

Hannon, McManus v. OTB, 33 OCB 29 (BCB 1984) [Decision No. B-29-84 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice

-between-

VIVIANE B. HANNON,
KAREN McMANUS,

DECISION NO. B- 29-84

DOCKET NO. BCB-719-84

Petitioners

-and-

NEW YORK CITY OFF-TRACK BETTING
CORPORATION,

Respondent.

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DETERMINATION AND ORDER

On July 19, 1984, Viviane B. Hannon and Karen McManus ("Petitioners") filed an improper practice petition alleging that the New York City Off-Track Betting Corporation ("OTB" or "respondent") violated section 1173-4.2c (5) of the New York City Collective Bargaining Law ("NYCCBL") by failing to execute a written agreement and by failing to take the necessary steps to implement an agreement. On July 20, 1984, respondent filed an answer to the petition. No reply was submitted.

Background

The title Branch Office Manager (OTB) consists of two assignment levels. The higher assignment level has been given the in-house title of Branch Manager

(Branch office Manager in charge of a branch), while the lower assignment level corresponds to the in-house title of Shift Manager (Branch Office Manager in charge of a shift).

Petitioner Hannon was hired by OTB on March 13, 1972 as a Branch Office Manager Trainee. Shortly thereafter, she became a Shift Manager. on June 14, 1980, Hannon was assigned to the position of Branch Manager. Petitioner McManus was hired by OTB on December 21, 1970, as a Supervisor. On January 3, 1973, she became a Shift Manager. In July 1982, she was assigned as a Branch Manager. By separate letters from OTB Vice-President Howard A. Mattelli, dated May 31, 1984, petitioners were advised that, due to the "reduced need for managers in charge of a branch", they would be reassigned to the position of Shift Manager, effective July 1, 1984. Each reassignment was accompanied by a \$2100 reduction in annual salary. Petitioners were further advised that their reassignments, two of seven being made at that time, were "determined by inverse order of title seniority."

Positions of the Parties

Petitioners' Position

Petitioners contend that their reassignments from Branch Manager to Shift Manager constitute non-disciplin-

ary demotions. The subject of demotions for other than disciplinary reasons was not brought before the membership of Local 858, IBT ("Local 858" or "the Union")¹ for consent or ratification and, thus, is not covered by the collective bargaining agreement between the union and OTB. Petitioners claim that this omission on the part of OTB (as well as on the part of the Union)² violates NYCCBL Section 1173-4.2c(5) which provides that

"[t]he duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement."

Petitioners argue further that, in the absence of negotiated procedures for non-disciplinary demotions, their reassignments should have been determined in accordance with their seniority within OTB. In support of this view, petitioners point to Article XIV of the 1982-84

¹ Local 858, IBT is the certified collective bargaining representative for employees in the titles Branch Office Manager (OTB) and Branch office Manager Trainee (OTB).

² Petitioners complain that "Local 858 ... bargained away our rights, without consent, to the [OTB]." However, the Union is not named as a respondent in this proceeding. Accordingly, we do not consider any of the allegations of the petition as they may relate to the Union.

agreement between OTB and Local 858 ("the Agreement") which, at Section 4 (2), provides that layoffs from among incumbents in the same class of positions shall be implemented "in inverse order to date of original appointment."

As a remedy, petitioners request that OTB be directed to honor petitioners' respective corporate seniority dates, reassign them to their positions as Branch Managers, and compensate them for all monies lost as a result of the "demotions." Additionally, petitioners request that we order OTB to maintain a seniority list by order of assignment to the Branch Office Manager title.

Respondent's Position

OTB maintains that its decision to reassign personnel from the higher assignment level of Branch Manager to the lower assignment level of Shift Manager was within its management prerogatives under NYCCBL section 1173-4.3b to direct its employees and to maintain the efficiency of governmental operations. Respondent explains that such reassignments were appropriate because the number of Branch Managers exceeded the number of positions that were necessary for efficient operations. In addition the Racing,

Pari-Mutuel Wagering and Breeding Law and the Civil Service Law mandate the assignment of personnel to a title and assignment level that correspond to the duties to be performed by such personnel.

OTB also asserts that, notwithstanding its right to determine, without negotiations, the method by which level assignments within the Branch Office Manager title are made, respondent consulted with Local 858 and informed the Union in advance that reassignments would be made in accordance with level seniority, that is, in inverse order of assignment from Shift Manager to Branch Manager. It is alleged that the date of appointment to the title Branch Office Manager (OTB) was not taken into consideration. Moreover, OTB notes, the reduction in salary that accompanied the reassignments is authorized by the Agreement which, at Article VII, Section 1(a), sets forth a separate salary range for each assignment level of the title.

It is argued that respondent's actions were a proper exercise of its management rights, consistent with its obligations under the Racing, Pari-Mutuel Wagering and Breeding Law, OTB Rules and Regulations and the collective bargaining agreement covering employees in the Branch Office Manager title; that petitioners have failed to plead any facts which would support a finding of improper practice; and that the petition should therefore be dismissed.

Discussion

Section 1173-4.2c of the NYCCBL defines the elements of the duty of a public employer and a public employee organization to bargain collectively in good faith. Among these is the obligation to execute a written agreement and to implement its terms "if an agreement is reached."³ The gravamen of the improper practice complaint in the instant case is OTB's alleged failure to fulfill this obligation. Such an allegation, if proven, would constitute a breach of the duty to bargain and an improper practice under NYCCBL section 1173-4.2a(4).⁴

Preliminarily, we note that petitioners have not alleged that any negotiations occurred between the Union and OTB on the subject of "non-disciplinary demotions" or

³ NYCCBL §1173-4.2c(5). See text at page 3 supra.

⁴ NYCCBL section 1173-4.2a(4) provides:
It shall be an improper practice
for a public employer or its
agents:

* * *

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

See, e.g., Westbury Teachers Ass'n v. Westbury Union Free School Dist., 8 PERB ¶3076 (1975), aff'd, 9 PERB 17018 (2d Dep't. 1976); Sylvan-Verona Beach Teachers Ass'n v. Sylvan-Verona Beach Common School Dist., 15 PERB T3067 (1982).

reassignments of Branch Managers to Shift Manager. While OTB asserts that it informed the Union in advance of the method by which it intended to implement the reassignments, which allegedly were necessary because of a reduced need for managers in charge of a branch, petitioners offer no basis for a finding in this case that an agreement was either sought or reached on the subject matter underlying the instant petition.

Even if a failure to comply with NYCCBL section 1173-4.2c(5) were established, however, we would be required to dismiss the petition. For, as individuals, petitioners lack standing to advance this claim. It is well-established that the duty to bargain in good faith runs between the public employer and the certified representative of its employees; it is not a duty owed to an individual member of the bargaining unit.⁵ Similarly, the right to negotiate belongs to the certified representative and not to individual employees on whose behalf the representative acts. Accordingly, only the representative may charge the employer with a denial of that right and with a violation of its corresponding obligation to negotiate.⁶ Since individuals may not

⁵ Decision Nos. B-6-71; B-13-81; B-15-83. See, East Ramapo Cent. School Dist. v. Kalin, 12 PERB ¶3121 (1979); State v. Robinson, 13 PERB ¶3063 (1980).

⁶ State v. Robinson, supra.

complain of a breach of the duty to bargain, and since there has been no ratification by the Union or authorization for instituting the instant proceeding, we have no alternative but to dismiss the petition.

Insofar as petitioners have alleged that their reassignments were effectuated in violation of applicable seniority principles, their petition also fails to state a claim of improper practice. Based upon a clause in the Agreement which contemplates the use of corporate seniority in determining order of layoff, this allegation sounds in breach of contract, which the Board lacks jurisdiction to consider.⁷ Allegations of contract violation are to be resolved by means of a grievance and arbitration mechanism such as that found in the agreement between OTB and the Union.⁸

⁷ See, e.g., City of New York v. District Council 37, Decision No. B-8-69. N.Y. Civ. Serv. Law §§205.5(d), 212.

⁸ Article VI of the 1982-84 Agreement. We note that, subsequent to the initiation of the instant proceeding, two requests for arbitration, concerning the same issues as are raised by this petition, were filed by Local 858, IBT, one on behalf of Branch Managers as a class (Docket No. BCB-733 83 (A-1971-84)), the other on behalf of Viviane Hannon, a petitioner herein (Docket No. BCB-740-84 (A-1976-84)).

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 docketed as BCB-719-84 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
December 18, 1984

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
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CAROLYN GENTILE
MEMBER

JOHN D. FEERICK
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