Seelig (Pres. of COBA) v. Ward (Comm. of Corrections), City, 29 OCB 34 (BCB 1982) [Decision No. B-34-82 (Scope)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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PHILIP SEELIG, as President of the Correction Officers' Benevolent Association of the City of New York,

DECISION NO. B-34-82

DOCKET NO. BCB-585-82

Petitioner,

-and-

BENJAMIN WARD, as Corrections Commissioner of the City of New York, OF THE YORK CITY DEPARTMENT OF CORRECTION and THE CITY OF NEW YORK,

Respondents.

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DECISION AND ORDER

On April 8, 1982. Philip Seelig, as President of -the Correction Officers' Benevolent Association ("Petitioner" or the "Union"), filed a scope of bargaining petition against Respondents, the New York City Department of Correction (the "Department") and the City of New York (the "City"), alleging that the Department replaced correction officers assigned to operate Rikers Island's "On Island" transportation vehicles with civilian workers not qualified and not trained to perform this job function. Petitioner requests that the Board of Collective Bargaining (the "Board" make a determination that Respondents' actions affect safety, security, and working conditions and fall within the scope of bargaining. On May 7, 1982, Respondents, appearing by

the Office of Municipal Labor Relations, filed their answer to the Union's petition. The Union filed its reply on May 17, 1982.

Position of the Parties

Union's Position

The Union's petition alleges that on or about March 15, 1982, civilians were assigned the function of operating Rikers Island's "On Island" transportation vehicles, a "time given job function"[1] traditionally performed by correction officers and part of the Transportation Division of the Department.

The Union states that the correction officers who drove these vehicles served the dual function of driving the vehicles and providing a measure of island security. Petitioner alleges that the civilians who now operate the vehicles are neither qualified nor trained to Perform this dual job function, and that conditions and good order on the buses have consequently worsened since the utilization of civilian drivers.

The Union contends that the Department "has taken a critical job function and transformed it into a dangerous condition."[2] To support this contention, the Union main-

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[1] Union petition paragraph 5.

[2] Id., paragraph 17.

tains that the level of security attained through surveillance by vehicle operators has significantly dropped, and anticipates the following consequences:

1. No one with authority will be on the buses to challenge suspicious riders;

2. Escaping inmates es may board these buses and take civilian hostages;

3. Civilian drivers may not react as quickly as correction officers in emergency situations and will lack the solidarity shared by officers during emergencies;

4. Delay may result in serious physical harm or death.

Petitioner asserts that the removal of correction officers from these vehicles has created a serious impact upon the safety and security of the officers as well as the institutions, inmates, and civilians on Rikers Island and in the adjacent community, and, therefore, constitutes the basis for its scope of bargaining petition. It rejects Respondents' assertion that managerial prerogative excludes this matter from the scope of collective bargaining. The Union requests that the Board, pursuant to Section 1173-4.3 of the New York City Collective Bargaining Law ("NYCCBL")[3]

[3] Section 1173-4.3 of the N`YCCBL provides, in pertinent part as follows:

> a. Subject to the provisions of subdivision b of this section and subdivision c of section 1173-4.0 of this chapter, public employers and certified or designated employee organizations

(more)

(Footnote 3/ continued)

shall have the duty to bargain in good faith on wages (including but not-limited to wage rates, pensions, health and -welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions ...

b. It is the right of the city, or any other public employer, acting through its agencies, 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; deter- the methods, means and personnel by, which government 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 and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwith- the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

and Sect-ion 7.3 of the Consolidated Rules of the office of collective Bargaining (the "Rules")[4] determine that Respondents' actions have created a practical impact upon the safety, security, and working conditions of employees represented by Petitioner and, thus, are within the scope of collective bargaining.

City's Position,

The City, in its answer, agrees that Rikers Island's "On Island" transportation is part of the Department's Transportation Division and that employees in the civil service titles of Motor Vehicle Operator were assigned to operate certain motor vehicles on Rikers Island in or around March, 1982. However, it denies Petitioner's allegation that correction officers have traditionally performed this function, thereby, establishing it as a "time given job function.” Respondents maintain that while it is true that correction officers have operated these vehicles since 1972, this job

[4] Section 7.3 of the Rules provides:

> A public employer or certified designated public employee organization which is party to a disagreement as to whether a matter is within the scope of collective bargaining under Section 1173-4.3 of the statute, or whether a matter is a proper subject for the grievance and arbitration procedure established pursuant to Section 1173-8.0 of the statute or under an applicable executive order, or pursuant to collective bargaining agreement nay petition the Board for a final determination thereof.

function was performed by inmates prior to 1972.

The City maintains that "On Island" transportation serves certain employees and citizen visitors and does not entail any custodial functions. Respondents reject, therefore, the allegation of the Union that surveillance is part of the job function and that the elimination of surveillance by vehicle operators would undermine the safety of correction officers and others on the island and in the surrounding community. Furthermore, Respondents stress that motor vehicle operators supplement, not replace, uniformed personnel and are "trained in vehicle operation as well as the specifics of their employment on Rikers Island."[5] They perform, duties within the scope of their training and employment, not duties of correction officers. Thus, it is argued, they do not have a negative effect upon
island security.

The City maintains that Section 1173-.4.3(b) of, the NYCCBL removes certain management rights from the scope of collective bargaining.

The City urges that the Union is seeking to disguise its opposition to civilianization by making a practical impact argument. It cites Board Decisions Nos.

[5] City answer, paragraph 7.

B-5-75 and B-21-75 to support its contention that the Union has failed to meet its burden in establishing practical impact, and that the Union's argument is "constructed entirely of speculation, innuendo, and groundless, conclusory allegations."[6] The City also cites previous Board decisions which support its managerial right to civilianize certain job functions without creating an obligation to bargain.[7]

The City contends that through its civilianization Program, the Department is attempting to "deploy its total work force in a fashion most conducive to effective, efficient and safe delivery of correction functions."[8] Assignment of non-uniformed ,civilian Personnel to operate certain motor vehicles allows the Department to assign more correction officers "to duties more directly related to the care and custody of inmates."[9]

The City concludes that no employee of Petitioner's unit has had his/her job status impacted upon by these reassignments and alleges that Petitioner is attempting to undermine the Department's right to determine the means and personnel by which its functions are conducted.

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[6] Id., paragraph 17.

[7] Decisions Nos. B-8-80, B-14-80, B-26-30, B-27-80.

[8] City answer, paragraph 11

[9] Id., paragraph 11.

Discussion

Section 1173-4.3(b) of the NYCCBL provides that an employer shall have the right "to determine the standards of services" and otherwise "to determine the methods, means and personnel by which government operations are to be conducted." It is on the basis of this provision that we have long held that civilianization programs are a valid exercise of management rights and will not, ordinarily, form the basis of an obligation to bargain unless, in the exercise of these rights, the employer affects wages, hours or working conditions of employees in a manner rising to the level of practical impact. The foregoing qualification appears in Section 1173-4.3(b) as a proviso:

> [Q]uestions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of bargaining.

In the instant proceeding, therefore, it is clear that the Department had and has the right to assign correction officers to duties more closely related to the custody and care of inmates, and utilize civilians in, areas not directly related to such custodial functions to assure the optimal efficiency of the Department, unless the Union can demonstrate that these actions have created a practical impact giving rise to the City's duty to bargain in good faith.

We agree with Respondents that the Union has not met its burden of proving practical impact. In Decision No. B-5-75, we described the burden placed upon the Union whenever practical impact on safety has been alleged:,

> We have no detailed information as to the nature or scope of safety of each and every contemplated change. Conceivably, some such changes may affect safety; others may not. Where it is apparent to this Board that a particular exercise of management prerogative would constitute a threat to employee safety, we believe there is warrant for a finding which will require bargaining at the time when implementation of any projected change is proposed. [emphasis supplied]

In the instant proceeding, it is not apparent to civilians to this Board that the assignment of civilians to the operation of motor vehicles has created a threat to the safety of correction officers. The Union has presented no evidence or persuasive argument to support a finding that the safety of correction officers bas been jeopardized. Rather, the Union's arguments are addressed, almost entirely, to the question of security on Rikers Island. The consequences to island security enumerated. by the Union in its petition are speculative and, as presented, bear no direct correlation to the safety of correction officers. Questions relating to the effectiveness of the deployment of City-forces

is not a subject properly brought before this Board.[10]

In numerous decisions dealing with the City's civilianization program, this Board has reiterated the need for specific facts which demonstrate practical impact.

> 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.[11]

In the instant petition, the Union has failed to support its argument that civilianizaticn of Rikers Island's "On Island" transportation has created a practical impact upon the safety Of correction officers.

We note that while the Union has also alleged the exclusive right to perform this job function, it has furnished no evidence in support of this assertion and has failed to controvert the City's assertion that this function had been performed by inmates prior to 1972.

Based on the foregoing, we find there is no requirement, that the parties bargain over the City's assignment of non-uniformed, civilian personnel to operate these vehicles and we dismiss the Union's petition.

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[10] Decision No. B-5-80. In that proceeding, we held that effectiveness was not an issue properly before this Board in that "neither petitioner nor this board has the authority or responsibility to share with the Police Commissioner determinations as to the best means of performing and fulfilling the mission of the Police Department."

[11] Decision No. B-27-80. See also Decision Nos. B-26-80; B-33-80.

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 Correction officers' Benevolent Association's scope of bargaining petition in the case docketed as BCB-585-82 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
August 24, 1982

ARVID ANDERSON
CHAIRMAN

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MEMBER

DANIEL G. COLLINS
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EDWARD F. GRAY
MEMBER

MARK J. CHERNOFF
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EDWARD SILVER
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