L.300, SEIU v. Dep't of General Services, 45 OCB 36 (BCB 1990) [Decision No. B-36-90 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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IN THE MATTER OF THE IMPROPER PRACTICE PROCEEDINGS

-between-

Local 300, Service Employees International Union, AFL-CIO, Petitioner,

Decision No. B-36-90
Docket No. BCB 1249-90

-and-

Department of General Services of the City of New York, Respondent.
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DECISION AND ORDER

On February 5, 1990, Local 300 of the Service Employees International Union ("the Union") filed an improper practice petition in which it alleged that:

> Respondent in conjunction with the Department of Personnel of the City of New York reclassified positions of Quality Assurance Specialist with individual specifications to one title of Quality Assurance Specialist without affording the Petitioner proper notice and in violation of 209A1a [and] . . . 209D [sic] of the Civil Service Law.[1]

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[1] Section 209-a of the Civil Service Law provides, in relevant part, as follows:

> 1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; . . . (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees. . .

The New York City Department of General Services, appearing by its Office of Municipal labor Relations ("the City"), filed a motion to dismiss, and an affirmation in support thereof, on February 23, 1990. The Union filed an affirmation in opposition to the City's motion to dismiss on April 20, 1990. The City thereafter filed a reply affirmation on April 24, 1990.

BACKGROUND

The Department of General Services employs Quality Assurance Specialists to inspect goods and/or services purchased by the City of New York. This job title is categorized into many distinct classifications. The Union is the representative of the employees in each of the classifications in this title pursuant to Certification No. 8-85. The work hours and wage rates for all the Quality Assurance Specialist titles are identical.

On or about February 7, 1990, pursuant to Resolution No. 90 on City Personnel Director Calendar No. D-119 ("Resolution No. 90"), several of the Quality Assurance Specialist titles were broadbanded into the overall title "Quality Assurance Specialist". The titles which were affected are as follows:

Quality Assurance Specialist (drugs and chemicals)
Quality Assurance specialist (equipment)
Quality Assurance Specialist (fuel and supplies)
Quality Assurance Specialist (furniture and supplies)
Quality Assurance Specialist (lumber)
Quality Assurance Specialist (printing and stationary)
Quality Assurance Specialist (textiles)
Associate Quality Assurance Specialist (building repairs)
Associate Quality Assurance Specialist (lumber)
Associate Quality Assurance Specialist (textiles)

City's Position

The City asserts that Sections 209(A)(1)(a) and 209(A)(1)(d) of the civil Service Law, which are alleged by the Union to have been violated in the instant case, are inapplicable to the City of New York and to its employees.[2] Moreover, the City contends that the determination to broadband a title falls squarely within its statutory managerial prerogative pursuant to Section 12-307(b) of the New York City Collective Bargaining Law ("the NYCCBL"),[3] and Section 813(2) of the New York City

[2] The City notes that Section 205.5d of the Civil Service Law provides, in relevant part, as follows:

> The [State Public Employment Relations] board shall exercise non-delegable jurisdiction of the powers granted to it by this paragraph [i.e. to establish procedures for the prevention of improper employer practices], however that this sentence shall not apply to the city of New York. The board of collective bargaining established by . . . the New York city charter shall establish procedures for the prevention of improper employer and employee organization practices as provided in section 1173-4.2 of the administrative code of the city of New York . . .

[3] Section 12-307b. of the NYCCBL provides in relevant part as follows:

> It is the right of the City, or any other public employer, acting through its agencies, . . . direct its employees; . . . 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; . . . and exercise complete control, and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

Charter.[4]

In response to the Union's allegation of practical impact, the City asserts that the existence of a practical impact as a result of an action that is within its statutory managerial prerogative is not an improper practice within the meaning of the NYCCBL. Moreover, the City notes that a demand to negotiate over the alleviation of a practical impact is not appropriately raised in an improper practice petition, but rather, must be raised in a scope of bargaining petition.

Finally, the City contends that the Union has failed to allege factual circumstances which, if proven, would demonstrate the existence of a practical impact on employees affected by Resolution No. 90. It notes that as a condition precedent to the consideration of a claim of practical impact, this Board has long held that a union must specify factual circumstances which, if proven, would establish the existence of such a practical impact.[5] Consequently, the City argues that the Union's improper practice petition must be dismissed.

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[4] Section 813 of the New York City Charter provides in relevant part as follows:

> **Personnel Director; powers and duties. -a.** The personnel director shall have the following powers and duties . . .
>
> (2) To make studies in regard to the grading and classifying of positions in the civil service, establish criteria and guidelines for allocating positions to an existing class of positions, and grade and establish classes of positions; . . .

[5] The City cites Decision Nos. B-31-88; B-38-86; B-23-85 in support of its position.

Union's Position

The Union admits that Sections 209a(l)(A) and 209a(l)(D) of the Civil Service Law were incorrectly cited in its improper practice petition. However, it notes that those sections essentially mirror Sections 12-306a(l) and (4) of the NYCCBL.[6] Therefore, the Union requests that its improper practice petition be deemed to be amended to reflect the fact that it is charging the City with violations of Sections 12-306a(l) and (4) of the NYCCBL.

Moreover, although the Union concedes that the reclassification of job titles is within the City's statutory managerial prerogative, it asserts that the City had an obligation to negotiate over the practical impact of its determination to broadband the affected Quality Assurance Specialist titles. The Union therefore argues that the City committed an improper practice when it refused to negotiate over the practical impact of its determination. For these reasons, the Union submits that the City's motion to dismiss should be denied.

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[6] Section 12-306a (formerly Section 1173-4.2) of the NYCCBL provides, in relevant part, as follows:

> **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 their rights granted in Section 12-305 (formerly section 1173-4.1) 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. . . .

DISCUSSION

Initially, we note that with due regard for considerations of due process, this Board has consistently declined to adopt an overly technical approach to the resolution of disputes within its jurisdiction.[7] Where there is no showing of prejudice to an interested party, we will not, on the basis of a technical oversight, refrain from considering the merits of arguments or claims which are raised in the pleadings of a particular dispute.

We find that Civil Service Law §§209(A)(1)(a) and(A)(1)(d) are essentially the same as NYCCBL §§12-306a(l) and (4), and that, consequently, the City had sufficient notice of the nature of the Union's claim. Accordingly, we grant the Union's request to amend its improper practice petition. We shall deem the petition to charge the City with violations of NYCCBL §§12-306a(l) and (4) in the instant matter. Additionally, although the City correctly notes that a demand to negotiate over the alleviation of an alleged practical impact on workload or safety must be initiated in the form of a scope of bargaining petition, rather than dismissing the Union's allegation for having been raised in the wrong forum, we will consider it as though it was submitted pursuant to a scope of bargaining petition.[8]

In considering the merits of the Union's claim, we note that the determination to broadband a job title is within the City's

[7] Decision Nos. B-29-89; B-9-89; B-73-88; B-14-87.

[8] See, Decision Nos. B-26-89; B-56-88; B-37-82; B-16-81; B-41-80.

statutory managerial prerogative.[9] Therefore, the reclassification of the Quality Assurance Specialist job title is not, in and of itself, a mandatory subject of bargaining.

However, as asserted by the union, it is well settled that the City is bound to negotiate over the alleviation of any practical impact on employee workload and/or employee safety which arises from an action that is within its managerial prerogative.[10] In this respect, we have repeatedly stated that the duty to bargain over the alleviation of a practical impact does not arise until we have first determined, on the basis of factual evidence, that a practical impact has resulted from an act that is within the city's managerial prerogative.[11] We will not declare the existence of a practical impact, nor will we direct a hearing to consider this matter, on the basis of a bare allegation or a conclusory statement.[12]

In the instant case, the Union does not offer any evidence which indicates that an unreasonably excessive workload or a threat to employee safety has resulted from the City's determination to broadband the Quality Assurance Specialist job

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[9] Decision No. B-14-83. See also, Decision Nos. B-47-89; B 38-89; B-70-88; B-2-81 (the revision of job specifications is within the City's managerial prerogative).

[10] Decision Nos. B-47-89; B-70-88; B-2-81; B-41-80. See also, Decision Nos. B-26-89; B-56-88; B-10-81 (A practical impact on workload is not established merely by a showing that there has been an increase in the employee's duties. It will be deemed to exist only where there is an unreasonably excessive or unduly burdensome workload as a regular condition of employment.)

[11] Decision Nos. B-47-88; B-46-88; B-37-82; B-41-80;B-33-80.

[12] Decision Nos. B-31-88; B-38-86; B-23-85; B-41-80.

title. The Union's allegations of practical impact are wholly conclusory. We find that the Union has not alleged facts sufficient to warrant a hearing on its claim that a practical impact has resulted from the reclassification of the Quality Assurance Specialist job title, and therefore, we shall grant the City's motion to dismiss.

We note, however, that our determination herein is without prejudice to the filing of a scope of bargaining petition which contains sufficient factual allegations to warrant our further consideration of any alleged practical impact resulting from the implementation of Resolution No. 90. We emphasize that any future attempt to litigate issues of practical impact should conform to the requirements established and repeatedly recited by this Board.[13]

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,

[13] See, supra at n. 11.

ORDERED, that the improper practice petition, docketed as BCB-1249-90 be, and the same hereby is dismissed.

Dated: June 27, 1990
New York, N.Y.

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

THOMAS GIBLIN
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MEMBER