CWA v. City, 41 OCB 62 (BCB 1988) [Decision No. B-62-88 (IP)]

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

-between-

Communications Workers of America,

Petitioner,

DECISION NO. B-62-88
DOCKET NO. BCB-1086-88

-and-

The City of New York

Respondent.
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DECISION AND ORDER

The Communications Workers of America ("the Union" or "CWA") filed a verified improper practice petition on September 9, 1988. The Union alleges that the City failed to abide by the agreements reached at the bargaining table and violated its duty to bargain in good faith, by unilaterally implementing a mechanical time-keeping system at all Board of Elections locations. After receiving an extension of time, the City filed its answer on October 27, 1988. The Union did not submit a reply.

BACKGROUND

While bargaining over the 1982-1984 Collective Bargaining Agreement with the CWA, the City submitted a demand regarding the installation of time clocks in all Borough and General offices. Up until this time, employees had been using a manual sign-in/sign-out system to record

their arrival and departure from the workplace. The demand was discussed and withdrawn from the bargaining table when no consensus on it was reached. Thereafter, during August of 1988, the City issued a written notification to Board of Elections employees informing them that time clocks were being installed in their workplaces, and that as of September 6, 1988, they would be required to use them.

POSITIONS OF THE PARTIES

Union's Position

The Union contends that the City's institution of the new time clock system constitutes a blatant failure to abide by the agreements reached at the bargaining table. It also argues that the City's unilateral implementation of the instant system, after failing to reach an agreement on a new procedure during collective bargaining, evidences its violation of the duty to bargain in good faith.

City's Position

The City contends that its decision to install time clocks at Board of Elections offices was completely within its statutory managerial prerogative to "determine the methods, means and personnel by which governmental operations are to be conducted." Therefore, it maintains

that the Union has failed to allege facts which constitute an improper practice within section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").[1]

The City asserts that PERB has held managerial decisions regarding equipment to be within the employer's managerial prerogative.[2] Therefore, it argues that the implementation of a time clock system, being a capital improvement, is a non mandatory subject of bargaining. It contends that the new time clock devices are merely pieces of equipment which replace the old manual sign-in/sign-out time-keeping system.

Furthermore, the City argues that it has no obligation to bargain over the implementation of the new procedure, which it alleges, does not materially alter the degree of employee participation in the time-keeping system from that which was previously established. In the instant case, it maintains that the use of time clocks is a simple substitution of one manner of employee participation in the

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[1]a. 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; ...
>
> (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.

[2]The City cites Chateaugay Central School District and Chateaugay Chapter, NYSUT, Local 2557, 12 PERB 3015 (1979), and City of Albany v. Albany Police Officers Union, 7 PERB 3078 (1974) in support of this position.

maintenance of attendance records, for another. It asserts that the Union has failed to establish that the new system is more extensive or more intrusive than the prior sign-in/sign-out procedure, and therefore has no basis for arguing that its unilateral institution is an improper practice.

Finally, the City contends that although it previously sought to bargain over the implementation of a mechanical time-keeping system, it never waived its managerial right to act unilaterally in this area. It notes that in Decision No. B-7-72, the Board of Collective Bargaining held that the failure to classify a demand as permissive at the outset of negotiations, did not alter its status as a matter within the managerial prerogative during impasse proceedings. Therefore, the City asserts that since it never agreed to limit its authority to install the disputed time clocks, it can install them unilaterally, as it sees fit.

DISCUSSION

The basis of the Union's assertion that the City committed an improper practice in the instant case is that the subject of installing time clocks at Borough and General offices was presented, and subsequently withdrawn from negotiations over the 1982-1984 Agreement. It argues that the City acted in bad faith by unilaterally instituting such

a system when it failed to reach a consensus on it at the bargaining table.

We disagree. Although this Board encourages the resolution of matters affecting the workplace through employer-employee negotiations, we find that the implementation of the instant mechanical time-keeping system is not a mandatory subject of bargaining. Consequently, the failure to bargain over its inception can not constitute an improper practice within the meaning of Section 12-306 of the NYCCBL.

We recognize that PERB has on several occasions held the implementation of certain time-keeping procedures to be mandatorily negotiable, on the ground that employee participation in such procedures may be considered to be a "term and condition of employment".[3] Therefore, since the implementation of the instant mechanical time-keeping procedure will require employee participation in order to be effective, it is not, as the City argues, necessarily, a non mandatory bargaining subject.

However, as the City points out, PERB has also held that the alteration of time-keeping procedures is mandatorily bargainable only if it materially changes the

[3]See Buffalo Sewer Authority and Buffalo Sewer Authority Unit, Local 815, Civil Service Employees Association, AFSCME, 18 PERB 4615 (1985), County of Nassau and Nassau Chapter of the Civil Service Employees Association, Inc., 13 PERB 4612 (1980), East Quoque Union Free School District and East Quoque Teachers Association, 12 Perb 4555 (1979), Hampton Bays School District and Hampton Bays Teachers Association, 10 PERB 4596 (1977).

degree of employee participation established in a prior system.[4] We similarly have held that the implementation of a mechanical time-keeping system will be a mandatory subject of bargaining only if it clearly and directly impacts on the terms and conditions of employment.[5]

The Union has not alleged any facts which indicate that the implementation of the instant system constitutes a more intrusive time-keeping procedure than the former sign-in/sign-out method. Therefore we find, as the City maintains, that the installation of the time clocks in question is a mere substitution of one degree of employee participation for another, and does not materially alter the petitioners' terms and conditions of employment.

Having reached this point in our evaluation, we accept the City's argument that the installation of the disputed time clocks, in the absence of any material change in the degree of employee participation, is a matter of the equipment provided by the employer, which is within its managerial prerogative. Consequently, this issue is not a mandatory subject of bargaining.

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[4]See Monroe County Deputy Sheriff's Local 2964, Council 82, AFL-CIO, 20 PERB 4598 (1987), Newburgh Enlarged City School District and Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, 20 PERB 4573 (1987), Buffalo Sewer Authority and Buffalo Sewer Authority Unit, Civil Service Employees Association, AFSCME, 18 PERB 4615 (1985), Island Trees Union Free School District and Nassau Educational Chapter, Civil Service Employees Association, Inc., 10 PERB 4590 (1977).

[5]See Decision No. B-23-85.

We reject the Union's argument that the City acted in bad faith by bargaining over this subject and then unilaterally instituting the instant mechanical time-keeping procedure. As the City asserts, we held in Decision No. B-7-72 that the failure to classify a bargaining demand as permissive, will not alter its basic nature as such, if it originally was within the managerial prerogative. Since the City never actually limited its authority to act in this area, we find that the issue of installing time clocks has remained within its statutory managerial prerogative.

Finally, we also reject the Union's contention that the City failed to abide by Agreements reached at the bargaining table when it implemented the disputed procedure. The theory underlying this allegation is not stated and appears to be inconsistent with the facts of this case. In any event, this issue is beyond our jurisdiction, since we do not have the authority to enforce collective bargaining agreements within the context of an improper practice petition.[6]

Accordingly, for all the reasons set forth above, we dismiss the Union's 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

[6]See Civil Service Law 205.5(d).

ORDERED, that the Communications Workers of America's improper practice petition be, and the same hereby is, denied.

Dated: November 29, 1988
New York, N.Y.

MALCOLM L. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

DEAN L. SILVERBERG
MEMBER

MEMBER