

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC.,

Petitioner,

DECISION NO. B-34-87

DOCKET NO. BCB-949-87

-and-

NEW YORK CITY DEPARTMENT OF
CORRECTION and
THE CITY OF NEW YORK

Respondents.

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DECISION AND ORDER

On April 10, 1987, the Correction Officers' Benevolent Association ("COBA" or the "petitioner") filed an improper practice petition in which it alleged that the New York City Department of Correction and The City of New York (the "Department" or "respondents") violated Section 1173-4.2(a)(4) of the New York City Collective Bargaining Law "by unilaterally changing the scope and conditions of the Employees Assistance Program available to officers of the New York City Department of Correction." On June 12, 1987, respondents moved, pursuant to Section 13.11 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), for an order dismissing petitioner's improper practice petition

"upon the ground that it had failed to state a cause of action which may be considered by the Board."

Positions of the Parties

Union's Position

In its petition, the Union states that the Employees Assistance Program has been in existence and providing services for its members since April, 1980. The Union notes that

[t]his period of time has encompassed several periods of collective bargaining which have resulted in new contracts between the City and C.O.B.A.. The benefits provided by this program constitute a significant benefit contributing to the health and welfare of petitioner's members, and, as such, is clearly within the scope of collective bargaining as provided for in Section 1173-4.3 of the New York City Collective Bargaining Agreement [sic].

The Union further notes that this violation is particularly serious in view of the presently scheduled negotiations for a new contract.

For its remedy, COBA is seeking a Board order directing respondents to

[r]escind the recently enacted changes limiting the scope of the Employees Assistance Program, reinstitute the guidelines under which the E.A.P. has functioned, and order respondents to negotiate with petitioners over any

changes in departmental policies affecting this program.

Respondents' Position

In an affirmation in support of its motion to dismiss, respondents claim that despite the charge that the Department has unilaterally changed the scope and conditions of the Employees Assistance Program, petitioner fails to state how, in fact, the Program has been changed. Thus, it argues, petitioner alleges no facts which even arguably establish a violation of the statute. Respondents request, therefore, a Board order dismissing the improper practice petition.

Discussion

On June 12, 1987, respondents filed a motion to dismiss, pursuant to Section 13.11 of the Revised Consolidated Rules of the Office of Collective Bargaining, in which it was stated that petitioner had failed to indicate how, if at all, the Employees Assistance Program had been changed. The Union did not respond to the motion to dismiss. Section 13.11 provides as follows:

All motions, other than those made during a hearing, shall be made in writing, shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds of such motion. The moving

party shall serve copies of all motion papers on all other parties and shall within three (3) days thereafter file the original and three (3) copies thereof, with proof of service. Answering affidavits, if any, must be served on all parties and the original and three (3) copies thereof, with proof of service shall be within three (3) days after service of the moving papers. All motions shall be decided upon the papers unless oral argument, or the taking of testimony is directed, in which event the parties will be notified thereof and of the time and place for such argument or for the taking of such testimony. [Emphasis added].

The verified improper practice petition states that the Department "recently" enacted changes limiting the scope of the Employee Assistance Program. The petition does not, however, state how, when or the means by which the changes had been effected. Since the Union did not respond to the motion to dismiss, the record remains devoid of any facts upon which the Board can base a determination regarding the timeliness, sufficiency or merits of the charge herein. Accordingly, the Board is compelled to dismiss the 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 filed by the Correction Officers' Benevolent Association be, and the same hereby is, dismissed.

DATED: New York, N.Y.
August 27, 198

ARVID ANDERSON
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

CAROLYN GENTILE
MEMBER