DC37 v. Dep't of Parks & Rec., 41 OCB 45 (BCB 1988) [Decision No. B-45-88 (IP)]

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

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Petitioner,

-and-

THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION,

Respondent.
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DECISION NO. B-45-88

DOCKET NO. BCB-1042-88

DECISION AND ORDER

On March 25, 1988, District Council 37, AFSCME, AFL-CIO ("DC 37" or "the Union"), filed a verified improper practice petition against the New York City Department of Parks and Recreation ("Department" or "Parks Department"). The petition alleges that the Department committed an improper practice in violation of Section 12-306 (formerly Section 1173-4.2) of the

New York City Collective Bargaining Law ("NYCCBL")[1] when it

unilaterally changed work schedules and began requiring certain unit members to work weekends without first satisfying its duty to bargain for such change. The Union asks the Board

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[1] NYCCBL Section 12-306 provides, in pertinent part, as follows:

> **Improper Practices; good faith bargaining.**
> **a. Improper public employer practices.** It shall be an improper practice for a public employer or its agents:
> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
> (2) to dominate or interfere with the formation or administration of any public employee organization;
> (3) to discriminate against any employee for the purpose
> of encouraging or discouraging membership in, or participation in the activities of, any public employee
> organization;
> (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.
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> **c. Good faith bargaining.** The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
> (1) to approach the negotiations with a sincere resolve to reach an agreement;
> (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
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> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and"proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

to make a determination that the actions of the Department constitute an improper practice and issue an order directing the Department to cease and desist from taking such unilateral action until it obtains a written agreement from the petitioner.

The City of New York office of Municipal Labor Relations ("City") on behalf of the Department of Parks and Recreation, filed a verified answer to the petition on April 26, 1988. The Union filed a verified reply on May 20, 1988.

BACKGROUND

Prior to 1988, the Parks Department followed a long-standing practice whereby the normal work schedule for forestry staff Climbers and Pruners, among other employees, was Monday through Friday. In the event of weekend work required due to storm damage or other emergency, the Department would summon the necessary employees from a list of workers who had volunteered to be available for work on Saturdays or Sundays.

In early 1988, the Department decided to establish a full-time weekend forestry crew. The Union expressed its opposition to the plan in early February, when it first learned that the Department intended to expand the work schedule in order to staff the weekend crew. Nevertheless, the Department, in a memorandum dated February 10, 1988,

informed its forestry personnel that one weekend crew would be established, consisting of four employees, and it solicited comments concerning the crew's staffing, as follows:

> Due to instances of storm damage to trees on week-ends, the establishment of one (1) Forestry crew to work on week-ends [sic].
>
> The crew will consist of:
> Park Supervisor ---------- 1
> Climber & Pruner ---------- 2
> Assoc. Park Serv. Wker. ------ 1
>
> Pick-up truck ---------- 1
> Tower (H.R.) ---------- 1
>
> There are a number of ways this crew can be established:
> 1- Personnel volunteer.
> 2- Assign by roster set up on seniority, pre-scheduled, and everyone gets a shot at it.
> 3- Assign personnel based on assigned crew and sched. the whole crew.
> 4- Assign by lowest in seniority.
>
> I am open to comments; The crew will start March 12, 1988 and I will make the decision and announce it Friday, Feb. 19, 1988.

In early March, 1988, the Union attended a meeting during which the subject of weekend scheduling was discussed. The Union continued to oppose the schedule change. Despite the Union's-objections, on or about March 12, 1988, a new work schedule, which assigned forestry crew employees to work weekends on a rotating basis, became effective.

POSITIONS OF THE PARTIES

Union's Position

The Union contends that a change in the duty schedule for forestry personnel, which expands their work week from five to seven days so as to include weekends, is a mandatory subject of bargaining. As such, it argues, the unilateral imposition of a new duty schedule violates the Department's obligation to bargain in good faith.

The Union cites three decisions of the New York State Public Employment Relations Board ("PERB")[2] and Decision No. B-21-87 of the New York City Board of Collective Bargaining ("Board"), in support of its contention that the "manipulation" of work schedules has been found to be a mandatory subject of collective bargaining. The Union maintains that, once a matter is determined to be a mandatory subject of collective bargaining, associated terms and conditions of employment may not be changed unilaterally.

The Union also contends that, in this case, a second type of improper practice has been committed because the change "violate[s the] salaries provision of the Blue Collar Unit Contract, Article III, Section 1B. . . . which establishes an

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[2] City of White Plains v. IAFF, Local 274 (White Plains), 5 PERB 3013 (1972); City of Albany v. Albany Police Officers Union, 7 PERB 3132 (1974); and Corning Police (Steuben County Chanter CSEA) v. City of Corning, 9 PERB 3153 (1976).

economic quid pro quo for existing Monday through Friday work schedules."

Department's Position

In its answer to the Union's petition, the City cites Board Decision No. B-19-79 in support of its view that scheduling of work hours is a well-established management right. According to the City, it follows that the Parks Department is free to determine the days of the week on which it requires employees' services. The City further cites several additional Board decisions which, it says, confirm its position that the Department is not obligated to bargain with the Union before making unilateral schedule changes, provided that the changes do not alter the maximum hours of work per day or hours of work per week.[3] The City points out that, in this case, the Department changed the schedule by substituting one weekend day for one weekday at the approximate frequency of once every five weeks, and it stresses that there was no change in the number of hours worked per day or per week.

The City concludes by noting that, even though the Department was not obligated to do so, it met with Union representatives on several occasions in a good faith attempt to make a smooth transition into the new schedule.

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[3] Decision Nos. B-4-74; B-5-75; B-10-75; B-24-75; and B-21-87.

DISCUSSION

At the heart of the matter in this case are two competing interests: the statutory right of the certified representative of a bargaining unit to negotiate the terms and conditions of employment for its members, and the management right reserved to the City to make a unilateral determination as to how it will deploy its personnel, under Section 12-307 b. of the NYCCBL.[4]

The Union maintains that when the Parks Department unilaterally promulgated the new duty chart for members of its forestry crew, it committed an improper employer practice on two grounds. First, because rescheduling assertedly is a mandatory subject of negotiation, it is an improper practice

[4] NYCCBL Section 12-307 b. reads, in pertinent part, as follows:

> 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.

for the Department to put a new schedule into effect without first bargaining for it. Second, the new schedule allegedly constitutes an improper practice because it violates the salary provision of the unit Agreement.

As to whether the unilateral change in a work schedule is a mandatory subject of bargaining, we- find that, unless the change alters the total number of work hours per day or per week that employees are required to work, it is non-mandatory. The broad managerial authority to direct employees provided under Section 12-307 b. of the NYCCBL permits the City to unilaterally implement adjusted work schedules as it deems necessary.[5] In effect, management "buys" a specific number of hours of work and appearances per week and/or per year for each unit employee each time it negotiates a new labor contract with a bargaining unit. How it decides to parcel out the hours thereafter is a choice left solely to management's discretion, subject only to external law and/or other restrictions that it has voluntarily agreed to incorporate into its unit agreement. Therefore, the Parks Department did not commit an improper employer practice when it unilaterally extended the forestry personnel duty chart from Monday through

[5] See, e.g., Decision Nos. B-21-87; B-24-75; B-10-75; and B-5-75.

Friday to seven days.[6] This change in the duty chart does not require affected employees to work more hours or to appear a greater number of days per week than under the former chart.

With respect to the Union's claim that the salaries provision of the Blue Collar unit contract has been violated, we note that allegations of violations of collective bargaining agreements are subject to various forms of redress, but may not be rectified by the Board in the exercise of its jurisdiction over improper practices. Section 205.5.,(d) of the Taylor Law[7] precludes this Board from exercising jurisdiction over a claimed contractual violation that does

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[6] We note that this holding is not inconsistent with a line of decisions handed down by the PERB. The PERB has held that, while generally, changes in employees' days off is a mandatory subject of bargaining, [City of White Plains, supra note 2.] a broad management rights clause constitutes a waiver of the Union's right to negotiate work schedules. [County of Nassau (Nassau County Medical Center) v. Civil Service Employees Association (Nassau Chapter) 12 PERB 3091 (1979).] In the City of New York, an analogous situation applies to every bargaining unit covered by the NYCCBL, by virtue of the management rights clause contained in Section 12-307 b., supra note 4.

[7] Section 205.5.(d) of the Taylor Law, which is applicable to this agency, provides, in pertinent part, as follows:

> . . . the board shall not have authority to enforce an agreement between an 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.

not otherwise constitute an improper practice.[8] This restriction does not, however, prevent the Union from pursuing such other remedies as may be available in other forums.

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

ORDER

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 in the instant matter against the New York City Department of Parks and Recreation be, and the same hereby is, dismissed.

DATED: New York, N.Y.
September 6, 1988

MALCOLM D. MacDONALD

DANIEL G. COLLINS

CAROLYN GENTILE

JEROME E. JOSEPH

DEAN L. SILVERBERG

GEORGE NICOLAU

[8] Decision Nos. B-6-87; B-29-87; B-37-87; B-55-87; and B-35-88.