-1980 collective bargaining agreement between it and the City. The clause states:

> The Union recognizes the Employer's right under the New York City Collective Bargaining Law to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such Standards, developed by usual work measurement procedures may be used to determine acceptable performance levels, prepare work schedules and to measure the performance of each employee or group of employees. Notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees are within the scope of collective bargaining. The Employer will give the Union prior notice of the establishment and/or revision of performance standards or norms hereunder.

The Union seeks arbitration pursuant to Article VI, section 2 of the contract which, in relevant part, provides that an unresolved grievance may be brought by the Union to the OCB for impartial arbitration.

POSITIONS OF THE PARTIES

The City contends that the request for arbitration does not raise an arbitrable issue and should be dismissed. The City argues that the subject of the grievance, staffing and manning of a government operation, is a management right under NYCCBL section 1173-4.3b and the Board's interpretation of the law in Decision No. B-1-70. This managerial right, OMLR claims, is recognized in Article V, section 2a of the contract, which provides:

> The Union recognizes the Employer's right under the New York City Collective Bargaining Law to establish and/or revise standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions listed in Article 1, Section 1 of this Agreement. Notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees are within the scope of collective bargaining. The employer will give the Union prior notice of the establishment and/or revision of standards for supervisory responsibility hereunder.

The City maintains that there is no contractual provision, written agency policy or regulation limiting the span of control or denoting a ratio between supervisors and subordinates in HRA. OMLR argues that the Union has failed to cite any contractual provision or written policy relating to span of supervision. The contractual provision, Article V, section la, on which CWA relies, the City contends,, "is totally unrelated to the matter [CWA] seeks to arbitrate and [the Union] has failed to establish any prima facie relationship between the acts complained of and the sources of the alleged right. (B-1-76, B-3-78)." OMLR interprets the first sentence of Article V, section 2a to provide that an agency decision on the span of supervision cannot be the subject of grievance arbitration. OMLR concludes that the alleged grievance does not come within the contractual definition of grievance, which, inter alia, is, "A claimed

violation, misinterpretation or misapplication of the rules or regulations, written policy or orders applicable to the agency which employs the grievant affecting the terms and conditions of employment...." The City asserts that the request for. arbitration is an attempt "to create a grievable right that does not exist under the terms of the applicable collective bargaining agreement" and asks that the request be denied.

The Union admits that staffing and manning of a government agency is a managerial prerogative. However, CWA continues, HPA's policy is that a supervisor's span of control "is five (5) Income Maintenance Specialists for every Group Supervisor, rather than six (6), which is the basis for this grievance." CWA submits, in support of this allegation, a copy of an October 9, 1980 letter from an Assistant Commissioner in HRA's Office of Personnel Services to the President of Local 1180, CWA. The letter concerns a Union request for job specifications for various titles in the Income Maintenance and Food Stamp operations, including Group Supervisor I.M. The Assistant Commissioner states that the request concerns functional titles that are within the PAA class of positions. The Assistant Commissioner further states that there are no job specifications for functional titles but that functional positions had been evaluated and job

descriptions formulated. The job description for Group Supervisor I.M., the position apparently held by grievant, states, "The Group Supervisor directly supervises a Group of five Income Maintenance Specialists and two clerks." The Union argues that HRA's failure to follow this policy in this case violated Article V, section 1(a) of the contract.

In addition, the Union asserts that the City failed to adhere to the requirement, in Article V, section 2(a) of the contract, that the employer "give the Union prior notice of the establishment and/or revision of standards for supervisory responsibility hereunder." CWA concludes that a prima facie relationship between the grievance and the source of grievant's rights has been established. In its answer, the Union "[a]dmits that span of supervision is not a grievance, however, this is a violation of Agency Policy."

In reply, the City claims that the document submitted by the Union is not a written agency rule or policy. OMLR describes the paper as "an internal working document utilized by the Agency in connection with implementation of the new non-managerial evaluation system, and totally unrelated to the issue of span of supervision." The City maintains that the document contains statements only relating to conditions existing at the time the position was internally evaluated

and is not an agency pronouncement or guideline establishing a numerical span of supervision. The City notes that, in his cover letter, the HRA Assistant Commissioner states that "there are no job specifications for functional titles." OMLR affirmatively alleges that "the agency has never issued a written policy or procedure establishing or mandating a numerical span of supervision for employees covered by the agreement."

OMLR contends that the Union, in its answer, has admitted that span of supervision cannot form the basis of a grievance and that the staffing and manning of an income maintenance group is a managerial prerogative. According to the City, these statements, the language of Article V, section 2a of the contract, and the statutory management rights clause all "make ... clear that the Agency may establish and/or revise span of supervision unilaterally without contractual violation."

With regard to the Union's claim, which the City contends is raised for the first time in the answer, that HRA violated Article V, section 2(a) of the contract by not providing the union with prior notice of revision of standards of supervisory responsibility, OMLR asserts that there has been no modification by the agency of standards concerning supervisory responsibility for employees covered by the contract.

DISCUSSION

This is another matter in a series of cases where the Board is faced with the issue of adding to the criteria usually applied in determining the arbitrability of a grievance, viz., whether the parties are in any way obligated to arbitrate their controversies and, if so, whether the obligation is broad enough in its scope to include the particular controversy on which arbitration has been requested. There is no dispute in this case that the parties have a contractual agreement to arbitrate disputes[1] and that a claim of violation of a contractual provision is covered by the grievance-arbitration clause.[2] At issue in this case is whether the Union has established a nexus between the contract right that it claims to have been violated and the alleged improper acts of the employer.

In several recent cases, the Board has been asked to interpret contract provisions that were claimed violated and to decide whether the clause relates to the acts which are subject of the arbitration request.[3] The Board has decided

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[1]1978-1980 unit contract, Article VI.

[2]Article VI, section 1 defines grievance, in relevant part, as "A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the employer applicable to the agency which employs the grievant affecting terms and conditions of employment...."

[3]See Decisions Nos. B-7-81, B-6-81, B-4-81, B-21-80, B-15-80, B-15-79, B-7-79, B-3-78, B-3-76, B-1-76.

that, in determining arbitrability, it is appropriate to inquire as to the prima facie relationship between the grievant's allegations and the source of the alleged right which the Union seeks to enforce in arbitration. The Board has held that the grievant, where challenged to do so, has a duty to show that the contract provision or departmental rule cited is arguably related to the grievance on which arbitration is requested.

The parties to this matter agree that staffing and manning levels are management rights under NYCCBL section 1173-4.3b and a prior Board decision.[4] The City claims that it has not in any way, either by contractual provision, by departmental rule or by regulation, limited the managerial right to establish the ratio of supervisors to subordinates in the operations of HRA at issue herein. The Union claims that Article V, section la of the contract was violated when HRA increased the number of employees grievant is required to supervise. Article V, section la, quoted on page 2 above, expressly recognizes the employer's right "to establish and/or revise performance standards or norms, notwithstanding the existence of prior performance levels, norms and standards." The clause goes on to provide that

[4]Decision No. B-1-70.

questions concerning the practical impact on employees of an employer decision in this area "are within the scope of collective bargaining." In our opinion, rather than limit management's statutory right to determine staffing and manning levels, the clause reaffirms this right. Furthermore, as argued by the City, the next section of the contract expressly recognizes the employer's statutory right "to establish and/or revise standards for supervisory responsibility in achieving and maintaining performance levels of supervised employees for employees in supervisory positions"[5] which includes the title held by grievant. The Union has not claimed violation of any other provision of the contract and a review of the contract indicates that there are no other sections that deal with supervisory responsibility and performance levels.

We find that the Union has failed to establish the existence of a contractual right which may have been violated when the number of employees that grievant is required to supervise was increased by one employee. Indeed, the parties appear to have confirmed in the contract the City's statutory right to establish unilaterally staffing levels and span of supervision. There is no contractual basis for the alleged right that the Union seeks to enforce in arbitration.

[5]Article V, section 2a.

CWA's claim that arbitration is warranted because agency policy was violated by the employer's action is also without foundation. The source of the alleged policy relied on by the Union is an in-house job evaluation of the functional title, Group Supervisor IMC, held by grievant. The job evaluation describes the duties of a Group Supervisor to include supervision of five Income Maintenance Specialists and two clerks. The author of the document is not identified, it does not appear to be in the form of a rule or regulation, and it is described in the cover letter signed by the Assistant Commissioner as being intended for position evaluation purposes. The document is not a job specification for a civil service title. On its face, the document only lists the tasks performed by a Group Supervisor; the job description does not in any way mandate that particular circumstances or working conditions be maintained by the employer. In our opinion, the document does not qualify as agency policy, a rule or regulation nor does it afford grievant the right that he claims has been violated.

Moreover, whether or not the functional job description is agency policy, neither it nor the contract contain any limits on the employer's right to change its staffing patterns and increase the number of employees that a Group Supervisor may be required to supervise. Indisputably acting within its

rights under the NYCCBL and not having limited its statutory right by contract or otherwise, the City is free to amend the functional job description to require that an employee supervise more subordinates. There is no basis to require, at this stage, that the City arbitrate its decision.

We note that the statement of the grievance submitted by the employee does not primarily involve a claim of violation of alleged contractual right, but rather the grievant complains of increased workload and the impact on the employee of management's decision to increase the span of supervision. The parties in Article V of the contract recognized that there may be practical impacts on employees resulting from managerial decisions in areas such as performance levels and standards for supervisory responsibility and provided that "questions concerning the practical impact that decisions on the above matters have on employees are within the scope of bargaining." The Board has held that practical impact is a factual question to be decided by the Board and that the duty to bargain on impacts does not arise until after the City is afforded an opportunity to alleviate an impact.[6] The Board has also held that practical impact

[6]There are exceptions in the areas of layoff and safety to the policy providing the employer an opportunity to act voluntarily. The Board's decisions on practical impact bargaining are discussed in Decision No. B-41-80, pp.7-9.

disputes raise statutory issues within the exclusive jurisdiction of the Board.

In its answer to the City's petition, the Union asserts for the first time that the City failed to give prior notice of the revision of standards for supervisory responsibility as required in Article V, section 2a of the contract. The Board has consistently denied arbitration of a claim alleged for the first time at the request for arbitration step because to permit arbitration would frustrate the purposes of a multi-step grievance procedure.[7]

For the foregoing reason, we grant the petition challenging arbitrability and deny the request for arbitration without prejudice to the filing of a grievance concerning the alleged failure of the employer to give prior notice of the increase in the number of employees to be supervised by the grievant.

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

[7]Board Decisions Nos. B-6-80, B-12-77, B-6-76, B-3-76, B-22-74, B-20-74.

ORDERED, that the City's petition challenging arbitrability be, and the same hereby is, granted; and it is further

ORDERED, that the Union's request for arbitration be, and the same hereby is, denied.

DATED: April 8, 1981
New York, New York

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER