CWA v. HRA, 29 OCB 37 (BCB 1982) [Decision No. B-37-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

COMMUNICATIONS WORKERS, OF AMERICA, AFL-CIO, on behalf of Senior Assistant Office Managers, Administrative Assistants and Supervisors (PAA I) in Income Maintenance Centers,

DECISION NO. B-37-82

DOCKET NO. BCB-560-82

Petitioner,

-and-

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Respondent.
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INTERIM DECISION ORDER

A verified improper practice petition was filed by the Communications Workers of America, AFL-CIO (hereinafter "CWA") on January 15, 1982, in which it was charged that the New York City Human Resources Administration (hereinafter "HRA") unilaterally had undertaken certain actions affecting mandatory subjects of bargaining or having a practical impact upon employees, and had refused to bargain with CWA concerning these actions. The Union asserts that HRA's unilateral actions and refusal to bargain constitute improper practices in violation of §1173-4.2(a)(1) and (4) and §1173-4.3(b) of the New York City Collective Bargaining Law (herein-

after "NYCCBL"). The relief sought by CWA is an order directing HRA to bargain collectively in good faith regarding the challenged actions.

HRA, by its representative, the Office of Municipal Labor Relations (hereinafter "OMLR"), filed an answer and supporting affidavits and exhibit on January 27, 1982. OMLR'S submission describes and explains the actions of HRA which are challenged in the petition, and argues that those actions are reasonable exercises of management prerogative which have no practical impact on the employees involved. On this basis, OMLR requests that the petition be dismissed.

CWA filed a reply and supporting affidavit and exhibits on February 10, 1982. These documents dispute many of the allegations of HRA's answering papers.

Background

The dispute between the parties herein concerns a reorganization program initiated by HRA at certain Income Maintenance Centers. HRA claims that this reorganization was undertaken in response to criticisms contained in an evaluation of personnel policies in the Income Maintenance program which was prepared by the United States Office of Personnel Management. The aim of the reorgani-

zation, according to HRA, is to improve the efficiency of the supervisory structure in Income Maintenance Centers. The expressed motive for the reorganization is not disputed by CWA.

An understanding of the nature of the reorganization is complicated by(HRA's)use of a number of different office titles for employees serving in the various levels of the broad-banded civil service title of Principal Administrative Associate (hereinafter "PAA").[1] Prior to the reorganization, the supervisory structure in Income Maintenance Centers included a Director and an Office Manager, both managerial positions; a Senior Assistant Office Manager, filled by a PAA., Level III; an Administrative Assistant to the Senior Assistant office manager, filled by a PAA, Level I; Assistant Office Managers, filled by PAA's, Level II; and Supervisors, filled by PAA's, Level I.

Under the reorganization, as implemented, the job duties of the Senior Assistant Office Manager were changed, and the position of the Administrative Assistant to the Senior Assistant Office Manager was eliminated.

[1] CWA is the certified representative of employees serving in all three levels of the title of Principal Administrative Associate. Office titles are not utilized for purposes of certification nor for purposes of the union recognition and unit designation article of the collective bargaining agreement.

Additionally, the functions of two previously - separate units in each Center, the Reception/Quick Service Unit (hereinafter "Reception") and the Disbursement and Collections Unit (hereinafter "D&C"), were combined into a single unit under the supervision of a single Supervisor (PAA, Level I), with the consequent elimination of the position of an additional Supervisor in each Center.

Eventually, all 41 Income Maintenance Centers will undergo the above reorganization. Implementation of the reorganization was to begin on February 1, 1982. The record is not clear concerning the extent to which the reorganization, has been completed at the present time. It appears that the process could not be completed immediately upon the initial implementation date because the combination of the Reception and D&C Units requires physical reconstruction of parts of the facilities in which the Income Maintenance Centers are housed.

The Union learned of the planned reorganization on December 18, 1981. It is claimed by CWA that, from that date, it has demanded that HRA bargain over the following subjects:

a. elimination of the position of Senior Assistant Office Manager, as that position was previously defined;

b. wages for the position of Senior Assistant Office Manager, as that position is now defined;

c. practical impact on PAA's who are demoted or laid off as a result of the elimination of their positions in the reorganization;

d. practical impact on the working conditions, including workload and manning, of remaining employees in the bargaining unit;

e. practical impact on the safety of the remaining PAA, Level I, in the combined Reception/D&C Unit.

CWA asserts that HRA has refused to bargain over these subjects.

Positions of the Parties

CWA's Position

CWA contends that the change in job function and responsibility for the position of Senior Assistant Office Manager constitutes the creation of a new position. The Union also argues that certain of the duties prescribed for the newly-defined position would call for the performance of out-of-title work (i.e., the performance of managerial work by a non-managerial employee). CWA concludes that HRA should be required to bargain over the wages to be paid employees serving in this new position.

The Union further alleges that, as a result of the reorganization, the positions of between 82 and 123

PAA's will be eliminated.[2] CWA claims that this elimination of positions will result and has already resulted in the layoff and/or demotion of employees. Incidental to this, CWA alleges that employees have been transferred involuntarily to work locations far from their homes, and some have been forced to accept a demotion in order to avoid such unwanted transfers. It is also claimed by CWA that some unit employees have been reassigned to duties commensurate with a lower assignment level within the broad-banded title of PAA, without any diminution of salary, but also without any guarantee that they will continue to receive salary of the higher level position.

CWA contends that a per se practical impact results from the layoff or demotion of unit employees, and that HRA has refused to bargain over such impact. It is also claimed by CWA that the reduction in positions has a practical impact on the working conditions of the remaining unit employees, including workload and manning, and that HRA has similarly refused to bargain over this

[2] 82 positions represents the elimination of the positions of one Administrative Assistant to the Senior Assistant Office Manager (PAA, Level I) and one Supervisor (PAA, Level I) in each of 41 Income Maintenance Centers. The figure 123 apparently represents, in addition to the above, the purported elimination of the position of a Senior Assistant Office Manager (PAA, Level III) in each Center, as a consequence of the redefinition of the duties of that position.

impact. In connection with this claim, CWA alleges that Appendix I of the current collective bargaining agreement contains an acknowledgment by management that "such changes" have an impact on working conditions.

Finally, CWA asserts that the combination of the Reception and D&C Units has a practical impact on the safety of the Supervisor (PAA, Level I) assigned to each of the combined units. Specifically, CWA alleges that placing the large number of clients serviced by the Reception Unit in an area accessible to the large amounts of cash and negotiable instruments handled by the D&C Unit, increases the risk of theft and of harm to the Supervisor. The Union cites one particular incident in which the cash box in a combined unit disappeared. CWA again alleges that HRA has refused to bargain over this practical impact on safety.

On these grounds, CWA argues that HRA has failed and refused to bargain in good faith concerning the reorganization of its Income Maintenance Centers. Thus, CWA asserts that HRA has committed an improper practice, in violation of §1173-4.2(a) of the NYCCBL.

HRA's Position

HRA contends that the reorganization undertaken in the Income Maintenance Center is an exercise of HRA's

management rights, under §1173-4.3(b) of the NYCCBL. Moreover, HRA asserts that no practical impact has resulted or will result from the reorganization. HRA notes that, under the decisions of the Board of Collective Bargaining, an employer's obligation to bargain does not arise until a Board determination of the existence of practical impact is made. No such determination has been made in this case, and so, argues HRA, its failure to bargain with CWA cannot form the basis of an improper practice.

HRA disputes certain of the factual allegations made by CWA. Most significantly, HRA's answer and supporting, affidavits repeatedly state that the reorganization will not result in any terminations, layoffs, demotions, reductions in assignment levels, or performance of out-of-title work. The Union's assertions of a practical impact on safety is also contradicted by HRA, which alleges that Supervisors in the combined Reception and D&C Units are safeguarded by the fact that access to the areas in which cash and checks are kept is restricted to authorized personnel.

Concerning the redefinition of the position of Senior Assistant Office Manager, HRA explains that, until recently, that position had an important function under the "Random Assignment System", and was charged with the

responsibility of moving subordinate personnel from unit to unit within a Center in order to adjust staffing to workload. However, under the "Caseload Assignment System" now being implemented, staff workers are not transferred from unit to unit to meet the changing needs of work flow, and thus this aspect of the job of the Senior Assistant Office Manager became obsolete. A management analysis of this position showed that most of the other responsibilities of this position were identical to those of thelower title of Assistant Office Manager; and, a few duties were more properly assigned to the managerial position of Office Manager. Accordingly, HRA eliminated those duties of the Senior Assistant Office Manager which constituted an additional layer of supervision between the Assistant Office Manager and Office Manager levels. However, the Senior Assistant Office Manager position was retained, with its corresponding PAA, Level III pay status, for the purpose of assuming responsibility for the office Manager function during the Office Manager's absence from the office.

HRA further explains that the merger of the Reception and D&C Units was undertaken because, as separate units, Reception was busier in the mornings, and D&C was busier in the afternoons. By merging the two units under

one Supervisor, a more efficient use of supervisory personnel became possible. In this regard, HRA alleges that the supervisory ratio in the combined unit is not burdensome and is well within the Supervisor's job specifications.

For these reasons, HRA submits that its reorganization of Income Maintenance Centers constitutes the legitimate exercise of a management right which has no practical impact on the employees affected. Therefore, HRA requests that the improper practice petition be dismissed.

Discussion

Initially, we will dismiss CWA's claims under §1173-4.2(a)(l) and §1173-4.3(b) of the NYCCBL. The former section concerns claimed interference, restraint or coercion of public employees' exercise of their rights under the NYCCBL. We find that the Union has entirely failed to allege any facts tending to demonstrate any such actions by HRA in this case. The latter section mentioned above defines the scope of management rights and the right to bargain over practical impact. It does not created an independent basis for an improper practice. However, it seems clear that what the Union means in citing §1173-4.3(b) is that HRA has failed to bargain over an alleged practical impact. Thus, while we dismiss CWA's claim under that

section, we do so without prejudice to its claim of failure to bargain properly raised under NYCCBL §1173-4.2(a)(4).

We first address the merits of CWA's claims relating to the position of Senior Assistant office Manager. CWA alleges that HRA's redefinition of the duties of that position have, in effect, caused the elimination of that position and the creation of a new position. The Union demands bargaining over both the practical impact resulting from the elimination of the position, and the salary to be paid employees assigned to the new position. HRA responds that all it has done is to remove from the position in question those duties which are no longer needed, due to the changeover from a "Random Assignment System" to a "Caseload Assignment System", or which unnecessarily duplicate the duties of other positions. HRA alleges that although the duties of the position are now different, that office title will continue to exist, at the same PAA, Level III, salary level. It is argued by HRA that its actions with respect to this title are within its management rights under §1173-4.3(b) of the NYCCBL. It is further asserted by HRA that no layoffs, demotions, or reductions in assignment level will result from its actions, and thus, no practical impact will occur.

In reviewing the papers submitted to this Board, it appears that when CWA alleges that there have already been demotions of employees because of the "elimination" of the Senior Assistant Office Manager position, it refers to the fact that certain employees previously serving in that title and receiving the salary of a PAA, Level III, have been assigned to new duties which the union believes to be commensurate with the position of a PAA, Level II. There is, however, no allegation that any employee has suffered a reduction in salary due to the reassignment of duties. To the contrary, HRA has represented, in its answer and supporting affidavits, that there will be no reduction in assignment level or salary.

Section 1173-4.3(b) of the NYCCBL provides that right of management to it is the

> ... determine the standards of services to be offered by its agencies; determine the standards oi selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legit-itmate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which govern-ment operations are to be conducted; deter-mine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise com-plete control and discretion over its organi-zation 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, notwithstanding the above, questions con-

> cerning 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."

We find that HRA's redefinition of the duties of a Senior Assistant Office Manager is within the scope of management's right to "direct its employees", "maintain the efficiency of governmental operations", "determine the methods, means and personnel by which government operations are to be conducted", and "determine the content of job classifications". The fact that the redefinition of duties results in a decrease in responsibility does not, in itself, constitute a practical impact. We have long defined the term practical impact to mean an unreasonably excessive or unduly burdensome workload as a regular condition of employment.[3] On the record before us, we cannot say that a reduction in duties without any corresponding reduction in salary constitutes a practical impact.

The Union's contention that the employees affected have no guarantee that their salary (and assignment level) will not be reduced in the future, is not persuasive. In the face of HRA's written representation to this Board that the Senior Assistant Office Manager position will retain its PAA, Level III, classification and that no

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[3] Decision No. B-41-80 and cases cited therein at footnote 2.

employees will suffer a reduction in assignment level due to management's redefinition of the position's duties, we cannot speculate that such a reduction will occur in the future.[4] In the event that layoffs, demotions, or reductions in assignment level actually occur at some time in the future, CWA will be free to raise its claim of practical impact at that time.

We find CWA's claim that the redefinition of duties has created a new position concerning which HRA is required to bargain with the Union over wages, to be without merit. The record indicates that the redefinition of duties involves the elimination of duties incidental to the now-obsolete "Random Assignment System", the assignment of certain duties held in common with Assistant Office Managers (PAA, Level II), and the continuation of the previously-existing responsibility to fill-in for the Office Manager during the latter's absence. There is no indication that the redefinition calls for the assignment of duties not previously performed by PAA's serving in one or more of the relevant office titles.

[4] We note, however that PAA is a broadbanded Title, consisting of three levels, and that management is free to assign an employee to any level, or to change such assignment at will, except as limited by the collective bargaining agreement. We therefore question what kind of guarantee CWA would have this Board require of the employer.

Based on this record, we fail to see how the redefinition of duties, a matter within the scope of management's statutory prerogative, constitutes the creation of a new position in this case. The Union has been certified by the Board of Certification and recognized by the employer, in Article I, section 1 of the collective bargaining agreement, as the exclusive representative of employees in the title of PAA. Neither the certification nor the contractual recognition clause refer to the office titles to which PAA's may be assigned.

We now consider the Union's claims relating to the merger of the Reception and D&C Units under the direction of one Supervisor (PAA, Level I). It is not this Board's function to evaluate the wisdom of HRA's decision to combine these units. It is apparent that this decision was within the scope of HRA's management rights, under NYCCBL §1173-4.3(b), to "determine the methods, means and personnel by which government operations are to be conducted" and to "exercise complete control and discretion over its organization and the technology of performing its work". However, any practical impact found to result from the exercise of HRA's management rights is within the scope of bargaining.

CWA claims three categories of practical impact resulting from HRA's reorganization plan. These may be summarized as follows:

1. practical impact on PAA's who are demoted or laid off as a result of the elimination of their positions;

2. practical impact on the working conditions, including workload and manning, of remaining employees in the bargaining unit;

3. practical impact on the safety of the remaining PAA, Level I, in the combined Reception/D&C Unit.

The first category involves CWA's claim that the merger of the Reception and D&C Units under a single Supervisor (PAA, Level I) has had the effect of eliminating the position of one PAA, Level I in each Income Maintenance Center. This allegation is not disputed by HRA. For purposes of our determination, we include in this category the Union's undisputed claim that the position of one PAA, Level I, assigned as Administrative Assistant to the Senior Assistant Office Manager, has also been eliminated in each Center. Thus, the record indicates that a total of two PAA, Level I positions in each of 41 Centers will be eliminated under HRA' reorganization plan. CWA claims that, of necessity, there will be layoffs or demotions of 82 employees, and that a per se practical impact results therefrom.

The Union is correct in stating that this Board has held that a management decision to lay off employees results in a per se practical impact.[5] The practical impact resulting from the employer's 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.[6]

The difficulty with the Union's position on this matter is that while HRA concedes that the positions in question will be eliminated, it expressly and repeatedly asserts that no employee whose position is eliminated will be laid off or demoted. It is HRA's plan that the employees affected will be reassigned and/or transferred to other positions without reduction in assignment level.

Thus, we are faced with a dispute over whether there has been a management decision to lay off, such as would trigger a practical impact. The employer expressly having disavowed any intention to lay off or demote unit employees, the burden shifts to the Union to establish that there have been or will be layoffs or demotions. We find that CWA has failed to meet this burden.

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[5] Decision Nos. B-3-75, B-18-75, B-21-75, B-41-80.

[6] Id.

CWA's evidence of layoffs and/or demotions of PAA's, Level I, consists of allegations that certain employees have been transferred to new work locations requiring lengthy daily commutes from the employees' homes, and that at least one specified individual accepted a voluntary demotion to the title of Officer Associate rather than comply with a transfer to a PAA position in a work location far from home. Although the present condition of the City's mass transit system makes us sympathetic to the plight of all employees who face lengthy commutes to and from work, we can hardly find that a transfer necessitating such a commute is the equivalent of a demotion or layoff. Moreover, we must note that we have recognized that the right to transfer employees is within the scope of management's rights under §1173-4.3(b) of the NYCCBL; unless undertaken for an improper reason.[7] No improper reason has been suggested by the Union for the transfers resulting from HRA's reorganization of Income Maintenance Centers. Therefore, though the transfers complained of may pose a hardship for the employees affected thereby, it appears that they are the result of a legitimate exercise of management prerogative. The additional travel time necessitated by some of these

[7] Decision No. B-8-81.

transfers does not constitute practical impact, as this Board has defined that term.[8]

The second category of CWA's claim relating to the merger of the Reception and D&C Units involves the allegation that there has been a practical impact on the working conditions, including workload and manning, of the remaining unit employees in the Income Maintenance Centers. Related to this claim is CWA's contention, set forth in the supporting affidavit of Local 1180's President, that the redefinition of duties of the Senior Assistant Office Manager and the elimination of the position of Administrative Assistant to the Senior Assistant Office Manager has placed additional burdens on other unit employees.

As we have previously held, practical impact is a factual question, and the existence of such impact cannot be determined when insufficient facts are provided by the union.[9] We find the Union's allegations of practical impact on workload and manning to be vague and conclusory. Its claim is disputed by HRA. In the face of HRA's specific assertion that practical impact on the workload of remaining unit employees would be nonexistent or de minims (affidavit of Martin Burdick,

[8] See footnote 3, supra, and accompanying text.

[9] Decision Nos. B-16-74, B-27-80.

¶¶ 14-15), the burden was on CWA to come forward with details of the nature and extent of the practical impact on workload, sufficient to counter HRA's assertions and warrant a hearing. Yet, the Union's response was only to allege that the challenged management action "... will place additional burdens on other supervisors" and increases the workload for the A.A.'s to the office Manager and Director at each Center" (affidavit of Arthur Cheliotes, ¶¶ 9,16). on the basis of the record before this Board, we find that CWA has failed to allege facts sufficient to establish that any unreasonably excessive or unduly burdensome workload has resulted from HRA's reorganization plan, and thus we are unable to find the existence of any practical impact on workload or manning.[10]

[10] We note CWA's reliance on Appendix I of the collective bargaining agreement, in support of its claim of practical impact. We do not read the cited language of Appendix I, which paraphrases the practical impact clause of the statute, to be a concession that there is a practical impact. Rather, we read it as an acknowledgment by the City that the Union has the right to negotiate any practical impact on employees which results from management's actions. In any event, it is not the function of this Board, in an improper practice proceeding, to enforce the terms of the parties' collective bargaining agreement.

The final category of CWA's claim relating to the merger of the Reception and D&C Units involves the allegation that in the combined unit, waiting clients and Public Works Program participants have access to areas in which large sums of cash and checks are kept. The Union contends that this arrangement increases the risk of theft and of harm to the single Supervisor (PAA, Level 1) in charge of the unit. The Union explains that prior to the reorganization and merger, these two units were separately located and separately supervised, and only authorized employees had access to the D&C Unit's cash and checks. CWA argues that HRA's actions in combining the two units has had a practical impact on the safety of bargaining unit employees working in the Reception and D&C Units. Furthermore, CWA alleges details of an incident in a combined unit in which the cash box was actually stolen.

HRA characterizes CWA's allegations of a practical impact on safety as conclusory. Additionally, HRA contends that it has completed physical reconstruction of certain work areas in Income Maintenance Centers in order to restrict access to areas in which cash and checks are kept. It is alleged by HRA that neither clients nor

unauthorized staff can gain access to these secure areas, and thus, there is no increased risk to the safety of the PAA, Level I, assigned to supervise the unit.

In reply, CWA disputes HRA's claim that the physical reconstruction of secure areas has been completed, and further disputes the contention that the new construction has been designed to provide safety. CWA notes that in one Center, the only door to the area in question has no lock and no peephole.

We have recognized, in past cases, that the existence of a clear threat to employee safety constitutes a per se practical impact which warrants the imposition of a duty to bargain over the impact of a management decision prior to the time that decision is implemented. However, this does not mean that a union need only claim a practical impact on safety in order to require the employer to bargain. The question of whether there is a clear threat to employee safety, if disputed by the employer, is a matter to be determined by this Board before the obligation to bargain arises. The fact that a threat to safety constitutes a per se practical impact justifies imposing a duty to bargain prior to the time of implementation; it does not relieve the union of the burden of first proving the existence of such threat to safety.[11]

[11] Decision No. B-5-75.

We find that a disputed question of fact exists in this case as to whether there is a threat to the safety of PAA's assigned to the combined Reception and D&C Unit. Accordingly, we will direct that a hearing be held before a Trial Examiner designated by the Office of Collective Bargaining, for the purpose of establishing a record upon which we may ascertain whether there exists any practical impact upon the safety of the employees involved.

Finally, we reiterate our long-held rule that a duty to bargain on an alleged practical impact does not arise until the question of whether the practical impact exists has been determined by this Board.[12] We have 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." [13]

Accordingly, inasmuch as there has been no prior determination by this Board concerning the practical impact claimed by CWA in this case, there was no duty on the part of HRA to negotiate the demands raised by the Union

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[12] Decision Nos. B-9-68, B-41-80.

[13] Id.

in connection with HRA's reorganization plan. For this reason, HRA could not have been guilty of the improper practice of refusing to bargain in good faith, under NYCCBL §1173-4.2(a)(4), and no improper practice charge under this section could be sustained. Rather than dismissing the Union's improper practice petition outright, we have considered it as though it were a scope of bargaining petition. For the future guidance of the parties, we wish to make clear that since a finding of practical impact is a condition precedent to a duty to bargain to alleviate such impact, the proper mechanism for bringing a dispute of this nature before this Board is through a scope of bargaining proceeding.

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 petition filed by the Communication Workers of America, AFL-CIO, be, and the same hereby is, dismissed, except to the extent that it is deemed to be a scope of bargaining petition; and to that extent, the issue of practical

impact on the safety of unit employees in the Reception/ Disbursement and Collections Unit is referred to a Trial Examiner designated by the Office of Collective Bargaining for the purpose of conducting a hearing and establishing a record upon which this Board may determine whether any practical impact exists.

DATED: New York, N.Y.
September 23, 1982

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
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EDWARD SILVER
MEMBER

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MEMBER

CAROLYN GENTILE
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