

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

FIRE ALARM DISPATCHERS BENEVOLENT
ASSOCIATION,

DECISION NO. B-2-85

Petitioner,

DOCKET NO. BCB-727-84

-and-

NEW YORK CITY FIRE DEPARTMENT;
Commissioner Joseph Spinnato;
Deputy Commissioner Joseph Bruno;
Chief of Communications Joseph
Gordon,

Respondents.

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DECISION AND ORDER

This proceeding was commenced on August 13, 1984 by the filing of a verified improper practice petition by the Fire Alarm Dispatchers Benevolent Association (hereinafter "Petitioner" or "the Union"), in which it is alleged that the New York City Fire Department ("the Department" or "the City") by its representatives, Joseph Spinnato, Commissioner; Joseph Bruno, Deputy Commissioner; and Joseph Gordon, Chief of Communications (jointly referred to as "respondents") violated Section 1173-4.2(a)(4) of the New York City Collective Bargaining Law ("NYCCBL") by unilaterally changing terms and conditions of employment relating to overtime and by ordering Supervising Fire Alarm Dispatchers to perform work not

within their job specifications. Respondents, appearing by their representative, the Office of Municipal labor Relations ("OMLR"), filed an answer on September 7, 1984, to which the Union replied on November 7, 1984.¹

Background

On June 30, 1981, the Department issued a memorandum detailing a set of procedures whereby Duty Chief Dispatchers were responsible for telephoning Supervising Fire Alarm Dispatchers ("SFADs") and Fire Alarm Dispatchers ("FADs") to work overtime; these assignments were doled out on an alphabetical basis. Seeking a more equitable distribution of overtime, in October 1981, Union Trustee Al Trojanowicz submitted a proposal to the Department in which overtime assignments were given out on the basis of hours worked, so that the employee with the least amount of hours worked was the first to be called. Also under Trojanowicz's submission, selections and calls would be made by the SFAD on duty when overtime was authorized. on March 8, 1982, the overtime calling procedure outlined in the Trojanowicz proposal was adopted by the Department and incorporated into Dispatchers's Directive #82-5.

On May 22, 1984, the Department issued a memo amending Dispatcher's Directive #82-5; SFADs and FADs who had

¹An extension of time in which to file a reply was granted because of the Union's change of counsel during the Fall of 1984.

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worked over 100 hours overtime could not be offered additional overtime until all other eligible employees were first offered the work. This action was taken in order to maximize the equalization of overtime opportunities while staying within the wage "cap" requirement of the City-wide contract.

Positions of the Parties

The Union's Position

In its petition, the Union states that in return for the Department's agreeing to utilize a voluntary rotating seniority list overtime system, SFADs agreed to take over the task of calling employees to offer them overtime and to secure adequate coverage. The Union considers the Department to have "breached" and "changed" the agreement "by refusing to allow a voluntary rotating seniority list" and by excluding many Dispatchers and Supervising Dispatchers from overtime consideration..."

In its reply, however, the Union claims that the Trojanowicz proposal was only a suggestion, nonbinding on petitioner. The Union argues that at no time was there a agreement between the parties regarding overtime procedures and that the Department undertook its action "without any attempt to negotiate in good faith, or to honor past practice..."

The Union also asserts that the petition herein was submitted in a timely manner. It contends: a) that OCB's acknowledgement of receipt of the petition constitutes an acknowledgement of the timeliness of the claim; and b) respondents' conduct amounts to a continuing wrong so that the petition is timely regardless of when it was submitted.

As a remedy, petitioner seeks a cease and desist order wherein bargaining unit members are no longer responsible for calling in other SFADs and FADs to perform overtime.

The City's Position

OMLR raises a number of defenses which go to the sufficiency of the pleadings. Firstly, the City argues that the petition provides no relevant and material documents to clarify its allegations and fails to specify the dates of the alleged occurrences, in contravention of the notice pleading requirements of Section 7.5 of the Revised Consolidated Rules of the office of Collective Bargaining ("the Rules").² Thus, concludes OMLR, the Board is

²Rule 7.5 states:

Petition-Contents. A petition filed pursuant to Rule 7.2, 7.3 or 7.4 shall be verified and shall contain:

(continued...)

precluded from making a jurisdictional determination.

Secondly, the City asserts that the petition was filed in an untimely manner. SFADs began to call in employees for ordered overtime on March 22, 1982; the improper practice petition was filed on August 13, 1984. OMLR urges that the petition should be dismissed in that it was not filed within the four-month statute of limitations period prescribed by Section 7.4 of the Rules³

(...continued)

- a. The name and address of the petitioner;
- b. The name and address of the other party (respondent);
- c. A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy, involves contractual provisions, such provisions shall be set forth;
- d. Such additional matters as may be relevant and material.

³Section 7.4 of the Rules provides as follows:

Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public

within which an improper practice petition may be filed.

employer together with a request to the Board
for a final determination of the matter and for
for an appropriate remedial order.

Thirdly, OMLR contends that Petitioner has failed to establish a prima facie case. The City states that the Union admitted in its petition that it agreed to perform the call-in duties that it now claims were unilaterally imposed and that the Union itself originally suggested this arrangement. Thus, concludes OMLR, by the Union's own admissions, the City could not have refused to bargain collectively in violation of NYCCBL Section 1173-4.2 (a) (4).

Discussion

In essence, the Union claims that respondents violated the NYCCBL by ordering SFADs to perform call-in duties relating to the distribution of overtime. As a remedy, the Union seeks to have SFADs relieved of these duties. The unrefuted facts contained in the City's answer clearly establish that Dispatcher's Directive #82-5, which contains the overtime calling procedures complained of herein, was promulgated and took effect in March, 1982. Bargaining unit personnel actively participated in the procedures outlined therein for nearly two and a half years before filing the instant improper practice petition. It is thus obvious that the petition was filed well beyond the scope

of the four-month statute of limitations period contained in Section 7.4 of the Rules and must therefore be dismissed as untimely.

Further grounds for dismissal are based upon NYCCBL Section 1173-4.3(b) which states, in pertinent part:

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; determine 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.

While the Union's pleadings contradict each other with regard to whether or not the parties entered into an agreement regarding overtime distribution procedures in late 1981/early 1982, it is clear that the Department was guided by, and incorporated, the substance of Union Trustee Trojanowicz's overtime proposal into Dispatcher's Directive #82-5. The adoption of the Union's proposal does not mean, however, that the Department ceded any of the managerial

prerogatives contained in Section 1173-4.3(b) of the Law regarding actual implementation of the aforementioned procedures. The City has the statutory right to "direct its workforce" and to "determine the methods, means and personnel by which governmental operations are to be conducted." The assignment of call-in duties to a supervisory FAD falls within the scope of the City's rights to assign duties to its personnel and may not form the basis for either an out-of-title claim or an improper practice petition.

Furthermore, we note that it is uncontroverted that the Department's modification of the overtime procedures contained in Dispatcher's Directive #82-5 was necessary in order to adhere to the collectively negotiated overtime limitations contained in the City-wide agreement. Under these circumstances, the Union cannot be heard to allege an improper practice merely because an apparently justified modification in procedures it suggested has taken place which might be to the disadvantage of some bargaining unit members.

For the reasons set forth above, we are compelled to dismiss the instant improper practice petition.

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-727-84 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
February 19, 1985

ARVID ANDERSON
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