OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- - - - - - - - - - - - - - - - - x
In the Matter of the Improper
Practice Proceeding

-between-

UNITED PROBATION OFFICERS
ASSOCIATION,

DECISION NO. B-29-87

Petitioner,

DOCKET NO. BCB-968-87

-and-

THE NEW YORK CITY DEPARTMENT OF
PROBATION,

Respondent.
- - - - - - - - - - - - - - - - - x

DECISION AND ORDER

This proceeding was commenced on June 9, 1987 with the filing of a verified improper practice petition by the United Probation Officers Association (herein "UPOA" or "petitioner') against the New York City Department of Probation (herein "City"). The City, appearing by its Office of Municipal Labor Relations, filed a verified answer on July 6, 1987. UPOA filed a reply on July 21, 1987.

The petition alleges that the City "has unilaterally changed the amount of overtime allowed for certain job functions. The amount of time allowed for pre-sentence investigation recommendations has been reduced from 1½ hours in King's County to ½ hour." UPOA asserts

that the City has, by this action, violated the New York City Collective Bargaining Law ("NYCCBL"),[1] past practice, and the collective bargaining agreement.

The reply specifies that the contractual provision allegedly violated is Article 5, Section 1.[2] The petitioner requests "either a favorable ruling or that the Board refer this matter to arbitration since a grievance is pending on the contract violation claimed."

---

[1]NYCCBL Section 1173-4.2a(4) states that it is an improper practice for an employer "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."

[2]Article 5, Section 2 reads, in relevant part:

> 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 City's Position

The City takes the position that the assignment and allocation of overtime falls within the statutory rights granted by NYCCBL Section 1173-4.3(b) which reads, in relevant part:

> It is the right of the City...to determine the standards of services to be offered by its agencies; ... direct its employees; ... maintain the efficiency of government operations; determine the methods, means and personnnel by which government operations are to be conducted; determine the content of job classifications; ... and exercise complete control and discretion over its organization and the technology of performing its work.

The City also asserts that there is no limitation in the contract or elsewhere on the City's statutory right with respect to the assignment of overtime.

Discussion

Under the circumstances herein, we believe that the City's position is the correct one. In a number of recent cases arising in the context of challenges to arbitrability, we have been called upon to determine the arbitrability of grievances involving the denial of overtime or the failure to assign overtime. In finding these grievances to be not arbitrable, we have stated

that in the absence of a limitation in the contract or otherwise, the assignment of overtime is within the City's statutory management right "to determine the methods, means and personnel by which government operations are to be conducted."[3] Even where the contract provides for compensation for overtime worked pursuant to order or authorization, we have found that such a provision "in no way establishes that an employee is guaranteed the right to perform overtime work in any particular circumstance."[4] Moreover, in the absence of contractual or other limitation, the determination that recommendations prepared or communicated in a half hour are sufficient for the City's purposes would appear to fall within its statutory right "to determine the standards of services to be offered" as well. Clearly, the decision as to when and how much overtime is to be authorized or ordered falls within the realm reserved to the City by Section 1173-4.3(b), and thus it is outside the scope of the City's obligation to bargain collectively.

The petitioner appears to argue that the City's

[3]Decision Nos. B-23-86, B-35-86, B-17-87, B-20-87.

[4]Decision No. B-35-86.

action violates the NYCCBL because the City did not comply with the contractual provision cited. Under the circumstances herein the Board has no jurisdiction over a claimed contractual violation.[5] Any such claim is subject to the grievance-arbitration procedure.

For the reasons set forth above, we are compelled to dismiss the petition herein, without prejudice to the timely filing of a request for arbitration by the UPOA.

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

---

[5]Section 205.5(d) of the Taylor Law, which is applicable to this agency, provides that:

> ...the board shall not have authority to enforce an agreement between a public employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

ORDERED that the improper practice petition filed by the United Probation officers Association in Docket No. BCB-968-87 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
July 22, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

DEAN L. SILVERBERG
MEMBER

PATRICK F. X. MULHEARN
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER